

Explanatory note for Terms and Conditions

The HM Revenue & Customs (HMRC) standard terms and conditions have been developed in such a way that they are applicable, as they stand, to the majority of contracts for goods and services. Where more detailed contract specific terms and conditions are required, these will be described either in the specification of requirements or other schedule to the contract as appropriate. Such specific contract terms may cover issues such as security or intellectual property.

The HMRC standard terms and conditions are based on those developed by the Office of Government Commerce (now Efficiency and Reform Group) and are not generally open to negotiation, though HMRC do welcome suggestions for improved drafting to be considered in any subsequent reviews. The terms and conditions are government standard clauses and are not designed to disadvantage the contractor in any way. They are designed to provide adequate contractual protection for HMRC and to provide suitable remedies for both parties in the event that something goes wrong.

Contractors who are familiar with government contracts generally accept the standard terms and conditions for what they are; a model set of clauses that will apply to the majority of contracts for goods and/or services. However, there are certain clauses that cause concern for contractors who are not so familiar with government contracts. This note attempts to shed light on some of these clauses and allay concerns.

Recovery of sums due – Clause B3

Contractors sometime express concern regarding the provisions in this clause for HMRC to recover sums due under the contract from any payment due to the contractor under virtually any contract with government. This clause would not be invoked without a bone fide reason for doing so and all other available remedies would be considered before taking such action.

Arrears of VAT – Clause B5

Contractors also express concerns regarding the provision in this clause for HMRC to recover outstanding VAT from payment due to the contractor under the contract. This clause would only be invoked when all other debt management action has been considered, and does not take precedence over established debt recovery procedures.

Intellectual Property Rights (IPR) – Clause D8

These clauses have been drafted in such a way that HMRC's commercial staff can select from 3 options:

1. There is no IP in the contract but the basic clause protects against the possibility of infringement of third party IPR. This may not apply to the

- goods or services being provided, but the clause is designed to provide a standard level of protection.
2. The IP in goods or materials provided under the contract remains with the contractor.
 3. HMRC wishes to acquire the IP in any goods or material developed.

Contractors are sometimes concerned that there is insufficient protection for specific IPR. Again, these clauses are intended to be standard and anything specific can be included elsewhere in the contract.

Client's right to publish the contract – Clause D10

Government has set out the need for greater transparency across its operations to enable the public to hold public bodies and politicians to account. This includes commitments relating to public expenditure, intended to achieve greater transparency and better value for money. This clause enables HMRC to meet its transparency obligations in terms of the commitment to publish all new central government ICT contracts above £10,000 from July 2010, and all new central government contracts from January 2011.

Liabilities, indemnities and insurance – Clause F1

These are standard clauses which provide protection to both parties and enable a level of liability to be set that is commensurate with the risk of direct loss under the contract. HMRC no longer asks for unlimited liability (except for death and personal injury etc, as described in clause F1.1 (a-d) as it understands the difficulties in obtaining unlimited cover.

Break clause – Clause G3

Some contractors have expressed concern at the unilateral provision within this clause for the client to terminate the contract. This is a standard government clause intended for use when there is a sudden or unforeseen change in central government policy resulting in there being no further need for the goods or services in question. This has been rarely invoked in the past, but contractors will no doubt appreciate that it is an important provision to have during times of political change or uncertainty. Clause G4.2 provides for compensation to be paid where the break clause is invoked.