

Tender loving care

Written tenders and agreements are the basis of successful projects. [Mike Unwalla](#), a freelance author, provides a few tips for freelancers and anyone else who needs to manage or commission a documentation project.

This article stems from a question that was asked to the IASIG¹. The enquirer had been asked to tender for a job and, since he'd never done this previously, he wanted to know about the potential pitfalls and whether IASIG members could offer any tips.

Although I have written the article from a personal perspective, many ideas and working practices have also been mentioned by others in the IASIG who contributed to the discussion. The issues addressed are not exhaustive and, on the other hand, some may not apply to your situation. Since I produce software documentation, many of the examples relate to this. Also, this article does not in any way deal with IR35² issues. My understanding is that it is your working practices (and not the content of any contract) that determine whether or not you fall under the IR35 ruling.

Introduction

What is a tender? There are various definitions, depending on whether

Acknowledgements

Thanks to all the IASIG contributors to the *Invitations to Tender* topic (started December 2000) and the *Terms and Conditions* topic (started August 1999). I have used many of the ideas and comments as a starting point for this article.

Notes

1 The IASIG (Independent Authors Special Interest Group) is a group of freelance technical authors who are all members of the ISTC.

2 IR35 is a recent item of legislation that allows the Inland Revenue to treat certain types of contractor as employees of the company in which they are contracting, even though these contractors are operating as limited companies.

3 Throughout this article, I use the term *client*, even when strictly it should sometimes be 'potential client'.

one takes a legal, a commercial or just a common usage perspective. For practical purposes, we can say that a tender is 'an offer to do work'. In practice, the offer will be written and the cost of the work will often be fixed.

Is there a legal requirement to ask for or to supply a written tender? For most organisations that engage writers and for most writers, the answer is no. You could just make a verbal offer to 'do the right thing' by the client³. If that works for you and the client, go for it. However, generally it's a rather foolish approach. The problem is that your interpretation of 'the right thing' may be very different from the client's interpretation. Problems are compounded by there not being anything written down to refer to.

So, put it in writing. There is no rigid format that you need to follow. I use the following documents:

- A written quotation. This contains the background to the project, sets limits to the scope and outlines the deliverables. It also shows the price for each of the deliverables.
- Terms and conditions (T&C). This is a standard document, which doesn't change. It describes the duties and responsibilities of both parties.
- A letter of agreement. This basically ties the quotation and the T&C together and specifies variables such as the start date.

These three documents are described in more detail later. There's no fixed order in which to send these documents. Sometimes I send the T&C before producing a quotation, sometimes with the quotation and sometimes after the quotation has been agreed in principle. Email is a great way of initially sending these documents. If the content is acceptable, I then send paper copies for the client to sign.

The quotation

Clients typically want fixed-price quotations for specified deliverables. Sometimes, that's not possible and you will have to provide an estimate. Fine, as long as you and the client are clear about this.

Before producing the quotation, find out as much as possible about what will be documented. For example, I send clients a checklist that asks questions about the product and the users. I then include this information in the quotation. In the quotation itself, specify:

Basis of the quotation or tender For example, I state that it's based on the software I've seen and the number of screens specified by the client. If more functionality is added later, or if there turn out to be many more screens than expected, there is a good case for requesting extra payment.

Background to the work Include a few paragraphs that give a high-level overview of the product and what it's used for. This helps to ensure that you are on the right track; the client can easily see if there are any fundamental misunderstandings. *User experience* This is very useful. Even if a full user analysis is not possible, at least you can specify what they are expected to know or not know.

Peripherals and ancillaries If the subject is part of a system or process, one IASIG member specifies the inclusion of references to other equipment systems which are necessary to give a complete picture of the subject he is documenting.

Deliverables Itemise each deliverable. For example, for a small project you might just specify a price for the final deliverable. On the other hand, for a larger project you could specify a draft as being a deliverable. Some IASIG members suggest that you can even ask for money before starting a project.

Sometimes you can give clients a set of options for the deliverables. For example, if cost is an issue, give two options: the cost for a full and comprehensive user guide and the cost for a brief getting started guide. This gives the client some choice and, in any case, will certainly make the client think about what is needed.

Specification If there is no formal specification, one IASIG member defines things like overall layout (such as A4, single-sided) or format (such as Microsoft Word, HTML, PDF). Alternatively, you could present this information as part of the deliverables.

Validity period State for how long the quotation is valid.

Problems with the quotation

Sometimes, there isn't sufficient information from which to produce a quotation. This is likely to happen with larger projects. One solution is to offer the client a fixed-price scoping project in which you spend a few days or weeks investigating the project. Another alternative is to work for a daily or weekly rate but clients aren't likely to be keen on that, since they want to know for how long they will be engaging you.

One of the hardest things to get right is the costing. I don't mean the price that you present to the client but rather your estimate of the time it will take to produce the work. Ideally, the estimate and the actual time that you spend should be the same. In practice, that doesn't always happen. I have a tendency to underestimate (call me an optimist) but it's getting better with practice. Keep a record of the time it takes for various jobs and use those to help you estimate the current job.

Some IASIG members have had occasional problems with unscrupulous potential clients taking their quotation and then not engaging the author. Rather, the clients produced the work themselves or passed it on to others. Although you may not be able to prevent this entirely, there are a few things you can do to protect yourself.

- Don't go into too much detail. For example, I typically just present estimated page counts for paper-based material and estimated topic

Clause	Deals with
Basis of documentation	General rules or conditions about what will be documented. My T&C state that the documentation will be based on software that was provided at the start of the project. If this changes, then extra charges may apply.
Access to information	Who is responsible for supplying information and organising access to these people. One member states that he won't chase reluctant suppliers or contractors, since this can be time consuming and costly.
Provision of materials or equipment	Who provides what. Generally not a contentious area. My T&C state that any third-party software supplied by the client or used in the production of the documentation will be a legal copy.
Approval of deliverables	The review and approval cycle. An important issue. How many revisions of a document are you prepared to make? What is the process for approval of each item? Some IASIG members ask for written approval of the various drafts.
Errors and omissions	Errors on your part. We all make mistakes and this is an important clause. It's not designed to get you off the hook or excuse sloppy work. However, it will help to prevent disputes after the work has been completed. My T&C state that it's the client's responsibility to check the final documentation carefully, because payment of the invoice indicates that the documentation is acceptable. Doing things this way means that: <ul style="list-style-type: none"> □ The final copy is checked carefully (in theory). □ The client is happy with the work. □ I know that I won't be faced with any additional workload if mistakes are found (having said that, if it's easy to correct, then just do it).
Additional charges	Charges that you will make in addition to the quotation. Some causes of additional charges are: <ul style="list-style-type: none"> □ Additional work. For example, an extra software module was developed. □ Site visits. You may charge for every site visit or for none, or there may be some other costing mechanism. It doesn't matter, as long as both parties know in advance.

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- counts for online help.
- Make the detailed document plan a chargeable deliverable. Then even if you are not used for the project proper, you will be paid for the work that you have done.

Standard terms and conditions

Your T&C should contain information that applies to all the projects that you are likely to undertake. (You may find that some of these items are better specified in the quotation or in a letter of agreement.) You won't be able to cover all eventualities but you will be able to produce a clear framework within which to operate.

One advantage of having a separate document for the T&C is that it doesn't contain anything confidential and so can be distributed freely. At least one member of the IASIG publishes his T&C on his website for anyone to see.

The table above shows the typical clauses that are contained in T&C.

Letter of agreement

This can be just a brief letter stating:

- When the project will start
- A target date for delivery of each of the various items of documentation
- The charges for each deliverable (specify whether inclusive of VAT)
- Payment terms (you could put this

into the T&C) – typically 30 days. Since my T&C specify the responsibilities of the Subject Matter Expert (SME) for the project, I also specify who this person is (often the person who asks me to do the work).

Send two signed copies of the letter and two signed copies of both the other documents to the client. Ask the client to sign one copy of each and return them to you. Make it easy for the client and also enclose an SAE.

Other issues

Should you start work before the paperwork has been signed by the client? It depends on how sure you can be that a verbal agreement will be honoured. Sometimes, with the best will in the world, things go wrong. For example, in a large company, the person who initiates the job may be overruled.

In some organisations, the accounts department will not part with any money unless there is a purchase order. If this is the case, it is a good idea to obtain one before you start the project. On the other hand, for one client in a large organisation, I regularly start work without a purchase order (and without a signature on T&C); quite often, the job is finished before the purchase order is generated.

Professional Indemnity Insurance (PII) may be easier or cheaper to obtain if you have T&C, a standard contract or something similar.

Should you have the T&C and other standard documents written by a solicitor or lawyer? It's not necessary. Any competent technical writer should be able to say in plain English what his or her conditions are. Nevertheless, it is probably worthwhile to have your material checked by a legal professional. For example, I wrote my T&C, based on others that I'd seen and the problems that I thought might arise with the work that I do. They were checked by a solicitor who showed me areas of omission and items that were ambiguous.

Final comments

Both you and the client must be happy with the tender. The aim should be to clarify areas of potential confusion. Do not write a one-sided

Clause	Deals with
Timely disclosure	When one party notifies the other of unusual circumstances. Typically this will be 'as soon as is reasonably practical'. For example, if you badly miscalculate the target delivery date, then it's only fair to tell the client as soon as you know things have gone wrong. Conversely, if the client is not happy with your work, then you should be told early, rather than finding out at the end of the project.
Early termination	The procedure for terminating the contract in exceptional circumstances.
Confidentiality	States that both parties will treat all information supplied in strict confidence.
Copyright	Who owns what. This is usually not a contentious issue. When you produce work as a freelance writer you own the copyright. An easy way of assigning copyright is to state that as soon as final payment has been received, copyright is automatically transferred. To protect copyright at the approval stage, one IASIG member gives only hard copy that contains his copyright on every page, along with the word 'draft' and a print date. He doesn't give computer media at this stage. If you include your name, company name or trading name anywhere on the documentation, you may want to add the proviso that if changes are made, the name should be removed. Of course, this might be quite hard to verify.
Intellectual property rights	Who owns any discoveries or inventions. Not an issue for the average technical writer.
Liquidated damages or late delivery penalties	One IASIG member works for customers that have late delivery clauses. To protect himself, he includes clauses in his terms stating he is not responsible for delays caused by: <ul style="list-style-type: none"> □ Changes to the product □ Failure on the part of the client to provide information he has requested □ Slowness on the part of the client to review various drafts Additionally, he sets a cut-off date for modifications to the publication design.
Law	States under which country's laws the agreement operates.
Circumstances beyond control	States that neither party will be responsible for factors outside their control.

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contract. Be fair.

Be prepared to negotiate. If a client doesn't like one of the terms or conditions, consider changing it. However, if it's fundamentally important, don't change it. Walk away from the contract.

There is some useful information on contracts (although with a US slant) in *Making money in Technical Writing* by Peter Kent, ISBN 0-02-861883-1. This book is reviewed on the ISTC website at www.istc.org.uk.

Finally, remember that although the T&C may state that additional

work is an extra chargeable item, this doesn't mean that you always have to charge more. There may be far more long-term benefit from (casually!) mentioning that you did the work but that you've not bothered to charge extra.

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