

SATELLITE LAUNCH CONTRACT: CHECKLIST

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A checklist of the points typically included in a satellite launch contract.

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The legal, regulatory and contractual aspects for the satellite sector are specialised, although general principles of commercial and competition law apply. Insurance is an important issue and this must be reflected in commercial contracts, particularly launch service agreements and hosted payload agreements.

SATELLITE LAUNCH CONTRACT

There are relatively few entities capable of providing launch services, each of which has fairly standard contracts that form the basis for negotiation with any entity seeking to purchase launch services. Several new launch service providers are entering the market, focusing on the launch of small satellites (smallsats).

When the technical characteristics of the satellite have been determined and the weight of the payload known (which will be set out in one of the schedules to the relevant procurement contract), the purchaser of launch services would normally request proposals from a number of launch services contractors. The purchaser will then negotiate with one or more of them to provide relevant launch services.

A typical launch services agreement would include the following provisions.

Services to be provided

The contractor's obligations to perform all the tasks necessary to integrate the satellite into the launch vehicle (rocket) and all other associated services.

Launch schedule

The contractor would ordinarily publish its launch schedules from time to time. This is important because launch slots are valuable and these need to be integrated with the delivery timetable of the satellite itself under the procurement contract and also with regard to the relevant International Telecommunication Union (ITU) filing and its bringing into use and expiry date.

Launch schedule adjustments

Postponements can occur for several reasons, such as:

- The contractor can postpone for various reasons, including the loss of a launch vehicle, with consequential delays.
- Unfavourable weather.
- Political action and protests.

The launch service provider will also want the right to reschedule for various reasons, including late delivery of its satellite.

Contract price

Fixed price contracts, which would include all taxes, are generally adopted, although they are always a subject for commercial negotiation. The greater the risk for the launch services contractor, the higher the price.

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Payment schedule

These tend to be staged over the term of the contract, but again can be subject to negotiation.

Price adjustments

These depend on the circumstances, for example, whether a delay has been caused by the contractor or by the purchaser.

Warranties of the contractor

These are fairly standard but would cover that:

- The contractor is in a position to provide launch services in accordance with the schedule.
- There is a dedicated launch pad available for the particular launch on the date specified.
- The contractor will perform its duties with the highest levels of skill and due diligence.
- All goods and services provided will be of the highest quality.

Warranties of the purchaser

Depending on the nature of the satellite procurement contract, the purchaser would warrant that it has the relevant title to the satellite or otherwise has authority to deliver the satellite and to authorise the contractor to launch it.

Re-flight or refund option

In the event of a failed launch, the contractor would normally offer the next available launch without additional charges, or a full refund.

Force majeure and excusable delays

Force majeure terms are fairly standard, but governmental action can be important, especially in a volatile political world where highly advanced technology is being used for outwardly peaceful purposes, but can have other uses. Excusable delays are a subject for commercial negotiation and relate to which party bears the risk.

Assignment

These tend to be standard although both parties may want to control to whom any such contract may be assigned.

Public release of information

Release of any information is normally sensitive and would require joint approval by both parties.

Limitation of liability

These provisions are fairly standard and covered in general through insurance and mitigation steps.

Cross-waiver of liability

A typical launch services agreement would include a cross-waiver of liability provision, which is a requirement for the parties to agree to enter a reciprocal waiver of liability pursuant to which each party agrees not to bring a claim or sue the other party, the relevant state governments or any related third parties for any property loss or damage it sustains. The parties will also agree to extend the waiver and release of claims of liability to their contractors, subcontractors and customers.

Options

In some cases a purchaser may also negotiate options for one or more additional satellite launches if there are options in the manufacturing contract, in which case the relevant terms would be part of the launch services contract, including the price for exercise of the option.

Termination

Normally the contractor should not be able to terminate except for non-payment of any fees due from a purchaser. The purchaser may wish to have the right to terminate in the event of non-delivery of the satellite, with consequential payments to the contractor.

Insurance

Customers would normally work with the contractor on the terms of insurance against damage or harm caused to third parties by the launch vehicle, and the contractor would normally indemnify the customer above any amounts of liabilities insured or after expiry of relevant insurance. Insurance will also cover total loss, constructive total loss

and partial loss (the determination of which is also a highly technical matter) and which may require payment by one or more insurers depending on the reason, and therefore the liability, for any such loss.

Launch risk guarantee

Contractors sometimes guarantee amounts to cover each type of loss and may include (limited) consequential damages, but otherwise will be dealt with through insurance.

Government priority

The government from whose territory any launch is to take place may be able to take priority over civilian launch contracts and there would then be appropriate provisions for adjusting the relevant schedule with the purchaser.

Compliance with government export requirements

These tend to be most relevant with regard to the export of a satellite from the United States and may not be an issue if the launch is to be performed in the United States. As previously noted, the satellite manufacturer would normally deal with these issues and then liaise with the launch services contractor. Similarly, the manufacturer would be responsible for regulatory and any other governmental authorisations. Any authorisations relevant to the launch would normally be the responsibility of the launch services contractor.

Provision of post-launch payload data

The contractor will need to work with the purchaser throughout the launch phase until the satellite is delivered to its appropriate orbit, and will need to have an ongoing obligation to work with the purchaser in the event of any insurance claims, not only for total loss but also with regard to any constructive total loss or partial loss of the relevant satellite.

Language, notices, entire agreement, arbitration and governing law

See comments on [Checklist, Satellite procurement contract](#).

SATELLITE PROCUREMENT OR CONSTRUCTION CONTRACT

If you are also negotiating a satellite procurement or construction contract, it is essential that the two contracts are consistent with regard to delivery schedules, risk and insurance, and warranties and indemnities. For a checklist on the points to include in a procurement agreement, see [Checklist, Satellite procurement contract](#).