

# MODEL CONTRACTS FOR SMALL FIRMS

## LEGAL GUIDANCE FOR DOING INTERNATIONAL BUSINESS

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# International Supply of Services

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## Introduction

This Model Contract is a **framework for the supply of services**, an agreement under the terms of which the Client requests the service provider (“The Supplier”) to supply certain services.

1. As most of the Model Contracts of this handbook, this Model Contract provides a series or “menu” of possibilities depending on the background and the nature of the production. Many provisions may not be relevant to the particular contract and should, if not relevant, be deleted.
2. As far as the *duration of performance* is concerned, the Model Contract provides for two main schemes (Article 1.4): In the main option, the services have to be provided on a specific date. In the alternatives, it is contemplated that the services will be provided on different dates and/or during a certain period of time.
3. Article 5 deals with the *duration of the contract* and has to be consistently aligned on the scheme provided for in Article 1.4. An option (not addressed in the model) could be that the contract has a specific term with subsequent renewal requiring mutual agreement.
4. As far as *damages* are concerned (Article 4), the Parties may wish to include liability of the Supplier for lost profit suffered by the Client as a consequence of any breach by the Supplier of his obligations under the contract. Article 4.3 should be amended accordingly.

This Model Contract is a general framework only and must be tailored to the circumstances of the particular collaboration.

# ITC MODEL CONTRACT FOR THE INTERNATIONAL SUPPLY OF SERVICES

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**PARTIES:**

**Supplier**

Name (name of company)  
.....

Legal form (e.g. limited liability company)  
.....

Country of incorporation and (if appropriate) trade register number  
.....

Address (address of place of business of the Supplier, phone, fax, e-mail)  
.....  
.....

Represented by (surname and first name, address, position, legal title of representation)  
.....  
.....

**Client**

Name (name of company)  
.....

Legal form (e.g. limited liability company)  
.....

Country of incorporation and (if appropriate) trade register number  
.....

Address (address of place of business of the Client, phone, fax, e-mail)  
.....  
.....

Represented by (surname and first name, address, position, legal title of representation)  
.....  
.....

Collectively “the Parties”

# Background

- A. The Client carries on business in the *[field/provision/supply of – specify]*.
- B. The Supplier undertakes as part of its business the provision of services in relation to *[specify]*.
- C. The Client wishes to engage the Supplier to provide such services in relation to the Client’s business, and the Supplier is willing to provide such services accordingly, on the terms of this contract.
- D. *[If necessary, give an additional short explanation of the reason for the contract. If not necessary, delete this sub-section D.]*

# Operative provisions

## 1. Supply of the service – Qualifications of the Supplier

1.1 The Supplier shall provide the following service(s) to the Client, subject to the terms agreed in this contract and the more detailed specifications contained in schedule 1: *[describe the service(s)]*

- .....
- .....
- .....

1.2 The Supplier represents that it has all necessary capacity and qualifications to supply the services the aforementioned services.

1.3 The service(s) to be provided to the Client by the Supplier under this contract shall be rendered at/in *[specify place(s) of performance – delete sub-clause if not relevant]*:

- .....
- .....

1.4 The service(s) to be provided to the Client by the Supplier under this contract shall be rendered on *[specify date/time of performance]*.

*[Alternative 1: If the service(s) are to be provided during a certain time:*

*“1.4 The service(s) to be provided to the Client by the Supplier under this contract shall be rendered between . . . . . and . . . . . [specify timeframe/duration of performance], with the following intervals . . . . . [specify if necessary].”*

*[Alternative 2: If there are different times/timeframes for the various services to be provided:*

*“1.4 The service(s) to be provided to the Client by the Supplier under this contract shall be rendered pursuant to the following schedule:*

- 1.4.1 *Service [to be specified] shall be provided on [specify date/time].*
- 1.4.2 *Service [to be specified] shall be provided between . . . . . and . . . . . [specify timeframe/duration of performance]. with the following intervals . . . . . [specify if necessary].”*

1.5 The service shall be provided subject to the terms of this contract and in accordance with the specifications listed in schedule 1, *[and otherwise in accordance with the Supplier's current brochure or other published literature relating to the service from time to time – to be deleted if not relevant/not applicable]*.

1.6 The Supplier may at any time without notifying the Client make any changes to the service(s) which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the service(s).

1.7 The Client may order additional services or ask for amendments/alterations of services already agreed with the Supplier, or give instructions to the Supplier which result in an amendment, alteration, reduction or extension of the services already agreed with the Supplier. In such case, the amended, altered, reduced or extended services must be expressly specified in an addendum to schedule 1, and the possible impact of the Client's orders or instructions on the fees and expenses to be paid to the Supplier must be expressly agreed by and between the Parties in an addendum to schedule 2 before the services are performed.

*[Alternative: The scope of the agreed services may not be changed, altered, amended, reduced or extended, and the Client may not give any instruction to the Supplier that would result in such an amendment, alteration, reduction or extension of the services already agreed with the Supplier.]*

## **2. Payment of fees**

2.1 The Client shall pay the fees and expenses agreed with the Supplier, as specified in schedule 2, and any additional sums which are agreed between the Supplier and the Client for the provision of the service or which, in the Supplier's sole discretion, are required as a result of the Client's additional or amended instructions or lack of instructions, the inaccuracy or inappropriateness of any material provided by the Client or any other cause attributable to the Client.

2.2 The Supplier shall be entitled to invoice the Client following the end of each month in which the service is provided, or at other times agreed with the Client.

2.3 The Supplier's standard charges and any additional sums payable shall be paid by the Client (together with any applicable value added tax, and without any set-off or other deduction) within 30 *[specify any other figure]* days of the date of the Supplier's invoice.

## **3. Late payment and interest**

If payment is not made on the due date, the Supplier shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of *[specify]* % per annum.

*[Comment: The Parties should take into consideration that in some legal systems payment of interest is unlawful, or is subject to a legal maximum rate, or there is provision for statutory interest on late payments.]*



## 4. Warranties and liability

4.1 The Supplier warrants to the Client that the service will be provided using such care and skills as is customary for the provision of similar services on the Client's market [*Option: In the Client's country*]. The service will be provided in accordance with the specification agreed in schedule 1, and on the time [*Option: At the intervals and within the times*] expressly agreed in Article 2.3. Where the Supplier supplies in connection with the provision of the service any goods supplied by a third party, the Supplier does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Supplier.

4.2 The Supplier shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client, provided the Supplier has duly notified the Client within [*specify time*] days of receipt of such material or instructions.

4.3 Except in respect of death or personal injury caused by the Supplier's negligence, the Supplier shall not be liable to the Client for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Supplier, its servants or agents or otherwise) which arise out of or in connection with the provision of the service or their use by the Client, and the entire liability of the Supplier under or in connection with the contract shall not exceed the amount of the Supplier's fees for the provision of the service.

## 5. Term, termination and consequences of termination

5.1 This contract shall take effect on the date of its signature by both parties or, if signatures do not occur simultaneously, when the latest signature is given. Unless sooner terminated pursuant to Articles 5.2 or 5.3, this contract shall continue for a period of [*specify – to be in line with Article 1.4*].

5.2 The Supplier may forthwith terminate this contract by giving written notice to the Client, if the latter fails to pay any sum payable by it under this contract within 7 [*specify any other figure*] days of the due date for payment.

5.3 Either party may (without limiting any other remedy) at any time terminate the contract by giving written notice to the other if the other commits any breach of this contract and (if capable of remedy) fails to remedy the breach within 10 [*specify any other figure – note that some countries may impose longer deadlines*] days after being required by written notice to do so, or if the other goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed. For the purposes of the present sub-clause, a breach of any provision of this contract shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance [*check that this clause is valid under the laws applicable to the contract, and the laws of any country where enforcement of this contract may be sought*].

5.4 The termination of this contract for any reason shall not affect:

5.4.1 Either party's accrued rights, remedies or liabilities including payments due at the effective date of termination; or

5.4.2 The coming into force or the continuance in force of any provision of this contract which is expressly or by implication intended to come into or continue in force on or after termination.

## **6. Confidentiality**

6.1 Both parties understand and acknowledge that, by virtue of the present contract, they may both receive or become aware of information belonging or relating to the other party, its business, business plans, affairs or activities, which information is confidential and proprietary to the other party and/or its Suppliers and/or customers and in respect of which they are bound by a strict duty of confidence ("Confidential Information").

6.2 In consideration of such Confidential Information being disclosed or otherwise made available to either party for the purposes of the performance of the present contract, both parties hereby undertake that they will not at any time, either before or after the termination of the present contract, and either directly or indirectly, disclose, divulge or make unauthorized use of any Confidential Information, except to the extent to which such Confidential Information:

6.2.1 Is publicly known at the time of its disclosure or being lawfully made available to them;

6.2.2 After such disclosure or being made available to them, becomes publicly known otherwise than through a breach of this undertaking;

6.2.3 Is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by one of the Parties, provided that, where practicable, the other party is given reasonable advance notice of the intended disclosure.

6.3 Upon the earlier of a request from the other party or the termination of this contract, each party shall return the other all documents or records in any medium or format containing any Confidential Information which are in its possession or control and will not retain any copies of them.

6.4 This undertaking, and the obligations contained herein, will continue without limit of period.

## **7. Force majeure – excuse for non-performance**

7.1 "*Force majeure*" means war, emergency, accident, fire, earthquake, flood, storm, industrial strike or other impediment which the affected party proves was beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this contract or to have avoided or overcome it or its consequences.

7.2 A party affected by *force majeure* shall not be deemed to be in breach of this contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this contract to the extent that the delay or non-performance is due to any *force majeure* of which it has notified the other party in accordance with Article 7.3. The time for performance of that obligation shall be extended accordingly, subject to Article 7.4.

7.3 If any *force majeure* occurs in relation to either party which affects or is likely to affect the performance of any of its obligations under this contract, it shall notify the other party within a reasonable time as to the nature and extent of the circumstances in question and their effect on its ability to perform.

7.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by *force majeure* for a continuous period in excess of three [*specify any other figure*] months, the other party shall be entitled to terminate this contract by giving written notice to the party affected by the *force majeure*.

*[If preferred, replace 7.4 with the following alternative:*

*“7.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by force majeure for a continuous period in excess of three [*specify any other figure*] months, the Parties shall negotiate in good faith, and use their best endeavours to agree upon such amendments to this contract or alternative arrangements as may be fair and reasonable with a view to alleviating its effects, but if they do not agree upon such amendments or arrangements within a further period of 30 [*specify any other figure*] days, the other party shall be entitled to terminate this contract by giving written notice to the party affected by the force majeure.”]*

## **8. Change of circumstances (hardship)**

*[Comment: The Parties should be free to consult each other in the event of a major change in circumstances – particularly one creating hardship for a particular party. However, an SME should only include the option at the end of Article 8.4 (right to refer to the courts/arbitral tribunal to make a revision or to terminate the contract) if (i) the SME considers that it is not likely to be used against that party’s interests by a party in a stronger tactical position or (ii) the right to refer to a court/tribunal is already an existing right under the applicable governing law in the event of hardship.]*

8.1 Where the performance of this contract becomes more onerous for one of the Parties, that party is nevertheless bound to perform its obligations subject to the following provisions on change of circumstances (hardship).

8.2 If, however, after the time of conclusion of this contract, events occur which have not been contemplated by the Parties and which fundamentally alter the equilibrium of the present contract, thereby placing an excessive burden on one of the Parties in the performance of its contractual obligations (hardship), that party shall be entitled to request revision of this contract provided that:

- 8.2.1 The events could not reasonably have been taken into account by the affected party at the time of conclusion of this contract;
- 8.2.2 The events are beyond the control of the affected party; and
- 8.2.3 The risk of the events is not one which, according to this contract, the party affected should be required to bear.

8.3 Each party shall in good faith consider any proposed revision seriously put forward by the other party in the interests of the relationship between the Parties.

*[Option [delete if not applicable or not enforceable under the law governing the contract – see comment at beginning of Article 8]:*

*“8.4 If The Parties fail to reach agreement on the requested revision within [specify time limit if appropriate], a party may resort to the dispute resolution procedure provided in Article 15. The [court/arbitral tribunal] shall have the power to make any revision to this contract that it finds just and equitable in the circumstances, or to terminate this contract at a date and on terms to be fixed.”]*

**9. No partnership or agency**

Nothing in this contract shall (i) be deemed to constitute a partnership in law between the Parties, (ii) constitute either party the agent of the other for any purpose or (iii) entitle either party to commit or bind the other (or any member of its respective group) in any manner.

**10. Assignment and subcontracting**

10.1 This contract is personal to the Parties and *[include only where relevant, except to the extent necessary for the collection of outstanding bills through a factoring agent,]* neither party shall without the prior written approval of the other:

- 10.1.1 Assign, mortgage, charge or otherwise transfer or deal in, or create any trust over, any of its rights; or
- 10.1.2 Subcontract or otherwise delegate the whole or any part of its rights or obligations under this contract to another person.

**11. Notices**

11.1 Any notice under this contract shall be in writing (which may include e-mail) and may be served by leaving it or sending it to the address of the other party as specified in Article 11.2 below in a manner that ensures receipt of the notice can be proved.

11.2 For the purposes of Article 11.1, notification details are the following, unless other details have been duly notified in accordance with this Article:

- .....
- .....

**12. Entire agreement**

This contract sets out the entire agreement between the Parties. Neither party has entered into this contract in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in this contract. This Article shall not exclude any liability for fraudulent misrepresentation. *[Add where relevant: This contract supersedes any previous agreement or understanding relating its subject matter.]*

This contract may not be varied except by an agreement of the Parties in writing (which may include e-mail) *[Option, add where Article 8.4 or equivalent is included: “or in accordance with Article 8.4”.]*

### 13. Effect of invalid or unenforceable provisions

If any provision of this contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this contract shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that, in the absence of the provision found to be null and void, the Parties would not have concluded this contract. The Parties shall use all reasonable efforts to replace all provisions found to be null and void by provisions that are valid under the applicable law and come closest to their original intention.

### 14. Authorizations

14.1 This contract is conditional upon the following authorizations first being obtained *[specify the authorization(s) or other conditions required e.g. of governmental or regulatory authority]*.

- .....
- .....
- .....

14.2 The relevant party shall use all reasonable efforts on its part to obtain such authorizations and shall notify the other party promptly of any difficulty encountered.

### 15. Dispute resolution

Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of *[specify the arbitration institution]* by *[specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators]* appointed in accordance with the said rules. The place of arbitration shall be *[specify]*. The language of the arbitration shall be *[specify]*.

*[The following are alternatives to a specified arbitral institution under Article 15:*

*Alternative 1: Ad hoc arbitration*

*“Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of UNCITRAL [specify other rules] by [specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators] appointed by [specify name of appointing institution or person]. The place of arbitration shall be [specify]. The language of the arbitration shall be [specify].”*

*[Alternative 2: State courts*

*“Any dispute, controversy or claim arising out of or relating to this contract, in particular its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled by the courts of (specify place and country) which will have exclusive jurisdiction.”]*

## **16. Applicable law**

*[Specify national law]* law shall apply to the contract.

## Schedule 1: Specifications of the service(s) to be performed

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## Schedule 2: Fees and expenses

The following services shall be charged on the basis of the time spent by the Supplier at an hourly rate of . . . . .

- .....
- .....
- .....

The following services shall be charged for a total amount of . . . . ., regardless of the time spent.

- .....
- .....
- .....

The Supplier shall not be entitled to vary the Supplier's standard charges.

Alternative: The Supplier shall be entitled to vary the Supplier's standard charges from time to time by giving not less than *[three]* months' written notice to the Client from time to time.

All charges quoted to the Client for the provision of the service are exclusive of any value-added tax (VAT), for which the Client shall be additionally liable at the applicable rate from time to time.

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### DATE AND SIGNATURE OF THE PARTIES

Supplier	Client
Date.....	.....
Name.....	.....

Signature

Signature