

## Beware of standard terms and conditions

As this is an inaugural article, permit me to introduce myself. I've worked in IT related areas as victim, perpetrator and observer for 30 years. I currently hold the Chair in Software Reliability, (I now realise that should have been Software Unreliability), at the University of Kent as well as working in the family IT business, which deals with similar things. My main interests these days are Software Liability, Reliability and Security so I hope these will be of interest to you the reader. Although trained as a mathematician originally, my approach to IT is firmly in the range "pragmatic with tendencies to despair". Before regaling you in future articles about dreadful reliability and security related problems which tend to attract my forensic skills these days, I thought I would talk a little bit about software contracts.

The background behind this is that for many years I have been asking legally trained friends just what the situation was with regard to liability to the supplier for software failure. The general answer I got was, lots of exciting stuff about the tort (literally a wrong) of negligence, product liability and so on terminating with a resounding "I don't know". Finally tiring of my questions, one friend in the US said "Stop bothering me, go away and find out yourself.". I did, signed up for and eventually completed an LL.M. in IT law at the truly excellent University of Strathclyde Law school. Now when people come up to me and ask questions about liability, I can rabbit on about tort, product liability and so on before finishing with the now obligatory, "I don't know". I will continue with this in later articles, but one thing it taught me was to read contracts and even vaguely to understand them.

Now we come to the reason for this. My family business delivers software and I have become aware of an increasing trend for lawyers to get involved in writing standard terms and conditions for the acceptance and use of a supplier's software, no matter how cheap it is. This would be OK if lawyers generally understood the nature of software but they regrettably don't as a general rule.

Standard terms and conditions generally follow the following path and I am including conditions which have actually crossed my desk in recent weeks: first, discard any other agreement which might exist; now start laying down conditions such as a requirement for 24x7 support, (ha ha), access to the source code free of charge if support is 'not satisfactory', (ha ha), a warranty that the software will be free of defect for two years, (hahahahah). I could go on.

If you are a consumer on the end of standard terms and conditions, the courts are generally on your side. However, if you are a family business, even though the law takes into account such things as relative bargaining power, the idea of the law of contract is that if you sign, it is generally your problem. Now I have no problem with signing onerous contracts provided the amount of money changing hands is worth it but if you as a small business supplier provide software costing a few hundred pounds only, then I would urge you to read these contracts very carefully indeed. And then reject them.

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