

How to draft a contract?

More and more Norwegian companies are buying IT-services from Ukrainian IT Companies. The reasons are the high technical skills and low price level. It is also easy to find a good partner. Ukrainian IT companies are looking for opportunities in Europe. Norway one of the most attractive markets. When you have found the right partner, it is time to conclude a contract. Below you find some pieces of advice.

The one-pager is based on the report "Ukraine: IT business guide" (hereinafter "KPMG-report") conducted by KPMG Ukraine and KPMG Norway for the Norwegian-Ukrainian Chamber of Commerce (NUCC) and work conducted by Advice Group. NUCC has written the one pager and is responsible for the content. Please see the one-pager on outsourcing and outstaffing for general advice on how to move forward.

General advice

- Before contracting with a Ukrainian partner, you should consult a legal counsellor who knows the peculiarities of the Ukrainian legal system.
- To be valid under Ukrainian law the contract must include all essential terms of a contract that include but are not limited to full name of goods/services, contract price, procedure and terms of payment and procedure for delivery. For the full list see the KPMG-report.
- Include a clause in the contract that states that the provisions in the attachments precede the provisions in the standard contract in case of inconsistency.
- Include an anti-corruption clause in the contract. NUCC has an anti-corruption clause, which can be used by members as a sample.
- Please also note that a Ukrainian company might need the original documents, including payment documents. Original documents are required for Ukrainian residents for tax and currency control purposes.
- If you do not want an IT-company to work with a certain client, you should include a noncompetition clause. This can be relevant if an IT-company can compete with you on delivering services to your customers.
- Make sure that the regulations in the contract also apply to employees/private entrepreneurs working on the project.

Description of process and delivery

- You should provide a detailed description of the delivery, process, and responsibilities to avoid misunderstandings. The contract should also have requirements to quality standards and documentation on how this will be followed by the provider, including private entrepreneurs or subcontractor working on the project (if any).
- The contract should describe all three phases of the process namely the start-up, operational part and termination of the contract. There should also be a description of routines for reporting on progress and eventual deviations, including exceptional/unpredicted situations and security events (force majeure).
- An agreement should include prices and quantity discounts for consulting services or additional services, for example helpdesk service.

Handling of intellectual property and data

- If you have a business idea that is not transformed into a product or a prototype, you should include a non-disclosure section in the contract with the Ukrainian company (or
- Transfer of the IP-rights to the digital product being developed should be regulated in the contract. The parties can agree on how much of the proprietary rights to the software should be transferred. The preferred volume of IP-rights transferred to a customer, for example, the right to sell, transfer or make changes to the source code of the program, should be specified in the contract.
- It is recommended to describe the procedure of collection, transfer, processing, access and storage of data in detail in the contract. Handling of personal data should comply with the EU General Data Protection Regulation (GDPR). Ukrainian IT-companies with customers in the European Economic Area (EEA) should have systems compliant with the GDPR.

Liability, governing law and settlement of disputes

- It is recommended to limit the liability of the Norwegian party to the contract price, including that Norwegian company is not responsible for the lost profit or real damages caused to the counterparty, in case of non-performance of obligations under the contract.
- Arbitration is recommended and common as the dispute settlement mechanism. Arbitration is considered as a fast and a just mechanism for dispute settlement, but is not the cheapest option. When choosing to turn to arbitration, the contract price should be taken into consideration.
- Governing law specifies the material law of the country that regulates relations of the parties arising out of the contract. You should choose a country with the governing law you are familiar with and which gives some flexibility. Please note that non-disclosure, IP and noncompetition clauses are hard to enforce and should not be regulated under Ukrainian law.

