

Satellite launch services contract: checklist

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

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 services contracts and hosted payload contracts. The parties may also need to consider export control issues, especially in relation to the US International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR).

The satellite sector is growing rapidly, with the number of launches and available launch sites (spaceports) increasing. With this growth comes diversification in launch service providers and the types of commercial arrangements and contract terms being negotiated in the sector. In particular, numerous new launch service providers have entered the market with a focus on the launch of small satellites (smallsats).

When the technical characteristics of the satellite are determined and the weight of the payload is known (this is set out in one of the schedules to the relevant satellite procurement contract), the purchaser of launch services normally requests proposals from a number of launch services providers. The purchaser then negotiates with one or more of them to provide relevant launch services.

This checklist outlines the provisions included in a typical launch services contract.

Services to be provided

The contract includes the launch service provider's obligations to perform all the tasks necessary to integrate the satellite into the launch vehicle (rocket) and all other associated services. Typically, launch providers offer a designated launch for a specific individual satellite or an arrangement where multiple smaller satellites are launched together in one launch vehicle (rideshare) which may be financially and administratively more efficient for smaller launch service purchasers.

Launch schedule

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

Launch schedule adjustments

The launch service provider can postpone the launch schedule for various reasons, including:

- The loss of a launch vehicle, with consequential delays.
- Unfavourable weather.
- Political action and protests.
- The possible priority of a government (see Government priority).

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

Contract price

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

Payment schedule

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

Price adjustments

Price adjustments depend on the circumstances, for example, whether the launch service provider or the purchaser has caused a delay.

Warranties of launch service provider

The launch service provider's warranties are fairly standard and provide that:

- The launch service provider 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 launch service provider performs its duties with the highest levels of skill and due diligence.
- All goods and services provided are of the highest quality.

Warranties of purchaser

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

Re-flight or refund option

In the event of a failed launch, the launch service provider normally offers 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 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. Recently there has been an increased focus on whether the COVID-19 pandemic or any future pandemic would constitute a force majeure event or an excusable delay. The answer to this will depend on the specific wording of the relevant clause and the jurisdiction governing the contract. For background, see [Article, COVID-19: force majeure, frustration and illegality in English law: a detailed guide](#) and [Practice note, COVID-19: commercial contracts FAQs: Force majeure](#).

Assignment

Assignment terms tend to be standard, although both parties may want to control to whom any contract may be assigned.

Public release of information

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

Limitation of liability

Limitation of liability provisions are fairly standard and covered in general through insurance and mitigation steps.

Cross-waiver of liability

A typical launch service contract includes 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 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 this case, the relevant terms are part of the launch services contract, including the price for the exercise of the option.

Termination

Normally, the launch service provider 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 launch service provider.

Insurance

The purchaser normally liaises with the launch service provider on the terms of insurance against damage or harm caused to third parties by the launch vehicle, and the launch service provider normally indemnifies the purchaser above any amounts of liabilities insured or after expiry of relevant insurance cover. Insurance also covers 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 total loss.

Some launch service providers offer the launch service along with launch and one year of third party liability insurance.

Launch risk guarantee

Launch service providers sometimes guarantee amounts to cover each type of loss and may include (limited) consequential damages, but otherwise this is dealt with through insurance.

Government priority

Launches procured by the government from whose territory any launch is to take place may take priority over civilian launch services contracts. The contract should therefore contain appropriate provisions for adjusting the relevant schedule with the purchaser.

Compliance with government export requirements

Compliance with government export requirements tends to be most relevant with regard to the export of a satellite from the US and may be an issue if the launch is to be performed in the US. The satellite manufacturer normally deals with these issues and then liaises with the launch service provider. Similarly, the manufacturer may be responsible for regulatory and any other governmental authorisations. Any authorisations

relevant to the launch are normally the responsibility of the launch service provider.

Provision of post-launch payload data

The launch service provider must work with the purchaser throughout the launch phase until the satellite is delivered to its appropriate orbit. It usually has 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 Checklist, Satellite procurement contract.

Satellite procurement or construction contract

If the parties 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 contract, see [Checklist, Satellite procurement contract](#).

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