

# STAR Checklist Guide

## How to Avoid Common Contract Pitfalls

Successful contracts rely on effective working relationships between two companies. But misunderstandings, confusion and a lack of transparency can hamper a contract's success and ultimately lead to costly disputes.

Whether you have years of experience or are reading contracts for the first time, you should consider the critical aspects **before** you start to perform your duties. Your contract needs to provide certainty and cover everything you (and your clients) need, to protect both your business and the interests of your clients.

Below is a list of best practice steps you should take to ensure you use better contracts. They cover four critical areas: **Scope, Trust, Aims, and Risk** and complement my ten-point [STAR checklist](#). My checklist will ensure the contract you have safeguards your company, *without* onerous amendments or negotiations.

### SCOPE

Suppliers are good at describing in detail what they **will** do for their clients. But contracts create uncertainty because they rarely state what the supplier is **not** going to do (allowing incorrect assumptions to go unchallenged).

**Do you ever specify what you *won't* do?** The price of the promised goods, works or services is based on the agreed scope, but the precise limits of that scope need to be crystal clear to both parties. What *won't* be provided?

You must clarify these grey areas, whether by laying them out as additional requirements with a detailed overview of their costs or confirming someone else is providing them. This can *strengthen* the client relationship. Each project is unique, so tailor your approach and contract to suit.

You can detail potential project extras; alternative solutions to your client's requirements; ways that you can tailor the goods, works or services to your client's actual needs; and offer options relating to their hidden needs. Put your feet in your clients' shoes (or slippers) and answer questions your client doesn't even know they have, before they arise. Unless the limits of the scope of your contract are clear, then there's room for assumptions, mistakes and misunderstandings.

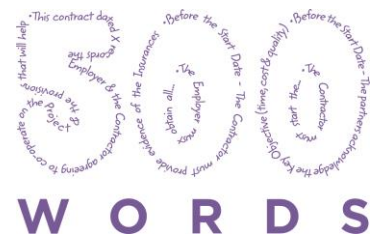
As a final check: is your scope of works discrete and defined *so clearly* that an outside observer could confirm when you have done everything? If it ends in dispute, would you be able to categorically prove what you have or haven't done?

**Do you ever specify what you want your client to do?** It is almost impossible to complete a project without input from your client, so you need to set out what your client needs to do to get their desired results. All contracts are a two-way street — so tailoring the contract to specify the information you need your client to provide or the tasks and actions you need them to do will ensure a smoother process and a better relationship.

### TRUST

Contracts can build trust and enhance existing relationships. They can demonstrate your desire to act with integrity by collaborating to deliver an outcome that benefits each company. If the contract is just about money, then the focus is wrong.

In a rush to secure a deal, small companies may want contracts signed ASAP; **before** they've created a strong foundation of trust and collaboration. Larger companies contract across multiple departments, leading to a



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more disjointed and less personalised process, which may not build the trust needed to see the project to success.

Ask yourself whether the contract embodies the trust that existed at the very start of your working relationship. Does a short contract make you think something is missing or hidden, and an element of mistrust? Is a longer contract, with in-depth legal stipulations, merely acting as a replacement for trust? If there is trust, is a lengthy contract truly necessary?

## It's a bit chicken and egg, so where do you start?

First, you should identify the primary purpose behind the contract, and whether it is a truly co-operative document designed to benefit and protect both companies.

For example, project timescales can slip, so consider whether any damages for finishing late are clearly stated in the contract. If so, are they manageable given the scope and programme? Does the client share any responsibility for works being held up and are these clearly outlined?

Also consider any limits on or exclusions of liability for specific losses. Don't bet your business on a single project.

Another sign that the contract is not collaborative is whether the client can cancel the contract at any time and without reason, without paying your loss of profit for any outstanding goods, works or services? If either of you chooses to end the relationship prematurely, are you both protected?

## ★ AIMS

Next, consider whether your contract specifically details the precise aims of the goods, works or services to be provided, particularly any outcomes related to time, costs, and quality standards. Surprisingly, most contracts don't(!)

Each client requires you to meet their specific aims; yet there is a danger of making assumptions as to what those aims are. You can establish this by asking **really simple** questions. Then, at the end of the project, when you've met those defined and agreed aims, you'll have a happy client. If your client's aims are not understood and you fail to manage or meet their expectations, that's when complaints and disputes will arise.

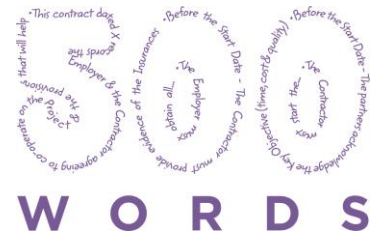
Once you've discovered their aims, ask which is the most crucial. Does completion on time overrule your client's budget or desired standards for quality? Is the project duration or completion date realistic for everyone involved, and to achieve the necessary standards for the budget?

Finally, ask yourself — will the finished project do what your contract promises?

## ★ RISK

Entering into a contract is a bit like the giddy phase of getting married — everything appears rosy and full of excited anticipation. But there's the real risk of things going wrong if the relationship isn't nurtured. Ultimately, if the situation deteriorates what happens then — is divorce your only option?

As well as personalising the contract, make sure you personalise the potential risks. Most contracts include standard clauses covering generic risks, but what are the specific risks that may prevent the aims being



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reached, and have these been missed? The more you discuss risks with your client, the more you can establish and outline specific risk factors, such as who bears the time and cost consequences should the worst happen, and who should mitigate them (even events beyond your reasonable control such as a pandemic). Risks matter right from day one until the end of your relationship. Think of it as a pre-nuptial agreement — you're preparing the ground in case the worst happens.

It is increasingly common to include a range of conditions precedent, for example setting a strict time limit for claims, or strict procedures for getting paid. Do any of the procedures require you to strictly comply with a time limit before you can exercise a right?

These simple 'get out clauses' attempt to remove or circumvent risk altogether but only for one company — there is no place for them if there's trust between the two companies. Why not turn it into a positive? Encourage the client to highlight any concerns immediately. This will provide you with the opportunity to put things right in a timely manner, and leave them happy, rather than bruised and beaten and, worst of all, wanting to walk away from the relationship.

## ***As our understanding develops...***

*Most companies think contracts are set in stone, but they're not. A contract should be a living document and should change as our understanding of the client, and the project, develops.*

*Of course, there should be a first version that's jointly signed off, but as it progresses there should be an updated version, instead of the original, plus a change order, that reflects the current position for the project.*

*This continual dialogue not only ensures the contract is clear, but also helps to avoid misunderstandings and brings about successful completion for both parties.*

**Sarah Fox, 500 Words**



I am a construction lawyer with over twenty years' experience. I've read **hundreds** of contracts, letters of intent, terms and conditions — all so that you don't have to...

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For an independent contract report, email [sarah@500words.co.uk](mailto:sarah@500words.co.uk) or call 07767 342747

