

First-time contracts for contractors

A brief look at the principles of business law will help you to understand how contractor contracts are made, and the specific clauses that yours should include.

Define Exactly What You Are To Do

All contracts are agreements to pay a certain amount of money for certain goods or services which must be provided within a certain time. Unlike employees, who contract for a great many services for a fixed rate of pay, contractors only provide one service (or a list of specific services) in a given contract for a certain rate of pay. "The service or services should be strictly defined," says [David Royden](#), a lawyer specialising in contract law with Layton's Solicitors in Manchester. "That is one thing that distinguishes the contractor from the employee."

The contract should not specify how you deliver the service: you should decide all that for the same reasons. You decide the hours, the place (if possible), the equipment, and you finance your work yourself.

"Avoid standard contracts of any kind," Royden adds. "Make sure the contract you sign accurately describes the specific agreement you are making."

If the client or agent asks you to do other things, or more things than are determined in the contract, you should refuse, or negotiate a higher rate of pay. This does not mean that you should be inflexible or unreasonable, but you should be paid for all the work you do.

Define the Deliverable--Use Milestones

The contract will require you to complete the work within a given period. But it should be clear as crystal from the contract exactly what the deliverable--the final product for which you are to be paid--should be. "Never allow anyone, especially an agent, to tell you what this should be. Make sure you can provide it exactly as required," Royden says.

As most projects divide into phases--and as you'd probably like to get paid at several points during the project--make sure the contract includes specific milestones at which, when you achieve them, you are to be paid a specific amount. "These should be tied to project-related events, and not to time-periods like months or years, which is the way employees get paid," Royden continues.

Be Careful About Warrants

Your client may have some specifications about your work, and about the deliverable that need to be considered. Does he demand that you have certain qualifications? "That would be what we call a warranty on your part: you warrant (stipulate) that you have these qualifications. Don't agree to sign the contract if you don't have them, since you could lose pay or be faced with a breach of contract suit if you do," Royden says.

Watch Out For Indemnities

Many contractor contracts call upon the contractor to 'indemnify' the client or agent if something goes wrong. The one thing that you have to make sure doesn't go wrong is your providing the deliverable on time: should you have doubts about your ability to do that, include them in the contract, or just don't take the job. If you foresee problems, you should get the client to agree in the contract that they may arise, and that you expect to be paid anyway.

“ Define the deliverable and make sure you can deliver what you promise ”

David Royden-Laytons Solicitors

Obviously, things do go wrong. For everyone. But it isn't fair to expect the contractor to pay for it if the contractor hasn't been dishonest about the services provided.

Some agents or clients try to include 'indemnification clauses' in contractor contracts--they oblige the contractor to pay for losses incurred under specific situations. "You should try to renegotiate these, as they are very easy to abuse," Royden points out. It is the responsibility of the client to pay for business losses. The client is in a better position to handle these situations than the contractor. What the contractor can and should do is to agree in the contract to cooperate with the client to help make good the loss.

Restrictive Covenants

Many agents include in contracts clauses called '[Restrictive Covenants](#).' These state that you cannot work for the client on your own bat; you must go through the agent. They can get more complex in that they can include client subsidiaries or partner companies, or they may specify a given geographic area in which you are not allowed to work except through an agent.

"You will hear from time to time that these clauses are not enforceable: this is absolutely not true as many of them are. Should there be one in your contract that you do not like, best to get it out

“ Try to renegotiate any

rather than try to contest it later in court. You may be right, and the clause may prove unenforceable, but it will cost you ten or twenty thousand quid to find out," Royden continues.

indemnification clauses the contract may include ”

David Royden-Laytons Solicitors

Agents will normally insist on keeping clauses in that prevent you from working for a client of theirs without going through them. That only seems fair as the agent introduced you to the client. But broader restrictive covenants should be avoided.

Contracts Don't Have To Be Complicated

In general, avoid anything in contracts that you don't understand, or find odd. Never allow yourself to be told that it's 'normal,' or 'standard;' if you don't like it, have it out or renegotiate it.

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