



Contracts between Freelances (Limited Companies) and their Clients

It is becoming increasingly likely that a client will send you a contract and/or terms & conditions (T&Cs). This is partly because these documents are used by Her Majesty's Revenue and Customs (HMRC) as an indicator of employment status (see FS2, 'Are your workers employed or self-employed for tax and National Insurance contributions?' – www.hmrc.gov.uk/leaflets/es-fs2.pdf).

The SfEP has examined a wide range of clients' contracts and terms & conditions before drawing up a model set of contract clauses that limited company SfEP members and associates can offer to clients who require some sort of formality in the client–freelance relationship.

Definitions

For the purposes of this document, the **contract** covers a specific job/project and will include all relevant details, such as:

- material supplied
- material still to come, and by when
- tasks to be performed
- delivery date
- fee and payment terms
- expenses to be reimbursed.

In addition there are **standard terms & conditions (T&Cs)**, general points that will tend to cover the overall working relationship between client and freelance, and will probably remain the same for each job.

Employment status

The model contract takes account of guidance in HMRC document FS1, 'Employed or self-employed for tax and National Insurance contributions' (www.hmrc.gov.uk/leaflets/es-fs1.pdf).

Although your client is responsible for correctly assessing your employment status, it is not a case of their simply declaring that you are not an employee. Your status is based on the terms of your agreement with them.

It is vital to understand that the fact that you are set up as a limited company does **not** of its own mean that you will not be classed as an employee of the client. Though in your own mind you may be one and the same thing, you and your company are legally distinct entities. Among other things, it is vital that any contract you sign is signed by you **on behalf of** your company and not in your personal capacity.

It is important that both client and freelance appreciate that certain practices can endanger the freelance's status as self-employed – for example, a freelance working regularly in a

client's office at times dictated by the client and while using their equipment. Aspects of self-employment particularly relevant to SfEP members and associates are:

- being able to subcontract work
- working at a time and place decided upon by you
- risking financial loss from a job/project (eg working for a fixed price regardless of how long the job may take) but having the opportunity to benefit from efficient practices (eg invoicing for the negotiated lump sum if the job takes less time than you estimated is **not** dishonest)
- being liable to correct unsatisfactory work in your own time and at your own expense
- providing your own main items of equipment
- having a number of different clients.

Remember that each job should be assessed independently, depending on your working practices, as it is possible to be both self-employed and an employee.

If you are in any doubt as to your status, HMRC has an Employment Status Indicator at www.hmrc.gov.uk/calcs/esi.htm. This is a free, anonymous questionnaire that will indicate your status provided you answer accurately; it can even be used as evidence but only if it is completed by your client.

If you are classed as an employee, you will not be able to claim tax deductions available to the self-employed, and you will have to pay Class 1 National Insurance contributions (NICs). Your client will be required to deduct income tax and NICs from your fee; these deductions can be backdated. Your client may also be liable to provide other staff benefits, statutory payments and employment rights – understandably, our clients are keen not to do that!

IMPORTANT: Only a little word but it makes such a difference – an employee has a contract **of** services; a freelance has a contract **for** services.

Clients' terms & conditions

Clients may send you their own terms & conditions (T&Cs). In many cases these documents are straightforward but some require compliance in areas that the SfEP believes are unreasonable for its membership.

Sometimes the T&Cs sent to freelances have been adapted from those given to the organisation's employees without considering the implications for editorial freelances. They may have 'catch-all' clauses that are not suitable for us.

Language to look out for:

- indemnity
- financial liability
- total responsibility.

You should **not** agree to this sort of clause. Explain (politely) to the client why it, and any other unreasonable clause, is unfair and ask the client to accept your crossing it (or them) out, initialling/signing against the crossed-out clause(s), and the substitution of the relevant clause from the SfEP's own model contract. Alternatively, just go ahead and make the amendments before sending the T&Cs back and thereby putting the ball in the client's court to show that you're still negotiating. There have been several precedents for this.

If you are unsure about something in a contract or terms & conditions that a client asks you to sign and which is not covered by this guidance, contact FirstAssist for advice.

Points to note

Indemnity insurance

Clients occasionally demand that a freelance has professional indemnity insurance (PII). If you don't have PII, you could explain that this is not generally necessary in connection with a **straightforward** job of copy-editing/proofreading/project management. However, as with any insurance, you should consider the consequences of not having PII, depending on the perceived risk(s) attached to the project that you are being asked to work on.

Sending out contract terms

It may not be necessary to send out a new contract with every job. It should be enough to send it when starting a job with a new client or if you are unsure or unhappy about a client you are or have been working with. You can adapt the SfEP model contract to say that, unless agreed otherwise, it will apply to all future work with that client (with the exception of the payment terms in clause 6.2 and the job scope in Schedule A, which can be agreed on a job-by-job basis in any other written form – eg a letter or email – which will then form part of the contract).

Clients outside the United Kingdom and European Union

This guidance document relates **only** to the United Kingdom and European Union. We are unable to advise if you are negotiating with a client outside the UK and European Union, so you should determine early on whose laws will apply in the event of a dispute.

SfEP model contract

The model contract on the following pages is offered for the use of SfEP members and associates.

PLEASE NOTE:

- a. This model is for limited companies, not freelances who operate as sole traders.
- b. If you alter anything in the model, other than deleting an unwanted alternative clause or phrase, you do so at your own risk and must remove the Society's name and logo.
- c. The parties to the contract are referred to throughout as *(Party A)* and *(Party B)*. As these parties are defined in clause 1 of the contract, there is no need to change these terms throughout the contract.
- d. In the contract, optional or alternative clauses are enclosed within square brackets. You should choose whether or not to include such a clause, or which of two alternative clauses to include, according to your circumstances.
- e. Within clauses, text that you need to substitute according to your circumstances is enclosed in square brackets: the field is either left blank (eg '[] Limited', where you substitute your company name for '[]') or the nature of the text that is required to be substituted is indicated by italics (eg *Month, Year, Place*).
- f. In addition, where you are required to choose the appropriate text from one of a number of options, the optional text is enclosed in square brackets and separated by the word '*or*' in italics. You should choose the relevant text and delete the other options (eg 'This agreement is subject to [the laws of England and Wales] *or* [Scots law]': you should delete either '[the laws of England and Wales] *or*' or '*or* [Scots law]' as appropriate.

This guidance and model contract, with definitions and points to note, were drawn up by Joanna Chisholm (Wordsense Ltd), Julian Roskams (Etica Press) and Jeremy Toynbee (Toynbee Editorial Services Ltd), the main contribution being made by Julian Roskams.

The guidance has also been looked at by FirstAssist, the LawCare Service to which the SfEP subscribes, and by Richard Balkwill, who advises companies and runs training courses on copyright and contracts. We thank them for their helpful comments.



SfEP Model Contract for Limited Companies

1. Parties

- 1.1 This agreement is made this [number] day of [month] 20[year] (the 'start date') between
- (1) (Party A) [] Limited (a company incorporated in [England] or [England and Wales] or [Scotland] or [Northern Ireland] or [the European Union] or [Place] and registered under number []) whose registered office is at [] or (Registered Charity Number []) and
 - (2) (Party B) [] Limited (a company incorporated in [the United Kingdom] or [the European Union] or [Place] and registered under number []) whose registered office is at []
- WHEREBY it is mutually agreed that (Party B) shall carry out the assignment ('the assignment') specified in Schedule A to this agreement on behalf of (Party A).

2. Quotations

- 2.1 (Party A) accepts that firm quotations can be given only against materials relating to the assignment seen in their entirety by (Party B). Quotations given against materials not seen or seen only in part are provisional and are subject to written confirmation by (Party B) on sight of the materials in full.
- 2.2 If, on receipt of the assignment or at an early stage, it becomes apparent that significantly more work is required than had been anticipated in this agreement, (Party B) may renegotiate the fee and/or the deadline. Similarly, if, during the term of (Party B)'s work, additional tasks are requested by (Party A), (Party B) may renegotiate the fee and/or the deadline. Further work on the assignment will not commence until (Party A) has confirmed in writing that the adjustment of the fee and/or deadline has been fully accepted.
- 2.3 Where the commissioned assignment is expected to take a long time to complete, (Party B) may agree provisional lower and upper limits for the fee on sight of the assignment in full and then, at a mutually agreed point in time during execution of the assignment, (Party B) will negotiate an adjustment, if necessary, of the previously agreed fee and/or deadline. Further work on the assignment will not commence until (Party A) has confirmed in writing that the adjustment of the fee and/or deadline has been fully accepted.

3. Scope

- 3.1 (Party A) is under no obligation to offer (Party B) work; neither is (Party B) under any obligation to accept work offered by (Party A).
- 3.2 The materials that are the subject-matter of the assignment will be delivered on or before the start date, for the agreed fee, and will be based on the description of the assignment in Schedule A to this agreement and any additional brief supplied by (Party A) and agreed by (Party B).

- 3.3 During the period of this agreement (*Party B*) may accept and perform engagements for other companies, firms or persons which do not conflict with or materially impinge upon its ability to provide the assignment.
- 3.4 Unless prevented by ill-health of employees or accident and subject to the express provisions of this agreement, (*Party B*) will undertake the assignment from the start date until [date] or [the assignment is completed in accordance with this agreement] or until this agreement is terminated in accordance with clause 10 below.
- 3.5 This agreement may be extended or renewed only by mutual agreement of the parties in writing.

4. (Party A) obligations

- 4.1 (*Party A*) shall at its own expense supply (*Party B*) with all necessary documents or other materials and all necessary data or other information relating to the assignment within sufficient time to enable (*Party B*) to undertake the assignment in accordance with this agreement.

5. Supply of equipment

- 5.1 The assignment will be undertaken unsupervised at such times and places as determined by (*Party B*) using its own equipment, unless otherwise agreed by the parties in writing.

6. Payment terms

- 6.1 (*Party A*) agrees to pay (*Party B*) in full for its work in relation to the assignment.
- 6.2 On presentation by (*Party B*) to (*Party A*) of a duly completed invoice at such time(s) as agreed by the parties, (*Party A*) will pay (*Party B*) a fee of ([£ [] per hour] or [£ [] per month] or [£ [] per printed page] or [£ [] flat fee for the job] (exclusive of any VAT if applicable).
- 6.3 Any queries about an invoice should be raised within seven days of issue.
- 6.4 Payment will be made within 30 days net of invoice date, according to the Late Payment of Commercial Debts (Interest) Act 1998. If payment is not made by the due date, (*Party B*) shall be entitled without limiting any other rights it may have to charge interest on the outstanding amount (both before and after any judgement) at the rate of [] per cent above the current Bank of England base rate from time to time from the due date until the outstanding amount is paid in full, as per the Late Payment of Commercial Debts Regulations 2002.
- 6.5 (*Party A*) accepts that, in the event of late or non-payment, (*Party B*) may refer the matter to a debt collection agency and/or start legal proceedings. (*Party A*) accepts full liability for meeting the additional costs that would be incurred by such legal action.

7. Additional costs

- 7.1 (*Party B*) agrees to attend (*Party A*)'s or other premises for necessary meetings, the time spent and agreed reasonable expenses incurred to be reimbursed by (*Party A*).
- 7.2 (*Party A*) will reimburse (*Party B*) for agreed reasonable expenses over and above usual expenses incurred in the process of undertaking the assignment. This includes but is not limited to postal, courier and special delivery charges.
- [7.3 (*Party B*) will no earlier than the last working day of each calendar month during the period of this agreement submit an invoice for any (*Party A*)-approved disbursements and other reasonable expenses which (*Party B*) has incurred in undertaking the assignment (if appropriately evidenced by receipts or vouchers) for which (*Party B*) is entitled to reimbursement.]

[7.4 *(Party A)* shall supply *(Party B)* with one free copy of the work that is the subject-matter of the assignment.]

[7.4 If *(Party B)* has made a substantial contribution to the work, it will be entitled to receive one free copy of the work that is the subject-matter of the assignment.]

8. Cancellation fee

8.1 If the assignment has been scheduled and the assignment is cancelled prior to actual start, *(Party A)* will pay *(Party B)* a cancellation fee of up to 50 per cent of the fee for the job.

8.2 If the assignment is cancelled once the assignment has commenced, *(Party A)* shall pay *(Party B)* in full for that proportion of the assignment already completed, plus a cancellation fee of 50 per cent of the remainder of the assignment.

9. Indemnification

9.1 Except in respect of death or personal injury caused by *(Party B)*'s negligence, *(Party B)* shall not be liable to *(Party A)* by reason of any representation (unless fraudulent) or any implied warranty, condition or other term or any duty at common law or under the express terms of this agreement for any loss of profit or any indirect special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of *(Party B)* or otherwise) which arise out of or in connection with the undertaking of the assignment or their use by *(Party A)* and the entire liability of *(Party B)* under or in connection with this agreement shall not exceed [50% of the total fee] or [the amount of the fee payable for one month] in respect of any single claim for the provision of the assignment except as expressly provided in this agreement.

9.2 *(Party B)* shall not be liable to *(Party A)* should the subject-matter of the assignment be delayed, lost or damaged when returned by *(Party B)* to *(Party A)* in the manner agreed by the parties.

10. Right to terminate

10.1 *(Party B)* reserves the right to refuse any assignment for any reason.

10.2 *(Party B)* reserves the right to terminate the assignment without further notice if it is delivered to it after the start date and the deadline is not appropriately extended by *(Party A)*.

10.3 While every effort is made to carry out contracts, no responsibility is taken for variation or cancellation owing to acts of God or any other cause beyond personal control. *(Party B)* or, in the event of its absence, a party acting on its behalf will notify *(Party A)* as soon as possible by the most expeditious means available to explain the circumstances, and, if *(Party A)* then wishes to terminate the agreement, *(Party A)* may do so, provided that *(Party B)* is paid in full at the agreed rate for any work already completed. *(Party A)* is not obliged to offer further work to *(Party B)*, and *(Party B)* is not obliged to accept ongoing work, even if it is offered.

10.4 *(Party B)* reserves the right to terminate the assignment without further notice if it or any part of it appears to contain any defamatory matter, breach any contract or moral rights or duty of confidence or constitute contempt of court or breach any provision of any statute or any regulation(s) made thereunder.

10.5 *(Party B)* reserves the right to refuse to accept or to terminate with immediate effect the assignment if its completion would involve the illegal copying of software programs.

10.6 This agreement will terminate automatically without any requirement for notice or payment in lieu of notice in the event that *(Party B)* becomes unable to undertake the assignment by reason of permanent incapacity or in the event that *(Party A)* or *(Party B)* goes into liquidation or makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.

- 10.7 Either party may by written notice summarily terminate this agreement with immediate effect if the other party breaches any term of this agreement which in the case of a breach capable of remedy is not remedied by the defaulting party within 21 days of a written notice from the other specifying the breach and requiring its remedy.
- 10.8 *(Party B)* shall not be liable to *(Party A)* or be deemed to be in breach of this agreement by reason of any delay in performing or any failure to perform any of its obligations in relation to the assignment if the delay or failure was due to any cause beyond *(Party B)*'s reasonable control.

11. Copyright and intellectual property rights (IPR)

- 11.1 All intellectual property conceived or made by *(Party B)* in the course of undertaking the assignment will belong to *(Party A)* and *(Party B)* hereby assigns and agrees to assign all its interest therein to *(Party A)* or its nominee, unless otherwise agreed. Whenever requested to do so by *(Party A)*, *(Party B)* will at *(Party A)*'s expense execute any and all applications, assignments or other instruments which *(Party A)* deems necessary to give effect thereto.

12. Quality of work

- 12.1 *(Party B)* undertakes to make all reasonable efforts to carry out the assignment in accordance with *(Party A)*'s instructions, which must be given in writing prior to the start of the assignment. *(Party A)* accepts that *(Party B)* sets its own working methods and undertakes to provide the assignment to the standards accepted within the publishing industry of the United Kingdom. *(Party B)* accepts no liability for the omission of material to which it has no reasonable access.
- 12.2 *(Party B)* guarantees that any work that it subcontracts on behalf of *(Party A)* will be completed to the same standard, schedule and budget and with the same conditions of confidentiality.
- 12.3 *(Party B)* shall make every endeavour to avoid errors. *(Party B)* accepts no responsibility for any errors, ambiguity or lack of clarity or the consequences of any errors, ambiguity or lack of clarity in original material supplied.
- 12.4 Where the parties agree that the assignment undertaken by *(Party B)* is not of the commissioned standard, *(Party B)* will correct the work [free of charge] or [at a rate agreed by the parties].

13. Employment status

- 13.1 Both parties agree and intend that this legal relationship is one of undertaking independent specialist services, and specifically is not a relationship of master and servant or employer and employee. Nothing in this agreement shall render *(Party B)* an agent or partner of *(Party A)* and *(Party B)* will not hold itself out as such.
- 13.2 Unless otherwise agreed by the parties, *(Party B)* shall not be subject to directions from *(Party A)* as to the manner in which it shall perform the assignment.
- [13.3 *(Party B)* is registered for Value Added Tax (VAT).]
- 13.4 *(Party B)* is responsible for its own income tax and National Insurance contributions, and for paying VAT (where applicable) and will not claim benefits granted to *(Party A)*'s employees.
- 13.5 *(Party B)* undertakes to *(Party A)* to indemnify *(Party A)* in respect of all and any income tax and National Insurance contributions which may be found due from *(Party A)* on any payments made to *(Party B)* under this agreement together with any interest penalties or gross-up thereon.

14. Variations of terms

- 14.1 Any changes or additions to the assignment or the terms of this agreement must be agreed in writing by *(Party B)* and *(Party A)*.

15. Confidentiality

- 15.1 Under the terms of the Data Protection Act 1998, *(Party A)* and *(Party B)* may keep on record such information (eg contact details) as is necessary. Either may view the other's records to ensure that they are relevant, correct and up to date.
- 15.2 The nature and content of the assignment will be kept confidential and not made known to anyone other than *(Party B)* and its contractors without prior written permission.
- 15.3 *(Party B)* will not disclose or use or cause to be disclosed or used at any time during or subsequent to this agreement any secret or confidential information of *(Party A)* or any of its clients or customers or any other non-public information relating to the business, financial or other affairs of *(Party A)* acquired by it except as required by *(Party A)* in connection with *(Party B)*'s performance of the agreement or as required by law.
- 15.4 All notes, computer disks and tapes, memoranda, correspondence records, documents and other tangible items made, used or held by *(Party B)* in the course of undertaking the assignment will be and remain at all times the property of *(Party A)*. At any time whether prior to or upon the termination or expiration of this agreement *(Party B)* shall promptly on request deliver to *(Party A)* all such tangible items which are in its possession or under its control relating to *(Party A)*, its business affairs and clients and/or the assignment and it may not make or retain copies unless authorised in writing by *(Party A)* to do so.
- 15.5 On completion of the assignment or at any other time requested by *(Party A)*, *(Party B)* shall return any original photographs, negatives and rewritable media, along with any other material requested at the start of the assignment.
- [15.6 *(Party B)* shall retain any manuscripts, paper proofs and similar for a minimum of [period].]
- [15.7 *(Party B)* shall retain any electronic files held for a minimum of [period].]

16. Standard terms

- 16.1 This agreement is personal between *(Party A)* and *(Party B)* and neither may sell, assign or transfer any duties, rights or interests created under this agreement without the prior written consent of the other. Nothing in this agreement is intended to confer on any person any right to enforce any terms of this agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
- 16.2 This document contains the entire agreement of the parties. It may not be changed by oral agreement but only in writing signed by both parties [and in the case of *(Party A)* no such agreement shall be binding upon it unless signed by a registered director].
- 16.3 Any notice to be given by one party to the other shall be validly given if:
- posted by prepaid recorded-delivery first-class post within the mainland of the United Kingdom and correctly addressed to the party to be served and shall be deemed served on the third working day after posting (unless not actually delivered)
 - sent to the correct facsimile number of the party to be served and the sender has his fax machine's printed journal entry to prove safe receipt by the party to be served and shall be deemed served on the next working day after sending
 - personally delivered to a registered director of *(Party B)* or a registered director or senior employee of *(Party A)* and shall be deemed served when so delivered.
- 16.4 This agreement supersedes any previous agreement between the parties in relation to the matters dealt within it and represents the entire understanding between the parties.

16.5 This agreement is subject to [the laws of England and Wales] or [Scots law] or [Northern Ireland law], and both parties agree to submit to the exclusive jurisdiction of the courts of [England and Wales] or [Scotland] or [Northern Ireland].

16.6 (Party B) may use (Party A)'s name in its promotional material.

Signed by [] (signature)
For and on behalf of (Party A)
(date)

Signed by [] (signature)
For and on behalf of (Party B)
(date)

Schedule A

The assignment shall consist of:

To include inter alia:

[Specify work to be undertaken]

[Specify length of contract]

[Specify how materials the subject-matter of the contract should be delivered and returned]