

# Avoiding IT disputes – top 10 tips

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Information technology has become a huge part of our daily lives and the success of businesses and organisations is often critically dependent on IT systems, projects and processes. When IT systems or projects go wrong, business critical services or functions can be affected, often causing huge problems.

Here are some top tips for avoiding disputes and keeping your IT contracts up and running:

## 1. Make sure your specification is clear

It might sound obvious but having a clear and detailed specification which spells out exactly what you want and need is key to the smooth running of your project. Be clear, precise and realistic. Avoid vague or ambiguous descriptions or statements. If assumptions have been made then say what they are and why they have been made. Do a cold-towel read of your specification before it is sent out – would a person with no knowledge of your project be able to read your specification and clearly understand what you are seeking?

If your specification does not clearly spell out what you want and need, you risk leaving room for interpretation. This can lead to disputes further down the line when your contractor believes it has complied with its interpretation of your specification, but you disagree. The dispute will therefore hinge on the specific wording used, so make it clear.

## 2. Get your contract signed up before work starts

Once a contractor has been appointed, there is often a rush to get the project kicked-off and underway, sometimes before the contract has been concluded. The contract phase is critical to the overall success or failure of your project – the contract is the key document which governs the relationship between you and your contractor so its importance should not be overlooked.

To avoid problems further down the line if you and your contractor start off your relationship in a way which contradicts the terms which end up in your contract, get the contract sorted before work starts. That way, both you and your contractor know your respective rights and obligations from the off.

## 3. Carefully consider any exclusion clauses/limitations on liability

In the haste to get your project kicked off and the contract concluded, exclusions and/or limitations on liability can often be sneaked in at the last minute. Think carefully about these clauses and what they mean if your project doesn't go to plan, before accepting them.

If you accept an otherwise unacceptable exclusion/limitation in the interest of getting the contract done and dusted, it could well come back to bite you should things go awry.

## **4. Consider appointing an internal contract compliance officer**

Once your project is up and running (with a contract in place), consider appointing a key person as your 'contract compliance officer'. This person should be familiar with the contract and should carry out regular checks to ensure the terms of the contract are being followed, so that any issues are picked up quickly.

If the project is allowed to continue in contradiction of the contract's terms or if there is delay in acting upon your contractor's breach, this continuance/delay may prejudice or even prevent your ability to do something about the issue when it is picked up.

## **5. Deal with contract variations correctly and document everything**

If you need to vary your contract, make sure you follow the variation requirements which are set out in the contract and keep the variation paperwork with the original contract. If you don't, any changes or variations could come back to bite you later on if things go wrong.

Keep notes and/or minutes of all phone calls, meetings or conversations with your contractor. This may not seem like a priority when your work day is busy enough but if there is a dispute later on, these documents will be your evidence and can make or break any claim.

Without them, it is your word against theirs.

## **6. Monitor and manage progress**

Carry out regular reviews of progress and where you should be and when (this could be done by your 'contract compliance officer'). If there is slippage, keep on top of it. If there are issues, make sure they are documented and dealt with. Again the documentation could prove crucial in establishing liability in any future dispute.

## **7. Don't let issues drag on**

A short delay can easily become a long delay, then a serious delay, then a business critical delay. Keep on top of issues and if you are becoming concerned by your contractor's performance in any way, deal with it, whether that be escalating it in accordance with your contract or calling for a plan of action to be put in place to deal with the particular issue you have identified.

If you don't deal with issues promptly, you might lose the legal right to do something about it, which can happen without you even knowing.

## **8. Take advice as soon as there is a problem**

As soon as you get that feeling in your gut that this isn't going well, take legal advice. Don't let things get worse and worse and then seek advice having already reached the end of the line. Performance issues can be managed and steps can be taken with a view to resolving issues but also protecting your position as a back-up if those issues cannot be resolved.

If you wait, it might be too late for meaningful action to be taken. Taking legal advice does not have to mean that termination of the contract will follow. If termination is where you want to go, taking advice will greatly assist in guiding you through often tricky notice and termination provisions which are very easy to get wrong and can have serious consequences.

## **9. Follow any contractual dispute resolution procedure**

If you do end up in dispute with your contractor and your contract contains a dispute resolution procedure, make sure you follow it. Before either party seeks recourse from the court, the court will expect you to have gone through this procedure and may well pause any subsequent court proceedings to allow this procedure to be completed.

Even if you think it is a waste of time, do it. You can't then be criticised for not having followed the correct contractual procedure.

## **10. Think carefully before terminating**

Terminating an IT contract is a big decision which inevitably causes disruption to business and services and impacts upon budgets. There can be other unintended consequences too; your contractor can dispute your termination as being wrongful and seek to bring a claim against you. It is therefore really important that any contract termination is dealt with correctly, after having taken legal advice in relation to your position.

If termination is not carried out correctly or if you terminate without having the right to do so, you are opening yourself up to a claim by your contractor which could have been avoided.

## Advice

Following these tips should give you a good shot of your IT project completing as planned, on time, within budget and minimising the risk of a dispute. If things still go wrong, you should then be in the best position possible to deal with any formal dispute, should one arise.

## Contact



Mark Hickson

Head of Business Development

[onlineteaminbox@brownejacobson.com](mailto:onlineteaminbox@brownejacobson.com)

+44 (0)370 270 6000

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