

“ I want to be a
**freelance
professional** ”

A **LAWWORKS** Pocket Series

1

*Law Works is a partnership between the National Trades Union Congress and The Law Society of Singapore that aims to educate workers on their legal rights, and to promote the interests of workers generally. This booklet is part of a **Law Works** pocket-series intended to provide a guide to particular areas of employment law, provide a checklist of key considerations, and point the way to avenues for further advice and assistance.*

*Regular legal clinics and periodic legal primer talks will also be run as part of **Law Works**. For more information on legal awareness and assistance for workers, please contact the National Trades Union Congress at: LawWorks@ntuc.org.sg or The Law Society of Singapore at: LawWorks@lawsoc.org.sg.*

All rights reserved. No part of this publication may be reproduced, stored in or introduced into a retrieval system, or transmitted, in any form, or by any means (electronic, mechanical, photocopying, recording or otherwise), without the prior written permission of the National Trades Union Congress (NTUC) or The Law Society of Singapore.

Disclaimer

This publication is freely distributed with the understanding that (1) the authors and editors are not responsible for the results of any actions taken on the basis of information in this work, nor for any errors or omissions; and (2) the publishers are not engaged in rendering legal, accounting or other professional services. The publishers, and the authors and editors, expressly disclaim all and any liability to any person, whether a recipient of this publication or not, in respect of anything and of the consequences of anything done or omitted to be done by any such person in reliance, whether whole or partial, upon the whole or any part of the contents of this publication. If legal advice or other expert assistance is required, the service of a competent professional person should be sought.

This booklet incorporates all the relevant laws as at 1 January 2013

© The Law Society of Singapore and the National Trades Union Congress 2013

CONTENTS

1. Introduction	02
2. Defining a Freelancer	03
3. The Freelancer's Contract	05
4. Resolving Disputes Between Freelancer and Hirer	14
5. Claims from Third Parties	19
6. Other Regulations	22
7. Checklists	24

1. INTRODUCTION

This guide is for persons who wish to take up work as independent contractors (or more commonly known as “self-employed”, “freelancers”, or “consultants”). Such individuals enter into verbal and written contracts to do work for other individuals, businesses, government bodies or organisations. Individuals often become independent contractors because of the desire for a flexible schedule and to be their own boss. These individuals are employed for certain projects and for a specific period of time. In this guide, these individuals will be referred to as “independent contractors.”

2. DEFINING A FREELANCER

■ 2.1

How is an independent contractor different from an employee?

A person performing work or providing a service for another person or business under a contract may be considered to be an independent contractor or an employee. The distinction is an important one and depends on the contract between you and the other party (the hirer).

Some relevant factors in determining whether you are an independent contractor include:

- How are you paid? Is your salary paid after completion of each project or on a weekly basis?
- Who has control over recruitment, payment of wages, production operations, and provision of work?
- Who provides the tools, equipment, working place and materials?
- Do you provide the service on your own account and at your own risk?
- Can you seek out other business opportunities while working for your employer?

Example:

T is a painter. He has various customers that he works for. He provides potential new customers with quotes and has control over who he works for. He negotiates his working hours with his customers.

When T does a job, he brings his own tools, equipment and materials to the site. At the end of each job, he submits an invoice for the work he has done. He works at his own risk (has a personal stake in whether he makes a profit or a loss).

T is an independent contractor.

■ **2.2**

**Why the distinction is important:
Your rights as an independent contractor**

As independent contractors are considered to be self-employed, they are not legally entitled to statutory protections and benefits accorded to employees, such as Central Provident Fund contributions, annual leave, medical leave, and rights under labour legislation such as the Employment Act and the Work Injury Compensation Act.

The legal rights and obligations of independent contractors are largely dependent on the terms and conditions of the contract they enter into with their hirers. This guide will focus on the essential elements of a contract to provide services.

3. THE FREELANCER'S CONTRACT

■ 3.1

What is a contract?

A contract is any agreement, written or oral, made between two parties to do work in exchange for some benefit, usually a payment.

To avoid ambiguity, a contract should be in writing. A written contract provides more certainty for both parties than verbal contracts or relying on someone's word.

Note: It will also be useful to keep any paperwork associated with the contract e.g. email correspondence, draft plans, etc. These can be used in subsequent discussions to resolve any problems; should any dispute become serious, they may also be used as evidence in court. Dispute resolution is discussed in section [4] on page [14].

■ 3.2

What should be included in a contract?

It is advisable to set out the following key terms clearly:

- The names of the contracting parties
- What service(s) is/are to be provided by the independent contractor
- When and where such a service is to be provided and completed
- The amount and mode of payments, including whether expenses such as travel and supplies will be included in the fee.
- The method of charging (e.g. hourly rate or a fixed rate for the project)
- The timing of payment (e.g. instalments by project milestones, upon completion or upon 14 days of an invoice being presented)
- How contracting parties can terminate the contract
- How disputes should be settled (considered in section 4)

Other important terms include:

(a) Intellectual property

You may create something such as a software program, song lyrics, or a document, in accordance with the employment contract. However, the creator of intellectual property is not always the owner. The owner will have certain rights (called ‘intellectual property rights’) that will allow them to license or sell the creation. The owner may also be able to stop other people from making money out of those creations, even the creator.

As a freelancer, you own any intellectual property in the works, articles or inventions you produce, such as copyright. If the hirer wants to own the intellectual property you create, this must be specifically provided for in the contract.

It is advisable to seek legal advice about clauses that give intellectual property rights to the hirer.

(b) Confidential information

If you want to retain control over your confidential information (e.g. client lists, pricing information or other trade secrets), the contract should include a clause allowing you to protect that information.

It is also advisable to specify the type of information that is confidential so that both parties understand exactly what needs to be protected (for example, ‘information regarding the contractor’s profit margins’).

(c) Exclusivity arrangement / Restraint of Trade

An ‘exclusivity’ clause restricts you from entering into contracts with other clients, and should be considered carefully (e.g. the fees in exchange for such restrictions).

A ‘restraint of trade’ or ‘no poaching’ clause may be included if the hirer is concerned that you might take their clients or compete with their business during the contract period or for a period of time after the contract ends. Usually a period is specified during which you cannot trade with the hirer’s clients.

A court may not enforce an exclusivity clause or restraint of trade clause that is too restrictive or unreasonable. To determine this, the court will

consider factors such as whether the clause protects only the genuine interest of the hirer, the period of exclusion and the geographic area to which the clause applies. It is advisable to have a clear contract to avoid protracted and costly court proceedings.

Note: Standard form contracts

A ‘standard form’ contract is a pre-prepared contract where most of the terms are set in advance and little or no negotiation between the parties occurs. Often, these are printed with only a few blank spaces for filling in information such as names, dates and signatures.

Standard form contracts often include a lot of legal ‘fine print’ and terms that you may not understand. They tend to be one-sided documents that mostly benefit the person who prepared the contract (for example, the main obligations provided for are imposed on the freelancer).

You should read the fine print carefully and get legal advice about any terms you do not understand before you sign the contract. Once the contract is signed, you are bound by all of its terms even if you did not actually read it.

■ 3.3

Varying, Amending or Suspending the Contract

Variations and amendments to the contract should be clearly set out in writing. The other party's confirmation in writing and counter-signing should be obtained wherever possible.

Variations to the main contract can be done in various ways, including by way of:

- a separate document detailing the agreed terms of variation,
- a handwritten variation to the relevant section of the contract in the document itself, with changes signed or initialled by both parties, or
- a confirmation email or letter and a response from the other party, recording your mutual agreement to the variation.

Similarly, if parties agree to suspend the contract (e.g. postpone the completion of the contract pending an event), this should be set out in writing and confirmed by both parties.

■ 3.4

Termination of contract

A contract can be terminated in several ways, including:

- By agreement between the parties,
- By giving notice of the termination (if parties provided for this in the contract e.g. one month's notice of early termination),
- By breach of either or both of the parties (where one party has breached an essential term of the contract and the other party decides to end the contract because of that breach. 'Essential terms' refers to the main subject matter of the contract), or
- By frustration (i.e. where the contract cannot continue for some reason beyond the control of either party and where neither party is at fault. For example, a contract may be 'frustrated' if a party dies or a new law has made the performance of the contract illegal).

When can a contract be terminated for breach of contract?

A breach of a contract will not bring a contract automatically to an end (unless the contract expressly states that this should happen). Normally, a breach just gives a right to ‘damages’ (that is, the right to sue for any loss caused by the breach of contract) and the obligations under the contract continue to be binding.

When the breach of contract is a serious breach or a breach of an essential term, the other party will have a right to choose to terminate the contract or keep the contract going. However, your contract may require the hirer to provide you with a ‘notice to remedy a breach’ before it can be terminated.

It is not always easy to know whether a particular breach by the other party is serious enough to allow you to end the contract. If you try to terminate a contract for a breach where you have no right to, the termination will have no effect, and you will still be required to comply with the rest of the contract.

One way to reduce the risk is to include in your contract a provision which expressly states that if a particular term is breached by the other party, you have the right to terminate the contract. Always seek advice before you try to end a contract in this way. Having a good dispute resolution clause in the contract will help manage these issues.

What else can happen if you breach your contract?

If you breach a contract and the matter goes to court, you may be ordered:

- to pay damages to the other party, or
- to perform your obligations under the contract (also known as ‘specific performance’).

Some contracts may specify what payments will be payable if there is a breach by one party of a particular term of the contract — this is often called ‘liquidated damages’. As long as this agreed sum is a genuine pre-estimate of the damage likely to be caused by the relevant breach, a court may enforce it. However, a court will not enforce it if the agreed sum is significantly greater than the cost of the damage and is considered unfair or unreasonable.

4. RESOLVING DISPUTES BETWEEN FREELANCER AND HIRER

Common situations include breaches of contract such as non-payment of fees or disputes arising from the work done.

■ 4.1

Alternative Dispute Resolution

There are several ways you can try to resolve a dispute before going to the Courts. The following methods are also known as alternative dispute resolution (ADR):

■ **Negotiation**

In many cases, it is best to try to resolve a dispute by negotiation rather than involving outside parties, or resorting to the Courts. Any agreements to resolve the matter should be stated in the contract.

■ **Mediation**

Parties can agree to go for mediation. A mediator acts as a neutral third party to assist parties to resolve the matter. The mediator does not issue any decision, and parties are free to decide whether to agree on a resolution of the matter.

■ Arbitration

Parties can agree, whether as part of the contract or after the dispute has arisen, to refer the matter to one or more adjudicators (also known as the arbitrator(s)) by whose decision they agree to be bound. By agreeing to arbitration, parties limit their rights of recourse to the Courts, as well as limit rights of review and appeals of the arbitrator(s)' decision.

Tip: It is advisable to set out in the contract what person or organisation will act as a mediator or appoint an arbitrator (e.g. Singapore Mediation Centre, Singapore International Arbitration Centre, etc) if there is a dispute. The organisations have clear procedural rules to guide parties in the event of dispute. This also avoids conflict over who will mediate a dispute or appoint an arbitrator for the dispute.

■ 4.2

Taking the matter to court

The court process can be time consuming and costly and in most situations should be the last resort. But if you feel that the other party is not doing what they are supposed to under the contract and they are not prepared to negotiate or participate in ADR, you could go to court to seek damages or specific performance for breach of contract.

A brief overview of the Singapore Courts:

■ **Small Claims Tribunals (SCT):**

You may seek recourse at the SCT for contracts for services that involve amounts not exceeding S\$10,000, or if both parties agree, not exceeding S\$20,000. Disputes cannot be brought to the SCT more than a year after it has happened.

More information on the Small Claims Tribunals can be found at:

<http://app2.subcourts.gov.sg/sct/index.aspx/>

■ **The Subordinate Courts**

This comprises the **Magistrate's Court** and **District Court** in which law suits below S\$60,000 and S\$250,000 are respectively filed.

■ **The High Court**

Law suits for claims above S\$250,000 can be filed in the High Court.

■ 4.3

For more assistance / information

- If you are a union member, you may:
 - approach NTUC Customer Service Centre at NTUC Centre, 1 Marina Boulevard, B1-01 One Marina Boulevard, Singapore 018989;
 - call NTUC Customer Service Centre Hotline at 6213 8008;or
 - seek advice from our workplace advisors by:
 - logging in to Workplace Advisory via the NTUC Portal;
 - iPhones:
www.ntuc.org.sg/workplaceadvisory1;
 - Android smart phones:
www.ntuc.org.sg/workplaceadvisory2.

- You may also:
 - approach The Law Society of Singapore's Pro Bono Services Office at Level 5 of the Subordinate Courts
 - call the general line at 6536 0650
 - email to ProBonoServices@lawsoc.org.sg

Do note, however, that the lawyers at these clinics cannot subsequently act on your behalf in court proceedings.

For more information on free legal advice and assistance for the community, please visit:
probono.lawsociety.org.sg

■ 4.4

Enforcement proceedings

- Do note that even after you have obtained a decision in your favour for payment of money, you may have to take up enforcement proceedings against that party in order to be paid. Examples include garnishee proceedings (to obtain monies in the party's bank account) or Writ of Seizure & Sale, which are separate proceedings with separate fees payable.

It is possible that you may not be able to recover any money. It may be prudent to check whether the other party is financially able to pay the amount claimed or what assets that party may have before you file a lawsuit against him. This will also help you decide whether to accept any instalment payment proposals or in considering the costs and risks of commencing legal proceedings.

5. CLAIMS FROM THIRD PARTIES

This section sets out the legal issues which you may encounter when you receive a claim from someone other than your hirer in connection with your work as a freelancer.

■ 5.1

Privity, Rights of Third Parties

In general, a third party (someone who is neither the hirer nor the freelancer) cannot claim against the hirer or the freelancer as he is not a party to the contract for service made between the hirer and the freelancer only. However, under the Contract (Rights of Third Parties) Act, if the contract for service expressly confers a benefit on a third party, and provides that the third party may enforce a term of the contract in his own right, a third party may claim benefits under the contract between the hirer and the freelancer. If you do not wish for a third party to be able to claim against you or the hirer for any benefit that the contract contemplates, it would be prudent to exclude the application of the Contract (Rights of Third Parties) Act in the contract for service. If the application of the Contract (Rights of Third Parties) Act is excluded,

you may also consider stating in the contract that the consent of any third party is not required to rescind or vary the contract for service at any time.

■ 5.2

Hirer's or Freelancer's Liability

An employer will usually be vicariously (indirectly) liable for wrongs committed by the employee where there is sufficient connection with the employer. Generally, this principle does not apply between an independent contractor and the hirer. However, in specific circumstances, the hirer may be liable for the acts of an independent contractor depending on (i) the nature of the relationship and (ii) the connection between the wrongdoer's role and the wrong is sufficiently close. For example:

- where the independent contractor is an agent of the hirer
- where the relationship between the independent contractor and the hirer amounts to an employment relationship
- where the relationship between the independent contractor and hirer is that of a partnership

As it may be difficult to determine when vicarious liability will arise, it is better to apportion the risk of liability to third parties clearly in the contract between the hirer and the independent contractor.

In general, where a hirer agrees to provide goods or services to third party, the hirer is generally not liable for negligence of the independent contractor whom the hirer has engaged to provide goods or services to the third party. However, where there is a “non-delegable duty” owed by the hirer to the third party, the hirer will be liable for any breach of that duty even if the independent contractor had been negligent.

6. OTHER REGULATIONS

Do note that there may be specific rules prescribed by law and codes of conduct that apply to certain industries or professions. We set out here, a non-exhaustive list of regulations, and would recommend that you seek specific legal advice on the specific industry or profession relevant to your freelancing work.

■ **Estate Agents Act**

- licensing and registration requirements
- duties and liability

■ **Legal Profession Act**

- professional conduct and discipline
- practising certificate
- account rules
- Legal Profession (Professional Conduct) Rules

■ **Dental Registration Act**

- practising certificate
- disciplinary proceedings

■ **Singapore Dental Council**

- ethical code and guidelines

■ **Medical Registration Act**

- practising certificate
- confidentiality
- performance and fitness requirements

■ **Singapore Medical Council**

- ethical code and ethical guidelines

- **Optometrists and Opticians (Practice, Conduct, Ethics and Publicity) Regulations**
- **Professional Engineers (Code of Professional Conduct and Ethics) Rules**
- **Human Organ Transplant Act**
- **Land Surveyors (Code of Professional Conduct and Ethics) Rules**
- **Accountants (Public Accountants) Rules**
- **Fire Safety (Registered Inspectors) (Code of Professional Conduct and Ethics) Regulations**
- **Fire Safety (Fire Safety Engineers) (Code of Professional Conduct and Ethics) Regulations**
- **Nurses and Midwives Regulations**
- **Architects (Professional Conduct and Ethics) Rules**
- **Traditional Chinese Medicine Practitioners (Practice, Conduct and Ethics) Regulations**
- **Allied Health Professions Act**
 - audiologist
 - clinical psychologist
 - dietician
 - occupational therapist
 - physiotherapist
 - podiatrist
 - orthodontist
 - radiation therapist
 - radiographer
 - speech therapist

7. CHECKLISTS

Are you an independent contractor / freelancer?	Present (✓)
Does your salary come after each project?	
Do you ... <ul style="list-style-type: none">• have control over recruitment, payment of wages, production operations, and provision of work?• provide the tools, equipment, working place and materials?• provide the service on your own account and at your own risk?• own any intellectual property in the works, articles or inventions you produce, such as copyright? If the hirer wants to own the intellectual property you create, this must be specifically provided for in the contract.	
Can you seek out other business opportunities while working for your employer?	

If you have ticked all of the above, you are probably an independent contractor/freelancer.

Checking Your Freelance Contract	Addressed (✓)
<p>Your contract should contain these essential elements:</p> <ul style="list-style-type: none"> • clear identification of the contracting parties • services to be provided • when and where service is to be provided and completed • payment method and amount • method of charging (hourly or fixed rate) • time of payment / payment schedule • termination of contract • how to settle disputes 	
<p>Does the contract ...</p> <ul style="list-style-type: none"> • Protect your intellectual property rights? • Give you control over confidential information? • Include a 'restraint of trade' or 'no poaching' clause? If so, does it go too far? 	
<p>Are there industry specific rules and regulations that may be applicable?</p>	

Join NTUC Professionals, Managers and Executives'
(PMEs) Conversations online:



www.facebook.com/UPforPMEs



www.linkedin.com/groups/UP-PMEs-4573957



www.twitter.com/UPforPMEs

LAWWORKS

A PARTNERSHIP BETWEEN

ntuc
National Trades Union Congress



LAW WORKERS COMMITTEE