



ALICE E. FUGATE

# Minding Your Business

Are you self-employed? Would you like to be? This column explores the joys and challenges of managing your own business in technical communication. Please share your experience and ideas. Contact Alice Fugate at Fugate Publications, [FugatePublications@compuserve.com](mailto:FugatePublications@compuserve.com), or Betsy Frick at Plain Language Solutions, [bfrick@mindspring.com](mailto:bfrick@mindspring.com).

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## Contracts 101

BY BETSY FRICK, *Associate Fellow, St. Louis Chapter*

Contracts are a popular topic among members of the St. Louis chapter's Consulting and Independent Contracting special interest group (CIC SIG). I've developed the following tutorial, Contracts 101, to answer some of the most common questions about contracts.

### **I'm new as an independent contractor. Do I need a written contract before I start a job?**

A written contract spells out the working agreement between you and your customer. As an independent contractor, you don't have the structure or support guaranteed by a large consulting agency or corporation. A contract sets the conditions for the work and protects the interests of both parties. Verbal agreements last only as long as the memory of the participants, and they do not stand up in court. So the answer is yes, always get it in writing!

### **What items should I include in my contract?**

My attorney advised me to create a standard contract detailing conditions that don't often change. A standard contract allows me to send copies to clients and prospects easily and quickly. He also suggested that I call the document "Standard Terms and Conditions" (ST&C, for short) instead of "Contract." Many clients respond more positively to the title "Standard Terms and Conditions," which may seem friendlier and more collaborative than the formal term "Contract."

My standard contract contains the following sections:

- *Fees and Expenses*: Breaks out the billable elements of any project.
- *Invoices and Payment*: Explains my invoicing schedule and expected payment schedule.
- *Customer Representative*: Identifies one person who can authorize changes and approve my work.
- *Confidentiality Clause*: Assures the client that I take reasonable steps to protect company secrets.
- *Project Modifications*: Outlines the process by which modifications may be made to the project. Project details are defined in a separate document, often called a "letter of agreement" (LOA). My contract states that any changes to the LOA must be agreed to by me and by the customer representative, and may incur additional fees.
- *Staffing*: Establishes my identity as the independent contractor under hire.
- *Access to Customer's Staff*: Guarantees my reasonable access to the customer's staff and resources.
- *Proprietary Materials*: Declares adherence to copyright law by both parties, and establishes ownership of the work. My contract states that all work in progress belongs to me until final payment is received; that I will retain one copy for my portfolio; and sets ownership and restricts use of any workshop materials that I develop.
- *Canceling or Postponing a Project*: Outlines the process by which either party may cancel or postpone a project, including time limits and fees.
- *Limit on Liability*: Declares liability for

content. My contract states that the customer is responsible for accuracy of content; my liability is limited to the amount I have been paid for the project at the time of the lawsuit.

- *Agreement and Acceptance*: Provides space for dated signatures.

Over the years, I've developed one ST&C for hourly rate projects and another for daily rate projects. Having two versions saves me from having to modify the ST&C every time I get a new project with a different rate method.

My complete ST&C documents are too long to include in this article; however, the article will be published in the CIC SIG online book, *Getting Started in Independent Consulting and Contracting*, which will include my complete sample ST&C documents in PDF format.

Specific details for each project, such as deliverables, responsibilities, timelines, specific fees, and similar items, are outlined in the LOA. I'll write about developing LOAs in a future article.

### **Contracts always seem written in a language so "legalistic" that they are impossible to understand. Is there a simpler style I can use?**

Legal language doesn't have to be complex. Find an attorney who writes in plain language. I did, and he inspired me to change my business name to Plain Language Solutions. The legal departments at several companies have reviewed and approved my ST&C, only occasionally requesting minor changes.

See the sidebar for examples of plain language in a contract.

### Can I write my own contract?

Sure you can! But I strongly recommend that you get the help of an attorney. The cost is not that great—several hundred dollars—and the comfort derived from knowing you are as protected as possible is worth every penny.

You can also find many books and Web sites on the subject. Read up on contracts before consulting your attorney, but get specific legal advice, too.

### My customer has a standardized contract form. Should I sign it?

Large companies sometimes do a lot of work with consultants and independent contractors and may have their own contract form at the ready. They may insist that you sign their contract if you want the work. I've signed company contracts before; I've even worked as a vendor from time to time, invoicing with a purchase order number.

My advice is to read a company contract very carefully and discuss any sec-

tions that you don't understand or may disagree with *before* you sign. For example, the company's contract might be directed toward agencies that provide contract (consultant) programming services, and it might state that work space and equipment will be provided by the company, that the programmers will work on site, and so on. You aren't a programmer, you may not want to work on site, and you may not need any equipment provided.

The company might agree to modify certain sections or to insert wording from your contract in place of theirs. Remember, anything is possible, and the worst they can say is, "No, we can't do that." Then you have to make a decision about accepting the project.

### I have an opportunity to do a type of work that my standardized contract doesn't cover. What do I do now?


You might be able to cover the new type of work in your LOA, or whatever document you use to outline the specifications for each project (sometimes called "scope of work"). Try to reserve

your contract for the items that don't change from project to project.

On the other hand, if the new work would require just a small change in the wording of your contract (say, a change from providing daily rate services, such as facilitating workshops, to hourly rate services, such as writing the materials for a customer's training sessions), you can tweak the appropriate sections of your contract. Refer to the sidebar for examples of the Fees and Expenses section of my two ST&C formats.

Remember: Ask questions about any new type of work before you make a decision.

### Conclusion

You can protect yourself from ethical or financial trouble by developing a good contract and using it on every project. With luck, you will never need to remind your customers of the contract protection, but you both will know that it is there. 

### SUGGESTED RESOURCES

Glick-Smith, Judith L., and Carol Stephenson. "Getting Professional Help: Why Contractors and Independent Consultants Need Lawyers." *Technical Communication* 45(1):89-94. ([www.techcomm-online.org/issues/v45n1/full/0256.html](http://www.techcomm-online.org/issues/v45n1/full/0256.html))

STC's Consulting and Independent Contracting (CIC) SIG provides information about practicing technical communication as an independent contractor or consultant. This Society-level SIG offers a number of resources, including a newsletter, listserv, and links to helpful Web sites. The listserv is particularly informative, but you must be a member of the SIG to participate. For information, see the Society's CIC SIG Web site at [www.stcsig.org/cic/pages/links.htm](http://www.stcsig.org/cic/pages/links.htm).

Steele, Karen, and Thomas Barker, eds. *Getting Started in Consulting and Independent Contracting*. This online book is written by members of the Society's CIC SIG and is available on the Web at [english.ttu.edu/gscic](http://english.ttu.edu/gscic).

The following examples show how I use plain language in two versions of my standard contract:

#### Standard Terms and Conditions—Daily Rate Project

##### Fees and Expenses

Fees for consulting, facilitating instruction, and developing materials are outlined in each individual proposal, scope of work, letter of agreement, or course description. Fees may include development and production of print materials and preparation time. Billable expenses in connection with a project include reasonable and customary out-of-pocket items such as travel, meals and lodging, duplicating, shipping, and rental of special equipment.

#### Standard Terms and Conditions—Hourly Rate Project

##### Fees and Expenses

Fees for this project are based on the time and materials expended. The letter of agreement for the project describes the specific hourly fees. Overtime work on hourly projects (billing more than forty hours per week, more than eight hours per day, weekend or holiday work) may incur an extra charge of 50 percent over the regular hourly rate, at Betsy's discretion. The customer is responsible for out-of-pocket expenses incurred in connection with this project, such as copying, purchase or rental of special software or equipment, courier service, mailing, and out-of-city travel, meals, and lodging. Travel time for visits to customer sites located more than thirty miles from Betsy's office are billed at the regular hourly rate. Betsy Frick and the customer may agree, in writing, on expense limits before starting the project.