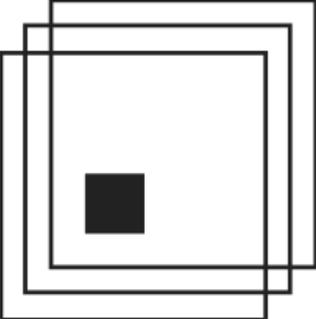


Software License Checklist

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Checklist	Further information	Notes (if any)
Grant and scope of licence		
<input type="checkbox"/> Is the software clearly and adequately described?	The customer should be clear what it is contracting for. There may also be warranties from the supplier that the software will perform as described.	
<input type="checkbox"/> Who has the right to use the software?	Contractors and other group companies should be expressly included if relevant.	

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Checklist	Further information	Notes (if any)
<input type="checkbox"/> Consider the length of the term.	A term may be fixed or perpetual.	
<input type="checkbox"/> Consider whether the licence is exclusive or non-exclusive.	The majority of commercial software is licensed on non-exclusive terms.	
<input type="checkbox"/> Consider the territories in which the software can be used.	A worldwide licence is ideal from the customer's perspective but may not be offered by the supplier.	
<input type="checkbox"/> Consider the permitted use of the software.	Particularly, ensure that it is adequate for the customer's anticipated future needs.	
<input type="checkbox"/> Is sublicensing permitted?	If it is, consider whether there are conditions (such as imposing end-user licence terms on the sublicensees).	
Software modification		
<input type="checkbox"/> If software is developed or heavily configured specifically for the customer, consider including additional protections	Useful provisions may include: —customer ownership of the intellectual property in the developed components —clear specifications for modifications —testing and acceptance criteria	
Specification and delivery		
<input type="checkbox"/> Does the agreement specify the delivery date and format?.	The majority of software is delivered by file transfer or download.	
<input type="checkbox"/> Will acceptance testing take place and, if so, on what terms?		
Support and maintenance		
<input type="checkbox"/> Consider whether support and / or maintenance services will be provided by the supplier.	Where specific levels of support are required, the agreement should include adequate service-level provisions, particularly in relation to response times and fix times.	

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<input type="checkbox"/> Check whether support and maintenance services are dependent on the purchase of upgrades at additional cost and / or support of customer version guaranteed for a period after any new version released.		
Documentation		
<input type="checkbox"/> What documentation (such as user manuals) is the supplier committing to provide?	It may be useful to specify the language of documentation, and include a warranty that it is sufficient to enable a reasonably skilled user to operate the software without third-party assistance.	
<input type="checkbox"/> How regularly will the supplier maintain or update the documentation?	Documentation updates should be made available to the customer when it receives any updates to the software.	
Licence fee		
<input type="checkbox"/> Is there an upfront one-off licence fee and / or periodic licence fee?		
<input type="checkbox"/> What are the provisions on interest for late payment?	The supplier is likely to require interest for late payment. It may be better to agree a specific rate rather than rely on statutory interest rates under the Late Payment of Commercial Debts (Interest) Act 1998.	
<input type="checkbox"/> Consider whether the licence fee is inclusive / exclusive of support and maintenance?	If exclusive, any support and maintenance fees must be clearly specified.	
<input type="checkbox"/> Consider whether the licence fee may be increased only with the written agreement of the parties.	The supplier may seek increases for the charges (eg annual, indexed linked) and additional machines / users.	
<input type="checkbox"/> Consider whether software updates (including new versions and patches) are included in / excluded from the licence fees?	If excluded, the customer should have the right to reject updates without affecting its right to support.	
Warranties and representations		
<input type="checkbox"/> Ensure that the agreement contains appropriate warranties and (potentially) representations.	Key warranties for the customer may include:	

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	<ul style="list-style-type: none"> —that the software conforms to specification and accompanying documentation —that the software is of satisfactory quality and fit for customer’s intended purpose (it is usual for suppliers to resist this warranty) —that all necessary rights, consents and approvals to grant the licence have been obtained by supplier —that the use of software and any accompanying documentation by customer will not infringe any third-party intellectual property rights, and —that the software is free from material defects, viruses and errors 	
Audit rights		
<input type="checkbox"/> Consider if the supplier is requesting a right to audit customer’s use of the software (to ensure licence terms complied with and all fees paid).	If so: <ul style="list-style-type: none"> —is the customer able to self-certify the number of users, etc? —will the audits be completed at agreed times on reasonable notice and (at most) annually? —is the supplier contractually required to minimise disruption to customer’s business? —is the supplier required to keep all information confidential? —are there suitable restrictions on what the supplier may request to see? —is the customer reimbursed for any reasonable expenses incurred in assisting with the audit (although this may be difficult if the supplier uncovers underpayment of licence fees, in which case commonly the supplier will want to be reimbursed its audit costs)? 	
Escrow		
<input type="checkbox"/> Consider whether the supplier is required to place source code for software in escrow.		
Liability		
<input type="checkbox"/> To what extent is the supplier’s liability limited or excluded?	Both parties will usually seek a cap on liability. Ensure the cap on supplier liability is sufficient to cover the potential losses which could be suffered by customer. If the software is not system critical and is	

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Checklist	Further information	Notes (if any)
	relatively easy to replace or repair then, as a minimum, the customer should ensure the capped amount covers all fees likely to be paid by them under the licence	
<input type="checkbox"/> Consider including specific types of loss which customer can recover.	<p>For example:</p> <ul style="list-style-type: none"> —operational / administrative expenses —wasted expenditure / charge —fines —additional costs of re-procuring services —losses relating to the infringement of third-party intellectual property rights <p>The supplier will usually expect an exclusion of consequential or indirect losses, and loss of profits.</p>	
Intellectual property rights indemnity		
<input type="checkbox"/> Does the agreement contain an indemnity protecting the customer against infringement of third-party intellectual property rights?	The supplier should indemnify the customer from any third-party intellectual property infringement claim in relation to the software. An indemnity may include every country where the customer may use the software.	
<input type="checkbox"/> What remedies does the customer have in the event of infringement of third-party rights?	They may include, at the customer's option, requiring the supplier to modify the software, to procure rights for the customer's continued use, to substitute with non-infringing software or to give a refund.	
<input type="checkbox"/> Is there a conduct of claims clause?	If so, does it contain appropriate customer concessions such as, for example, a requirement that the supplier must seek the written consent of the customer before any settlement?	
<input type="checkbox"/> Consider expressly stating that the indemnity is not subject to the cap on liability.	See 'Liability' above.	

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Termination		
<input type="checkbox"/> Consider the rights of the customer to terminate the agreement.	A customer may have the right to terminate an agreement for reasons including: —material or persistent breach by the supplier —supplier insolvency There is often no right for supplier to terminate for convenience.	
<input type="checkbox"/> Consider whether the customer should have the right to continue using software if the customer terminates due to breach by supplier.		
<input type="checkbox"/> Consider what happens upon termination in relation to accrued rights / liabilities.	The termination of the agreement should not to relieve the supplier from accrued rights / liabilities under the warranties and indemnities.	
Miscellaneous		
<input type="checkbox"/> Are export controls likely to be an issue?	Export controls are laws that require the licensing of the export, brokering or transshipment of sensitive goods and software.	
Consider whether it may be useful to include other provisions in the agreement.	These may include dispute resolution, sub-contractors, non-solicitation, confidentiality, force majeure, data protection and standard boilerplate provisions.	