



Contracts and Terms & Conditions between Freelances 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?' <http://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 terms & conditions that sole-trader 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)

Contract This 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.

Terms & conditions (T&Cs) These are 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 below takes account of guidance in HMRC document FS1, 'Employed or self-employed for tax and National Insurance contributions' (<http://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 & conditions of your agreement with them.

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 <http://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 also 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 and initialling/signing against the crossed-out clause(s). Alternatively, just go ahead and do it, send the T&Cs back and put 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.

Cancellation

Cancellation or curtailment of a project is one of the risks involved in being self-employed. Although compensation for the cancellation of an agreed project is welcome, it is not to be expected by a self-employed person.

Sending out T&Cs

It should not be necessary to send out your T&Cs with every job. It should be enough to send them 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.

Clients outside the UK

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

SfEP model terms & conditions

The model set of terms & conditions on the following pages is offered for the use of SfEP members and associates.

PLEASE NOTE:

- This model is for sole traders, not freelances who operate as a limited company.
- If you alter anything in the model, you do so at your own risk and must remove the Society's name and logo.

This guidance and model terms & conditions, with definitions and points to note, were drawn up by Gillian Clarke (publications director) and Anne Waddingham (advanced member). Anne has been a client as well as a freelance and brings to this exercise a great deal of experience on both sides of the fence; she also teaches the Publishing Training Centre's course 'Managing Editorial Freelances'. 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, and Mark Seaman, of Sweet & Maxwell. We thank them for their helpful comments.



SfEP model terms & conditions

- 1 These terms & conditions apply to any work done for the Client by the Freelance.
- 2 The Client is under no obligation to offer the Freelance work; neither is the Freelance under any obligation to accept work offered by the Client.
- 3 The Freelance will provide service(s) as mutually agreed, confirmed in writing by the Client.
- 4 The work will be carried out unsupervised at such times and places as determined by the Freelance, using her/his own equipment.
- 5 The Freelance confirms that she/he is self-employed, is responsible for her/his own income tax and National Insurance contributions, and for paying VAT (where applicable) and will not claim benefits granted to the Client's employees.
- 6 The Freelance agrees to attend the Client's or other premises for necessary meetings, the time spent and agreed reasonable expenses incurred to be reimbursed by the Client.
- 7 The Client will reimburse the Freelance for agreed reasonable expenses over and above usual expenses incurred in the process of editorial work.
- 8 The Client will pay the Freelance a fee per hour *OR* per printed page *OR* an agreed flat fee for the job, plus VAT where applicable.
- 9 The completed work will be delivered on or before the date agreed, for the agreed fee, which will be based on the description of the work required and the brief, both supplied by the Client.
- 10 If, however, upon receipt of the item to be worked on or at an early stage, it becomes apparent that significantly more work is required than had been anticipated in the preliminary discussion/brief, the Freelance may renegotiate the fee and/or the deadline.
- 11 Similarly, if, during the term of the Freelance's work, additional tasks are requested by the Client, the Freelance may renegotiate the fee and/or the deadline.
- 12 If the project is lengthy, the Freelance may invoice periodically for completed stages.
- 13 Any content created by the Freelance as part of the copy-editing/proofreading/project management process will become the copyright of the Client, unless otherwise agreed.
- 14 The nature and content of the work will be kept confidential and not made known to anyone other than the Client and its contractors without prior written permission.
- 15 The Freelance guarantees that any work that she/he subcontracts on behalf of the Client will be completed to the same standard, schedule and budget and with the same conditions of confidentiality.
- 16 If the Freelance's work is unsatisfactory, the Freelance will rectify it in her/his own time and at her/his own expense.
- 17 Unless agreed otherwise at the outset, payment will be made within 30 days of receipt of the Freelance's invoice, according to the Late Payment of Commercial Debts (Interest) Act 1998.
- 18 Under the terms of the Data Protection Act 1998, the Client and the Freelance 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.

- 19** Either the Client or the Freelance has the right to terminate a contract for services if there is a serious breach of its terms.
- 20** If the Freelance has made a substantial contribution to the copy-editing/proofreading/project management of the work, she/he will be entitled to receive one free copy of the work.
- 21** The Freelance may use the Client's name in her/his promotional material.
- 22** This agreement is subject to the laws of England and Wales [or Scots or Northern Ireland law, as appropriate], and both Freelance and Client agree to submit to the jurisdiction of the English and Welsh [or Scots or Northern Ireland] courts.

Signed by the Freelance: _____

Name: _____

Date: _____

Signed on behalf of the Client: _____

Name: _____

Position: _____

Date: _____