

## Contracts and terms & conditions between freelancers and their clients

It is hoped that the following SfEP guidance and model terms & conditions, with definitions and points to note, will help the membership resolve any queries or problems regarding terms & conditions and contracts with clients in the UK.

They were drawn up by former publications director Gillian Clarke and Anne Waddingham, an Advanced Professional Member with experience as both a client and a freelancer, in consultation with FirstAssist, the LawCare Service to which the SfEP subscribed, and with copyright and contract consultant Richard Balkwill and Mark Seaman of Sweet & Maxwell. Clause 18 was amended on 25 May 2018 with the introduction of the GDPR.

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.

The SfEP has examined a wide range of clients' contracts and T&Cs before drawing up a model set of T&Cs that sole-trader SfEP members can offer to clients who require some sort of formality in the client–freelancer relationship.

### Definitions

**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 freelancer, and will probably remain the same for each job.

## Employment status

The model below takes account of the guidance on [GOV.UK's Employment status](#) web page under [Self-employed and contractor](#). Detailed guidance can be found in the HMRC's [Employment Status Manual](#) under [ESM0500 - Guide to determining status](#).

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 T&Cs of your agreement with them.

### *Maintaining freelancer status*

It is important that both client and freelancer appreciate that certain practices can endanger the freelancer's status as self-employed – for example, a freelancer 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 are:

- being able to subcontract work
- working at a time and place decided on 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 even if the job has taken less time than you estimated)
- 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.

### *Employee status*

If you are in any doubt as to your status, check out the HMRC's [Employment Status Indicator](#). 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 clients are keen not to do that!

**Important:** Only a little word but it makes such a difference – an employee has a contract **of** service; a freelancer 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 freelancers have been adapted from those given to the organisation's employees without considering the implications for editorial freelancers. 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 are a number of precedents for this.

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

### Points to note

#### *Indemnity insurance*

Clients occasionally demand that a freelancer 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 copyediting/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.

The SfEP has a relationship with the insurance broker [PolicyBee](#) to provide this type of cover.

### *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.

### *Late payment legislation*

The Late Payment Act was amended in 2013 to harmonise it with EU Directives. Clients can set a credit period of up to 60 days (30 days for public section transactions) but that is the maximum and if you are not happy, ask for it to be reduced. If no contract exists, the default credit period is 30 days. The credit period begins on delivery of the goods or services or on receipt of the invoice, whichever is the later.

[Late payment legislation](#) and [interest calculator](#)

## SfEP model terms & conditions

The model set of terms & conditions that follows is offered for the use of SfEP members.

- This model is for sole traders, not freelancers who operate as limited companies.
  - If you alter anything in the model, you do so at your own risk and must remove the Society's name and logo.
1. These terms & conditions apply to any work done for the Client by the Freelancer.
  2. The Client is under no obligation to offer the Freelancer work; neither is the Freelancer under any obligation to accept work offered by the Client.
  3. The Freelancer 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 Freelancer, using her/his own equipment.
  5. The Freelancer 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 Freelancer 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 Freelancer for agreed reasonable expenses over and above usual expenses incurred in the process of editorial work.
  8. The Client will pay the Freelancer 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, on 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 Freelancer may renegotiate the fee and/or the deadline.
  11. Similarly, if, during the term of the Freelancer's work, additional tasks are requested by the Client, the Freelancer may renegotiate the fee and/or the deadline.
  12. If the project is lengthy, the Freelancer may invoice periodically for completed stages.
  13. Any content created by the Freelancer as part of the copyediting/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 Freelancer 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 Freelancer's work is unsatisfactory, the Freelancer 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 Freelancer's invoice, according to the Late Payment of Commercial Debts (Interest) Act 1998 (amended 2002 and 2013).
18. The information that the Client and the Freelancer may keep on record is covered by the terms of the General Data Protection Regulation. No more such information will be held than is necessary, at any time, to comply with those terms and with any compliance statement or privacy policy published by the Client and/or the Freelancer. Both the Client and the Freelancer agree that, where consent is required to hold or process such data, such consent has been requested and obtained and both facts can be demonstrated. Either may view the other's records to ensure that they are relevant, correct and up to date.
19. Either the Client or the Freelancer has the right to terminate a contract for services if there is a serious breach of its terms.
20. If the Freelancer has made a substantial contribution to the copyediting/proofreading/project management of the work, she/he will be entitled to receive one free copy of the work.
21. The Freelancer 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 Freelancer and Client agree to submit to the jurisdiction of the English and Welsh [or Scots or Northern Ireland] courts.

Signed by the Freelancer:

\_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signed on behalf of the Client:

\_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_