

## SOFTWARE DEVELOPMENT AGREEMENT

At the retail end of things we just walk into our computer store and buy a colourful box which has surprisingly little in it. What it does have in it is a disk or CD that we can use to load this 'off the shelf' software onto our system.

In business, things are often not quite that simple.

You may want or need software to run your particular business and there just is not any around, or it is in the US and is too expensive or too 'different' to be of any use to you. You have to get your own specialist software developed.

Or you may be using specific generic software and simply need some extra things on it to improve the way you do business or that better suits your needs.

Then again maybe you have had a great idea for a new software product and you need technical help to turn it into reality and make your multi-fortune.

Whichever of these relates to you, you will need a software development agreement. This is a contract with the guy who will write that software.

**CAUTION** There is no property right in pure ideas and it is therefore vital that you have an agreement with the software developer before you explain in too much detail what you are after. You don't want the developer simply writing the software and claiming it for himself, now, do you? Never enter discussions with anyone like that until you have had them sign a confidentiality agreement.

Whether you are the developer or the client the software development agreement will need to deal with such issues as

- > a very clear specification of just what it is that the software must do (it is impossible to be too detailed here)
- > production by the developer of functional specifications and implementation procedures (this is effectively taking the client's rather general specifications and turning them into a detailed list of precisely what the software must do to comply with those specifications)
- > procedure for approval of functional specifications and implementation procedures
- > changes to specifications – how, when and who pays
- > delivery schedule
- > acceptance testing – definition, performance, rectification, sign-off
- > price – lump sum, extra price for extra work,
- > is the price refundable if the software doesn't perform?
- > manner and timing of payment
- > project management – who are the contact points? what is their level of authority? communication requirements? meetings?
- > itemise the associated services of the developer including software documentation, system design, deliver arrangements, installation, user training, support etc
- > each of the associated services should be detailed in the agreement
- > the client's obligations including information, timely feedback, establishment of appropriate operating platform, personnel resources, access to site, changes to requirements
- > confidentiality obligations of both sides
- > confirmation of ownership of the software – does the client own it or just licence it?
- > access to source code
- > developer's product warranties
- > indemnities
- > limitation on liability including consequential loss exclusion
- > termination provisions – when and how
- > the parties rights and obligations after termination
- > dispute resolution provisions

There is a lot to cover isn't there? But if you think that it is all too hard, too much, too expensive etc just imagine what it will save you if things go seriously wrong.....which they very often do.