

Negotiating IT Contracts

KIT BURDEN



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Contents

Executive summary.....	V
About the author.....	VII
Chapter 1: Identifying the key risks	1
Key risks.....	1
Chapter 2: Defining the scope of the contract	3
The service description	3
Additional documentation.....	3
Catch-all defences	5
Dealing with change	6
Chapter 3: Price	9
Buying work	9
Misuse of bargaining power by the customer	9
Inadequately understood or defined requirements.....	10
Impact of change.....	10
Unforeseen costs and expenses.....	10
Renewal/extension-related price increases.....	10
Chapter 4: Delivery	13
Time is of the essence	13
Binding dates (plus liquidated damages).....	13
Best and reasonable endeavours.....	14
Liquidated damages.....	14
Chapter 5: Personnel issues	19
TUPE	19
Redundancy costs	20
Pensions entitlements.....	20
Due diligence regarding costs of employment	20
Required indemnities and provisions.....	20
The ‘no lemons’, ‘cherry picking’ provisions.....	21
Committing key personnel	21
Staff attrition.....	22
Micromanaging	22
Over-promised delivery	22

Chapter 6: Due diligence	25
Hiding information	25
The process of due diligence	25
Chapter 7: Contracting models in the IT and outsourcing sectors	27
The one-off contract	27
Framework contract	28
Joint ventures	30
Shared services	31
Chapter 8: Pricing options	33
Bodyshopping	33
Time and materials	34
FTE-based pricing	34
Fixed pricing	35
Capped fee	35
Open book	36
Joint venture	36
Output-based pricing	36
Chapter 9: Key contractual provisions	39
Warranties	39
Indemnities	42
Service credits	44
Liquidated damages	45
Liability clauses	46
Chapter 10: Disputes and defaults	49
Timing and delay	49
Dealing with changes to the specification	50
Issues with the 'holy trinity'	51
Governance	52
Dispute resolution	53
Chapter 11: Exit and termination	57
Termination for breach	57
Problems with termination for breach	58
Neutral termination provisions	59
Termination for convenience	60
TUPE and ARD	61
Intellectual property rights (IPRs)	61
Termination assistance	62
Index	65

Executive summary

ORGANISATIONS MAY spend millions of pounds on IT or outsourcing projects, but all too often, insufficient attention is paid to the contract, resulting in severe financial losses, failure of the project and the risk of large-scale litigation. What may originally have arisen as a streamlining and cost-cutting exercise can turn out to be a huge drain on resources, which no organisation can afford in this current economic climate.

Negotiating IT Contracts, based on Kit Burden's highly-successful masterclass, is a practical guide on how to understand and negotiate contracts relating to IT and technology-related outsourcing projects. Throughout the report, key points are illustrated with real-life examples from the author's wide-ranging experience of acting for both suppliers and customers. Written in an accessible style, the report is ideal for IT, project and business managers, and anyone else involved in negotiating an IT or technology-related outsourcing deal. Key legal concepts, in particular relevant regulations (such as TUPE), and commonly misunderstood terminology, are explained in simple terms, so that they can be easily understood in the context of negotiating a contract.

The report opens with the identification of the key risks likely to arise in an IT project – the risks which need to be catered for in the contract. A key theme of the report is the allocation of risk between the supplier and the customer, the successful negotiation of which enables the customer to minimise

his/her risks and the supplier to safeguard a reasonable return.

A review of the advantages and the disadvantages of different types of contracts is provided, and guidance is given on their suitability for different kinds of projects.

Chapter 3 covers alternative pricing models. To a non-expert, the wide array of options may be confusing, and it may be hard to ascertain which will offer the best value for the project. The options are also considered from the point of view of long-term value, which is essential for the ongoing success of a project. Thereafter, concepts, such as warranties, indemnities, service credits, liquidated damages and liability claims that commonly feature in contracts are examined, alongside the common errors in drafting, of which contract negotiators should beware.

It is acknowledged that however well a contract is drafted, disputes will arise, and the report discusses where these are likely to occur, how governance processes can ensure they are swiftly and effectively managed and – hopefully – resolved. Should more informal governance measures fail to resolve the issue, the possible next steps are examined, including expert determination, mediation, arbitration and litigation.

The report ends on the themes of exit and termination. Provisions for termination and ongoing rights need to be built into a contract, to ensure that the customer can take back or retender for any services at the end of the term, ideally with the full cooperation of the supplier.

About the author

KIT BURDEN specialises in the areas of outsourcing and complex technology transactions, advising both users and suppliers of IT on all aspects of the procurement process. His work ordinarily involves him in business-critical projects valued in the region of hundreds of millions of pounds. His major clients include: UBS, Dixons, RBS, Lloyds TSB, CMC Markets, TUI, Birds Eye Iglo, HCL Technologies, the Law Society, the British Council and Red Hat, as well as various major insurers, retail banks, and other large corporates and providers of IT and outsourcing services.

Kit is identified as a leading IT and outsourcing lawyer by all of the leading legal directories, including the *Legal 500*, *Legal Experts* and *Chambers and Partners*.

He is a trustee of the Society of Computers and Law, and chairs its Outsourcing Group. He is also a member of the Computer Law Group. A frequent speaker at industry and legal conferences both in the UK and internationally, Kit also writes for various journals on IT and outsourcing including *IT Law Today*, *Computers and Law*, and the *Computer Law and Security Review*, for which he is on the editorial board. He is the author of *Computer Contracts* (Sweet & Maxwell) and the *Legal Protection of Computer Software* (EMIS), and co-author of the chapter on 'IT Contracts' in the *Encyclopaedia of IT Law* (Sweet & Maxwell).

Kit can be contacted at kit.burden@dlapiper.com or on +44 (0)20 7796 6075.