

Contractor's contract checklist



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Contract checklist for contractors

For contractors, the fundamentals of engagements haven't really changed that much. There are still key points in your contracts to look out for before you sign-up to undertake a project or engagement.

It is important to ensure the overall commercial aspects of your contracts are sound and not become side-tracked by looking only for the IR35-based clauses, such as Control, and the Right of Substitution.

Below is a recap of the points we highlighted in our online article, ['Eight key points contractors should look for in a post-IR35 contract'](#):

1. Look for a contract that clearly states "For Services", not "Of Service".
2. Ensure the contract term is clear.
3. Ensure you understand the payment process and payment date, so you're not left out of pocket.
4. Ensure you are clear about your contractual obligations.
5. Look for any restrictions, such as a non-disclosure agreement.
6. Ensure you are comfortable with the indemnity and liability.
7. Look at the location and flexibility in the contract. Make sure you're happy with the commute and ensure you are not required to always be on-site as this could place you inside IR35 under the rule of control.
8. If you are working for an agency or umbrella, make sure you get a Key Information Document (KID).

Please feel free to take advantage of this handy checklist (overleaf) that you can use to help you ensure your contracts are sound and do not position you inside IR35.

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Contract clauses that need to be included

Tick if present

1. **Parties involved** – ensuring that the contractor’s limited company/umbrella and the agent/client are correctly identified.
2. **What is offered** – the hourly or daily rate the contractor will get paid.
3. **Timings** – the start date and end date of the contract.
4. **Payment terms** – when and how will the contractor be paid, e.g.: weekly based on timesheets, monthly, on which date of the month.
5. **What services/deliverables the contractor must provide** – This means a contractor can (and should) be able to say no to any other work the client feels like putting the contractor’s way.
6. **Right of Substitution**

This means a contractor can send a substitute (with similar relevant skills) to work on the contract if necessary. A substitute does not have to be an employee of the contractor’s limited company and can be anyone the contractor might know of that works within the same field. Alternatively, it could be someone who is sourced from an agency or even a networking website.

The limited company remains liable for all costs associated with the substitute and the limited company must be paid as usual by the end-client, the limited company then pays the substitute directly.

[Click here to find out more about the Right of Substitution.](#)
7. **No Mutuality of Obligation (MOO)**

[Click here to find out more about Mutuality of Obligation.](#)
8. **Contract termination** – A termination clause that works both ways, allowing the contractor to leave part way through the contract.
9. **Liability and indemnity** – This clause is used to manage the risks associated with the contract, and it enables one party to be protected against the liability arising from the action of another party.
10. **Intellectual Property (IP) Rights** – It should be set out clearly at the start who owns what.
11. **Governing law** – Ideally this should state that the jurisdiction is the UK. Some contractors may find their Professional Indemnity insurance does not apply to contracts from other jurisdictions, such as the USA. Check this point carefully in your insurance policy to ensure you are covered.
12. **Confidentiality** – The area of the confidential material should be carefully checked and agreed.
13. **Force majeure** – This is included in most contracts and allows for the unforeseen and the unexpected, such as natural disasters. If the client’s offices are destroyed by a fire, for example, contractors should not expect to be able to enforce their rights in the contract.

Contract clauses to consider challenging or having removed

Tick if removed

1. **Control** – The client has control over the contractor and how the contractor works. This is a common occurrence in contracts and one that must be removed if you are to remain outside of IR35.
2. **Mutuality of Obligation (MOO)** – The contractor is obliged to take any work provided by the client. This suggests there is mutuality of obligation between the contractor and the client, meaning the contractor could be working inside IR35.
3. **Holiday pay and/or sick pay** – These points indicate that the contractor is actually an employee of the company and not independent.
4. **Ongoing contracts or reference to ongoing work** – This suggests that the contractor is not working on specific projects but taking any work, which implies a mutuality of obligation between the contractor and the client.
5. **Automatic renewal clause** – These do not allow the contractor to re-negotiate rates and terms, and also suggest there is a mutuality of obligation between the contractor and the client.

Contracting for an agency or umbrella company

Tick if present

1. KID – Is the Key Information Document (KID) present?

Seek professional advice

When it comes to contracts you can never be too careful. It is advisable to seek professional advice before you sign a contract, and arranging for a contract review is a good place to start.

A contract review is a report that independent tax specialists provide to contractors giving an opinion of IR35 status. The review is used to understand the contractor's situation, regarding IR35, by evaluating the contractual terms and working arrangements - including Personal Service, Control and Mutuality of Obligation - and whether the contract places the contractor either inside or outside of IR35.

For further details please contact **0330 433 1670**

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