

Contract Terms and Conditions

This list of Terms and Conditions supplements what you learned in your Rita Mulcahy's™ *PMP® Exam Prep* book, 11th edition (Prep book), in the “Procurement” chapter (pages 332-333). There are many terms and conditions related to contracts. We included common ones in your Prep book but this is a more complete list. These categories of terms and conditions can make up standard or special provisions of a contract.

- **Acceptance** How will you specifically know if the work is acceptable?
- **Agent** Who is an authorized representative of each party?
- **Arbitration** This method to resolve disputes uses private third parties to render a decision on the dispute. Arbitration is paid for by the parties and is used because it is usually faster and cheaper than the courts.
- **Assignment** This refers to the circumstances under which one party can assign its rights or obligations under the contract to another.
- **Authority Who has the power to do what?**
- **Bonds** These are the payment or performance bonds, if any, that must be purchased. For example, a payment bond would protect the buyer from claims of nonpayment by the seller.
- **Breach/default** This occurs when any obligation of the contract is not met. **Watch out:**—a breach on the seller's part cannot be fixed by a breach on the buyer's part. For example, failure to complete an item in the procurement statement of work (seller's breach) cannot be handled by the buyer stopping all payments (buyer's breach).

A breach is an extremely serious event. The exam may present situations in which seemingly little things in the contract are not done. The response to a breach must always be to issue a letter formally notifying the other party of the breach. The project manager must understand the legal implications of their actions. If they do not watch out for and send an official notice of breach, the project manager's company could lose its right to claim breach later.

- **Changes** How will changes be made? What forms will be used? What are the timeframes for notice and turnaround?
- **Confidentiality/nondisclosure** What information must not be made known or given to third parties?
- **Dispute resolution** How will any disputes regarding the contract be settled? Some options for dispute resolution are to use the courts or an arbitrator.
- **Force majeure** This refers to a situation that could be considered an “act of nature,” such as a fire or freak electrical storm, and it is an allowable excuse for either party not meeting contract requirements. If a force majeure occurs, it is considered to be neither party's fault. It is usually resolved by the seller receiving an extension of time on the project. Who pays for the cost of the items destroyed in a fire or other force majeure? Usually the risk of loss is borne by the seller and is hopefully covered by insurance. (See also “Risk of loss” below.)
- **Incentives** These are benefits the seller may receive for achieving the buyer's objectives of schedule, cost, quality, risk, and performance.
- **Indemnification (liability)** Who is liable for personal injury, damage, or accidents?
- **Independent contractor** This term means the seller is not an employee of the buyer.
- **Inspection** Does anyone have a right to inspect the work during execution of the project? Under what circumstances?

- **Intellectual property** Who owns the intellectual property (for example: patents, trademarks, copyrights, processes, source code, or books) used in connection with or developed as part of the contract? This may include warranties of the right to use certain intellectual property in performance of the contract.
- **Invoicing** When will invoices be sent? What supporting documents are required? To whom are they sent?
- **Liquidated damages** These are estimated damages for specific defaults, described in advance.
- **Management requirements** Examples of management requirements include attendance at meetings and approval of staff assigned to the project.
- **Material breach** This breach is so large that it may not be possible to complete the work under the contract.
- **Notice** To whom should certain correspondence be sent?
- **Ownership** Who will own the tangible items (such as materials, buildings, or equipment) used in connection with or developed as part of the contract?
- **Payments** When will payments be made? What are the late payment fees? What are reasons for nonpayment? Watch out for questions regarding payment management. For example, as a response to inaccurate invoices, the buyer cannot stop all payments; this would be a breach. They can, however, stop payments on disputed amounts.
- **Procurement statement of work** If it is not a separate document, this will be included as part of the contract.
- **Reporting** What reports are required? At what frequency? To and from whom?
- **Retainage** This is an amount of money, usually 5 percent or 10 percent, withheld from each payment. This money is paid when the final work is complete. It helps ensure completion.
- **Risk of loss** This allocates the risk between the parties to a contract in the event goods or services are lost or destroyed during the performance of a contract.
- **Site access** This describes any requirements for access to the site where the work will be performed.
- **Termination** This means stopping the work before it is completed.
- **Time is of the essence** Delivery dates are strictly binding. The seller is on notice that time is important and that any delay is a material breach.
- **Waivers** These are statements saying that rights under the contract may not be waived or modified other than by express agreement of the parties. A project manager must realize that they can intentionally or unintentionally give up a right in the contract through conduct, inadvertent failure to enforce, or lack of oversight. Therefore, a project manager must understand and enforce all aspects of the contract, even if a procurement manager is involved in administering the contract.
- **Warranties** These are promises of quality for the goods or services delivered under the contract, usually restricted to a certain time period.
- **Work for hire** The work provided under the contract will be owned by the buyer.