

that the Contract Details can provide to the contrary if the parties so agree.

There is capacity for the contract to cater for the reciprocal situation – an indemnity by the customer. Because this is relatively unusual for government entities, however, the default position is that customer indemnities are not offered. The parties can stipulate to the contrary in the Contract Details. Commonwealth users are referred in the User Guide to the Commonwealth “Guidelines for Issuing Indemnities, Guarantees and Letters of Comfort”⁵.

Capping of liability: Clause 24

Suppliers will invariably seek to cap their liability in an IT contract. Whilst the default position is that no cap applies, clause 24.2 makes it clear that a cap may be inserted in the Contract Details. It is important to note that under the default provisions, any cap inserted in the Contract Details will be reciprocal.

Termination for convenience: Clause 28.2

Government customers tend to feel comfortable with an ability to terminate for convenience. Suppliers are understandably reluctant to agree unless there is an adequate compensation mechanism in place in the event that the customer exercises this right. Clause 28.2 provides by way of default that the customer has a right of termination for convenience accompanied by an obligation to compensate the contractor for stranded costs only. Nevertheless reference is again made to the fact that, in the Contract Details, the parties can stipulate that a right of termination for convenience will not apply, or that a different compensation formula will be invoked.

Summary

The GITC 4 has been produced with the intention of best meeting the needs of government agencies, whilst having

due regard to the status of the IT industry in Australia and the needs of IT contractors. The documentation and processes intended by and built into GITC4 will hopefully assist parties to meet their respective contracting needs with greater efficiency and by adding greater certainty to the relationship.

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- 1 Editor's note: available at <http://www.gitc.finance.gov.au> under "Archive".
 - 2 Editor's note: available at <http://www.gitc.finance.gov.au> under "About GITC/The Framework".
 - 3 Editor's note: available at <http://www.gitc.finance.gov.au>.
 - 4 Editor's note: Audit Report No.38, tabled 24/05/2001, available at <http://www.anao.gov.au> under "Publications".
 - 5 Editor's note: FC 1997/06 Guidelines, April 1997, available at: http://www.finance.gov.au/publications/FinanceCirculars/1997/fc199706_guidelines.htm.

Defamation on the internet (Italy)

On 6 February, the Court of First Instance of Teramo suggested a peculiar key to the assessment of damages incurred through the Internet. The case concerned the owner of a web site who was charged with libelling, through the Internet, a bank which he alleged had defrauded him. The bank, which was eventually held not liable for fraud, sued the web site owner before the Court of Teramo for defamation.

The web site owner was held liable for defamation but the bank should have adduced evidence as to the damages it had effectively suffered as a result. The decision stated that posting information on the Internet does not necessarily imply full disclosure to the public (as would be the case for press and television) since, in order to visit a web site, the user must take some specific actions such as typing the full address in the browser bar or using a

search engine. By using this criterion the traditional rules on defamation through press and television cannot be automatically applied to the Internet.

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