



The Production Services Association

A SAMPLE CONTRACT, TERMS AND CONDITIONS FOR USE BY THE SELF-EMPLOYED

For almost four years now various PSA Council members have been trying to produce a sample contract together with terms and conditions that could be used between service companies, artist management companies and the self employed contractors who supply them with goods and services.

One of the main stumbling blocks in drawing up such a contract has been the fact that every draft produced ended up by being more a *contract of employment* as opposed to a contract for services. It took away some or all of the self employed status of the freelancer. The problem has been that for years both employers and freelancers have considered and treated the freelancer as a temporary employee when in fact the freelancer is a contractor providing services. They are small business (sole traders) in their own right and definitely not employees.

More recently I have taken up the task of producing the final elusive contract. After starting again from scratch we now have a simple contract to supply goods and services suitable for use by freelancers. It has the full approval of both corporate and freelance members of the PSA Council.

The sample contract is of critical importance to employers and freelancers alike, all should read it, circulate it and those who use the services of freelancers should encourage those freelancers to start using it.

Chris Hannam.
PSA COUNCIL.



NOTES RELATING TO PSA TERMS and CONDITIONS OF BUSINESS FOR USE BY THE SELF-EMPLOYED.

Interpretation

In this document the following words are used:

Self-employed contractor – a freelance person supplying goods or services, a small organisation with a single person acting as a sole trader, or a small partnership or Limited Company. In a contract and business terms and conditions the word Supplier is normal used.

Client – customer or the person or organisation contracting the goods or services, usually the organisation paying the invoice.

Introduction:

A self-employed contractor is contracted by a client to provide goods and or services and is therefore a trade supplier, as a trade supplier there is no entitlement to any benefits such as sick pay, holiday pay, pensions and benefits provided by the client to their employees.

A self-employed contractor should have made adequate provision for insurance covering the scope of work they have been contracted to provide, typically this should include Public and Employees Liability, Contractors All Risks covering plant and equipment, Travel and Medical insurance. The client may stipulate the amount of cover required as in some contractual situations the amounts of cover must be the same amongst all contractors – this is especially so in the case of Public Liability Insurance.

Self employed contractors also have their own responsibilities under the Health and Safety at Work Act 1974 (HASAWA), and will be required to make adequate provision for Personal Protective Equipment (PPE), Risk Assessments and Work Methods, First Aid etc.

Self -employed contractors are advised to have a contract between themselves and any clients to whom they are engaged to provide services.

A contract between a self employed contractor and a client is a contract to supply services, it is not a contract of employment or contract of service. It will assist in establishing a self-employed contractors status and will go some way in protecting both the parties in the event of a dispute.

Any contract should be issued by the self employed contractor to a client stating the self-employed contractors terms and conditions of business, a contract issued by a client – e.g. a service company or an artist/artist management company, to a self employed contractor may be construed as a contract of employment.

A sample contract is attached at the end of these guidance notes for use by the self-employed contractor.

Areas marked < > indicate any details that need entering - this may be a name, date, monetary sum or figure.

These should be completed at the time of negotiation with the client.,

The list of Clauses contained within the sample contract are by no means an exhaustive list, The self-employed contractor may wish to add additional Clauses to suit their own particular needs. Additionally they may find that the Client wishes additional Clauses to be added or for changes made to existing Clauses.

This is only to be expected but it is advised that legal advice be sought if the freelancer is not 100% certain of the meaning or validity of a particular Clause.

It is also suggested that any paragraphs, lines or words that are struck out or altered should be initialled by both parties and dated.

The notes that follow give guidance as to what the Inland Revenue and the Health and Safety Executive (HSE) consider to be a self-employed contractor but each and every case is different, for further advice contact your local area Tax Office.



It cannot be stressed to often that a self-employed contractor is not an employee and holds all the responsibilities of a person running their own business.

Health and Safety Duties Of the Self Employed

Self –employed contractors have certain duties under the Health and Safety at Work etc Act 1974 (HASAWA.)
These duties include:

- If they are also an employer, to fulfil the duties of an employer.
- To conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that both themselves and other persons (not being their employees) who may be affected thereby are not exposed to risks to their health and safety.
- Not intentionally or recklessly to interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions.
- To provide, or ensure that there is provided, such equipment, if any, as is adequate and appropriate in the circumstances to enable them to render first aid to themselves while at work.
- To provide their own Personal Protective Equipment (PPE) and/or clothing.

It is a legal requirement under the HASWA and the Management of Health and Safety At Work Regulations 1992, to produce a written Health and Safety Policy Statement and Risk Assessments if you employ five or more people.

However, under HASWA if a significant risk could be created to a large number of people, a risk assessment, written proof of a safe system of work and training would still be required from a self employed contractor (business) with fewer than five employees. An example of this would be a rigger.

It is likely that in the very near future the regulations will change and every business will be required to produce written Risk Assessments and have a Health and Safety Policy regardless of the number of employees.

A "self-employed" person has the responsibilities of both an employer and an employee, they employ themselves.

What Is Self-Employment?

The HSE consider that a self-employed person is someone who is responsible for payment of their own Income Tax and National Insurance contributions *and* also has their own Public Liability Insurance, in fact they class self-employed persons as employers! A self-employed contractor does not normally work under supervision.

This same view now seems to be adopted by HM Tax Inspector as a definition of who is "self-employed" as opposed to an employee, It is understand that the Inland Revenue are soon to start taking away Schedule "D" status from self-employed persons who do not hold their own Public Liability Insurance.

HM Tax Inspector's are also asking self-employed persons if they are allowed to put someone in to do the job on their behalf, they consider that self-employed contractors should be allowed to assign a job.

If you work for an employer who covers you under their Employers Liability Insurance then the chances are you are an employee even if you pay your own Tax and National Insurance contribution. This is even more the case if you work under supervision such as a "stage hand/local crew" person may do.

Employers need to take care as well, you may end up with a large bill for National Insurance Contributions for your self employed contractors who you thought were paying their own N.I. contributions, this has already happened to at least one company in our industry and it cost them a fortune!



Clients undertaking the services of self-employed contractors are advised to keep evidence of the defining criteria used to determine "self employed" status. It is no longer acceptable for a self-employed contractor just to state that they are a "self employed" and provide a schedule D number.

Typical defining criteria will consist of a questionnaire about the self employed contractor, the services provided, qualifications and training information, bank details, Tax details, written evidence of your trading status e.g. accountants letter or letter from the Inland Revenue, and Insurance details. Once the client has satisfied themselves of your "self employed" status they will treat your invoice for payment as trade invoices, otherwise they have to treat you as an employee and deduct tax and NI at source.

It is very important to ascertain a self-employed contractors status as to whether they are in fact employed or self-employed. No client in their right mind should use self-employed contractors unless they carry insurance suitable for the scope of work they have been contracted to carry out.

If the client intends to cover individuals under their own employers/public liability insurance they may then become an employee of the client who then has to take all the responsibilities of an employer.

Clients, Production Managers, Crew chief/bosses take note, you may have employees you did not think you had together with all the responsibilities for Health and Safety, Tax, National Insurance and Working Time Regulations for them!

The more you provide for self employed contractors, the more likely that they may be classed as your employees.

Below are some simple checks which can be applied that will give indications to the status of self employed contractors:

Indications towards being employed

- You work for long periods for the same client
- Your client supplies all the tools (other than just small hand tools) and materials
- Your client provides Employers Liability Insurance cover for you
- You work under supervision
- You can't sub contract the job
- You are told where to work, how to work and what time to start and finish work
- You have a 'contract *of* service'
- You expect your client to give you work and he expects you to accept the work
- You work for a daily or hourly rate
- You don't risk your own money and there is no possibility that you will make a financial loss
- You work at the premises of the person you work for, or at a place or places he or she decides.

Indications towards being self-employed

- You don't work under supervision
- You work for a number of different clients
- You provide your own tools (other than just small hand tools) and materials
- You have a 'contract *for* services'.
- You hold your own Public Liability Insurance (and Employers Liability Insurance if you also employ people).
- You can sub-contract the job or provide a deputy to carry it out.
- Your contract does not have 'mutuality of obligation' i.e. on an employer to provide work, and a worker to accept it.
- You employ other people and pay them out of your own pocket.
- Within the overall timescale of the project, you can choose how and when the work will be carried out.
- You have the final say in how the business is run.
- You have to correct unsatisfactory work in your own time and at your own expense.
- You use "entrepreneurial skills", in other words, you take business risks. It is possible for you to loose money as well as make it. You are paid an agreed amount for the job regardless of how long it takes you.
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none of the checks that employers can make to ascertain that the "labour only contractors" they intend to appoint are genuine self-employed persons is by getting them to quote for the jobs available and not offering a weekly, daily or hourly rate of pay.



Quoting for a job uses "entrepreneurial skills" and is an "acid test" for true self employment but even then it may be possible to do the occasional job for a daily or hourly rate, for instance, if it proves to be extremely difficult to quote a price to do the whole job because until you start you don't know how long it's going to take or what is involved. This seems to be acceptable as long as it's only occasional and does not represent the majority of your work.

Invoices raised by self-employed contractors should be all encompassing and typically use phrases like "For goods and services provided on ABC event as per our (verbal) quotation". It is suggested invoices are not split into days, hours, weeks etc unless used to indicate additional services outside of the original quote, otherwise as suggested in the paragraph above be difficult to quote due to the nature of the contracted work,

It is not actually the self-employed contractor's choice – the client is ultimately responsible for whom they contract and therefore for deciding if the self-employed contractor is in fact "self-employed" and therefore either a genuine trade supplier or an employee.

The client will be inspected by the Inland Revenue and they will approve the defining criteria for self-employed contractors and if they do not agree with the tests applied will request the tax due plus interest. It is then up to the client/employer to try and claim the amount back off all the self-employed contractors they have used. Although this tax may also have been paid by the self-employed contractors the revenue see the client as the employer and therefore should have made the deductions. If tax has been double paid then the employee (self-employed contractor will receive the payment back from the revenue) which will involve costly accountants charges to unravel it all.

The only people who can really decide if you are genuinely self employed or not are the Inland Revenue and even then it's quite possible for each local area office to give a different definition and ruling on each case.

All the information I have given here acts only as indicators but it's a fair bet that the more indicators you have pointing towards self-employment, the more likely you are to be "self-employed".

Employers must remember that self-employed persons are not "short term employees" and must not be treated as such.

Employment status is not a matter of choice. People are self-employed if they are in business on their own account and bear the responsibility for its success or failure.

The Inland Revenue quote that "The tax rules for self-employed people are designed to reflect the day-to-day transactions of the true risk-taking entrepreneur. Genuine self-employment is about being in business on one's own account and not simply applying a label of self-employment".

Bear in mind that because you are self-employed in one job doesn't necessarily mean you will be in your next job.

Disclaimer.

The details contained within this sample contract, conditions, terms and guidance notes are given in good faith and are believed to be correct. Whilst every effort has been made to ensure that the information contained herein is correct, no liability can be accepted by the Author or The Production Services Association for any errors or omissions. You are advised to seek legal advice when entering into any form of contract or agreement.