

1. General

An **Escrow agreement** or arrangement by which one party (‘‘depositor’’) deposits an asset (documents or software) with a third person (called an **escrow agent**) to make delivery to another party (‘‘recipient’’) if and when the conditions of the arrangement have been met. An escrow agent may act as a broker, trustee, or stakeholder.

The terms of the escrow arrangement are agreed between the depositor and recipient as to the conditions for release. The escrow agent will not release the asset until the dispute is resolved. The terms also often include the responsibilities of, a broker, trustee,

In some cases all of the arrangement details are contained in a single document between the depositor, recipient and escrow agent. In other cases they will be split between a first document under which the escrow agent is appointed and a second document under which the conditions previously agreed by the depositor and recipient. The terms of the arrangement and other details of the escrow arrangement are agreed and required by the parties concerned.

This note covers in outline the common types of escrow arrangements commonly encountered.

2. Computer program (source code)

Escrow arrangements are commonly used for a software vendor or software maintenance contractor providing a product or bespoke software products to one of its business customers (i.e. not to consumers). For example, such a product could be a software system to run a business or a website, a web application, or a

The supplier does not give the customer the software product to its customer but instead provides it to its customer under a limited licence. The licence gives the customer rights to run the code for certain purposes, e.g. for maintenance or for use within the customer’s business.

Whilst the supplier gives the customer the software product (i.e. the executable computer code) that is required for the software to run correctly, it also provides the ‘‘source code’’ (i.e. the code that the supplier developed by the supplier is an asset belonging to the supplier. In view of that investment, it needs to be protected so that it can supply it to other

arrangement by which one party (‘‘depositor’’) deposits an asset (documents or software) with a third person (called an **escrow agent**) to make delivery to another party (‘‘recipient’’) if and when the conditions of the arrangement have been met. An escrow agent may act as a broker, trustee, or stakeholder.

The terms of the escrow arrangement are agreed between the depositor and recipient as to the conditions for release. The escrow agent will not release the asset until the dispute is resolved. The terms also often include the responsibilities of, a broker, trustee,

In some cases all of the arrangement details are contained in a single document between the depositor, recipient and escrow agent. In other cases they will be split between a first document under which the escrow agent is appointed and a second document under which the conditions previously agreed by the depositor and recipient. The terms of the arrangement and other details of the escrow arrangement are agreed and required by the parties concerned.

This note covers in outline the common types of escrow arrangements commonly encountered.

Escrow arrangements are commonly used for a software vendor or software maintenance contractor providing a product or bespoke software products to one of its business customers (i.e. not to consumers). For example, such a product could be a software system to run a business or a website, a web application, or a

The supplier does not give the customer the software product to its customer but instead provides it to its customer under a limited licence. The licence gives the customer rights to run the code for certain purposes, e.g. for maintenance or for use within the customer’s business.

Whilst the supplier gives the customer the software product (i.e. the executable computer code) that is required for the software to run correctly, it also provides the ‘‘source code’’ (i.e. the code that the supplier developed by the supplier is an asset belonging to the supplier. In view of that investment, it needs to be protected so that it can supply it to other

However, where the customer does not have the source code and its documentation, it is at risk if the supplier goes out of business and it becomes unable to maintain the software (or arrange for someone else to do so) where the supplier fails to do so for any reason. This risk is particularly acute if the supplier becomes insolvent, ceases trading, or for any other reason the supplier cannot, or chooses not to, fulfil its obligations to support/maintain the software or to provide the customer with the source code or to provide the customer with the documentation agreed to do so.

A common solution is for the customer to place the custody of a specialist escrow agent an updated version of the source code with the escrow agent when the software is released. The escrow agent holds the source code is placed with the escrow agent. The escrow agent ensures the source code is correct and complete and releases it to the customer where circumstances arise as set out in an escrow agreement between the supplier and the customer.

Such an escrow arrangement ensures that the supplier knows that the customer can obtain the source code if and when it needs to have access to it. This is particularly important to operation of the customer's business and it becomes necessary for the customer to support and maintain the software (or arrange for someone else to do so) where the supplier fails to do so for any reason. This risk is particularly acute if the supplier becomes insolvent, ceases trading, or for any other reason the supplier cannot, or chooses not to, fulfil its obligations to support/maintain the software or to provide the customer with the source code or to provide the customer with the documentation agreed to do so.

The supplier and customer may agree to use a specialist software escrow and other services agent or a third party trusted by them to act as the escrow agent.

In the UK, one of the best known escrow agents is the NCC Group. You may wish to see details of the various escrow services and the standard form of agreement which it offers. Its website is at www.nccgroup.trust/uk/our-services/software-escrow

Please note that businesses may already have their own standard forms of escrow agreement or other forms. Suppliers or licensors may be able to impose the supplier's standard form of software escrow agent or to impose their own. For that reason, we have not included our own portfolio of documents in this guidance note.

3. Sale of goods payment escrow

This arrangement is designed to protect a transaction between buyer and seller in the event of a dispute or international sale of goods.

- the buyer wishes to purchase the goods and delivery of them and
- the seller wishes to accept payment for the goods and they do conform to the contract, he will release the goods to the buyer.

Unless both buyer and seller agree to do so, the risk that the other will not do so is borne by the party who is not doing so.

copy of the source code and its documentation, it is at risk if the supplier goes out of business and it becomes unable to maintain the software (or arrange for someone else to do so) where the supplier fails to do so for any reason. This risk is particularly acute if the supplier becomes insolvent, ceases trading, or for any other reason the supplier cannot, or chooses not to, fulfil its obligations to support/maintain the software or to provide the customer with the source code or to provide the customer with the documentation agreed to do so.

A common solution is for the customer to place the custody of a specialist escrow agent an updated version of the source code with the escrow agent when the software is released. The escrow agent holds the source code is placed with the escrow agent. The escrow agent ensures the source code is correct and complete and releases it to the customer where circumstances arise as set out in an escrow agreement between the supplier and the customer.

Such an escrow arrangement ensures that the supplier knows that the customer can obtain the source code if and when it needs to have access to it. This is particularly important to operation of the customer's business and it becomes necessary for the customer to support and maintain the software (or arrange for someone else to do so) where the supplier fails to do so for any reason. This risk is particularly acute if the supplier becomes insolvent, ceases trading, or for any other reason the supplier cannot, or chooses not to, fulfil its obligations to support/maintain the software or to provide the customer with the source code or to provide the customer with the documentation agreed to do so.

The supplier and customer may agree to use a specialist software escrow and other services agent or a third party trusted by them to act as the escrow agent.

In the UK, one of the best known escrow agents is the NCC Group. You may wish to see details of the various escrow services and the standard form of agreement which it offers. Its website is at www.nccgroup.trust/uk/our-services/software-escrow

Please note that businesses may already have their own standard forms of escrow agreement or other forms. Suppliers or licensors may be able to impose the supplier's standard form of software escrow agent or to impose their own. For that reason, we have not included our own portfolio of documents in this guidance note.

This arrangement is designed to protect a transaction between buyer and seller in the event of a dispute or international sale of goods.

the buyer wishes to purchase the goods and delivery of them and the seller wishes to accept payment for the goods and they do conform to the contract, he will release the goods to the buyer.

Unless both buyer and seller agree to do so, the risk that the other will not do so is borne by the party who is not doing so.

S

A

ims can be met. This escrow
f paying cash in advance to the
will not return the goods if he does
ement usually provides the facility
or suitability/condition before the
over to the seller. Sometimes the
aid over until the goods have for a
e terms of a warranty given by the
ds (see “4” below).

by a bank is a payment method preferable in some ways to use of as a relatively expensive method Use of a performance or security

less expensive. Although in some
without payment or in return for
will be willing to act only in return
st of using any of the other means

and seller need to ensure that the
by both seller and buyer. Any

M

may make use of internet escrow agent and money exchange services online, often by mirroring the same information. This may as a result succeed in making a sale of a car. Sometimes, the escrow agent may have never existed.

they cannot fully trust each other, a particular escrow agent or appears to be that the escrow agent proposed is not that the agent is genuine, using an escrow agent to obtain security. When the escrow agent is a professional person or firm, the escrow agent is likely to have confidence that the escrow agent is genuine.



5. Landlord and tenant deposits

A landlord will typically require a deposit from a tenant (under a rent deposit scheme) as security for any failure to comply with the terms of the tenancy agreement. An alternative requirement, typically for residential tenants, is for the tenant to provide a third party personal guarantee.

Where the deposit is instead held by the landlord, it is thereby kept safe for the tenant.

In the case of commercial property, the deposit is often held by a solicitor or managing agent jointly appointed for the landlord and tenant. The terms of their appointment or agreement signed by the landlord, tenant and solicitor/agent.

For residential tenants, deposits are covered by the Assured Shorthold Tenants (AST) deposit protection schemes. These schemes guarantee that a tenant's deposit is kept safe and that landlords cannot make deductions from it as long as he has complied with the terms of the tenancy agreement and has not damaged the property rented.

6. Legal document escrow

As already mentioned, a document is placed in escrow in each case, the circumstances are different. Documents are often technically complex, and so the law governing the placement of any document in escrow is complex.

It is not practicable to deal with all the law governing such a relatively brief note. We will therefore simply mention briefly two examples of use of escrow.

Transfer deed

In conveyancing of freehold land/property can only effect a transfer of title as a deed if it is in writing, signed by the parties, and effective as a deed if it is in writing, signed by the parties, and contains the words 'I hereby transfer' and the way in which the property is to be transferred.

A deed of transfer will be valid if it is in writing, signed by the parties, and he has his signature witnessed by a solicitor. Due to the very technical legal requirements, a deed will only be legally bound by the law if it is signed by a solicitor, i.e. before his solicitor (or a solicitor before) the seller executes the deed. If the seller executes the deed conditionally, he will only be bound if the condition is fulfilled. Such a deed is called an 'escrow'.

Typically, the seller's solicitor will execute (but not date) the deed, and then hand it to the buyer's solicitor.

commercial tenant to pay a sum to the landlord (under a rent deposit clause in a tenancy agreement) as security for any failure to comply with the terms of the tenancy agreement. An alternative requirement, typically for residential tenants, is for the tenant to provide a third party personal guarantee.

Where the deposit is instead held by the landlord, it is thereby kept safe for the tenant.

In the case of commercial property, the deposit is often held by a solicitor or managing agent jointly appointed for the landlord and tenant. The terms of their appointment or agreement signed by the landlord, tenant and solicitor/agent.

For residential tenants, deposits are covered by the Assured Shorthold Tenants (AST) deposit protection schemes. These schemes guarantee that a tenant's deposit is kept safe and that landlords cannot make deductions from it as long as he has complied with the terms of the tenancy agreement and has not damaged the property rented.

As already mentioned, a document is placed in escrow in each case, the circumstances are different. Documents are often technically complex, and so the law governing the placement of any document in escrow is complex.

It is not practicable to deal with all the law governing such a relatively brief note. We will therefore simply mention briefly two examples of use of escrow.

In conveyancing of freehold land/property can only effect a transfer of title as a deed if it is in writing, signed by the parties, and effective as a deed if it is in writing, signed by the parties, and contains the words 'I hereby transfer' and the way in which the property is to be transferred.

A deed of transfer will be valid if it is in writing, signed by the parties, and he has his signature witnessed by a solicitor. Due to the very technical legal requirements, a deed will only be legally bound by the law if it is signed by a solicitor, i.e. before his solicitor (or a solicitor before) the seller executes the deed. If the seller executes the deed conditionally, he will only be bound if the condition is fulfilled. Such a deed is called an 'escrow'.

Typically, the seller's solicitor will execute (but not date) the deed, and then hand it to the buyer's solicitor.

completion (i.e. in escrow), purchaser's solicitor. This is in escrow until completion of land/property at completion

IP / information

Another example is intellectual property held in escrow by an escrow agent. For example, manufacturing designs, lab reports, scripts. A deposit of such an item can enable the author/originator to use the escrow arrangement to include details of contents, and date of creation, but, in order to be able to use the master copy/physical work. The agreement will set out the circumstances in which that will occur.

7. Sale of shares of a company

Deferred payment of part of price

In an Agreement for the sale of a company as part of the share sale Agreement, the net asset value of the company. The price is paid by the buyer to the seller on the date of completion. Therefore, the price is paid by the buyer into an escrow account. Once the net asset value has been determined, the balance (i.e. the total price less the amount paid by the escrow agents from the account) is paid by the buyer to the seller. If there is an excess amount left in the escrow account, the buyer will be paid that amount.

In an Agreement for sale of a company, the sale of a substantial part of all assets of the company may be based on their net value. Where the purchase price escrow arrangement is part of the Agreement.

Deduction of warranty/indemnity

Another very similar escrow arrangement is used in company share or business asset sales where the buyer provides a secure source of funds to be paid in settlement of any such claim (when it has been substantiated) is deducted from the account and it is then paid to the seller. The balance in the escrow account is then being paid to the seller.

We have included several examples of these situations (listed under "Corporate" in paragraph 1.1.1)

the author will give the document to the purchaser's solicitor. The effect of making the document a deed is that the deed only transfers the

on escrow. Various items may be held in escrow. For example, song music and/or lyrics, television and film treatments and scripts. A deposit of such an item can enable the author/originator to use the escrow arrangement to include details of contents, and date of creation, but, in order to be able to use the master copy/physical work. The agreement will set out the circumstances in which that will occur.

sale

In an Agreement for the sale of a company as part of the share sale Agreement, the net asset value of the company. The price is paid by the buyer to the seller on the date of completion. Therefore, the price is paid by the buyer into an escrow account. Once the net asset value has been determined, the balance (i.e. the total price less the amount paid by the escrow agents from the account) is paid by the buyer to the seller. If there is an excess amount left in the escrow account, the buyer will be paid that amount.

In an Agreement for sale of a company, the sale of a substantial part of all assets of the company may be based on their net value. Where the purchase price escrow arrangement is part of the Agreement.

Another very similar escrow arrangement is used in company share or business asset sales where the buyer provides a secure source of funds to be paid in settlement of any such claim (when it has been substantiated) is deducted from the account and it is then paid to the seller. The balance in the escrow account is then being paid to the seller.

We have included several examples of these situations (listed under "Corporate" in paragraph 1.1.1)

8. Simply-Docs escrow documents

Simply-Docs' portfolio of documents includes the following types of escrow templates. All of these are set out below. If you click on the title of any of them, please click on the title and it will take you to the document page:

Business

[Escrow Sale of Goods Agreement - Payment terms](#)
[Escrow Sale of Goods Agreement - Payment terms](#)
[Escrow Sale of Goods Agreement - Payment terms](#)

Corporate

[Escrow Retention Schedule \(Purchase Agreement\) - Warranty or Indemnity Claims](#)
[Escrow Retention Schedule \(Purchase Agreement\) - Warranty or Indemnity Claims](#)
[Schedule - Purchase Price Accounts With ESCROW Share Sales](#)
[Schedule - Purchase Price Accounts with ESCROW \(Asset Sales where creditors and debtors are not the same\)](#)
[Schedule - Purchase Price Accounts with ESCROW \(Asset Sales where creditors and debtors are not the same\)](#)

Property

[Guidance for Landlords on Tenancy Agreements](#)

types of escrow templates. All of these are set out below. If you click on the title of any of them, please click on the title and it will take you to the document page:

[Escrow Sale of Goods Agreement - Payment terms](#)
[Escrow Sale of Goods Agreement - Payment terms](#)
[Escrow Sale of Goods Agreement - Payment terms](#)

[Escrow Retention Schedule \(Purchase Agreement\) - Warranty or Indemnity Claims](#)
[Escrow Retention Schedule \(Purchase Agreement\) - Warranty or Indemnity Claims](#)
[Schedule - Purchase Price Accounts With ESCROW Share Sales](#)
[Schedule - Purchase Price Accounts with ESCROW \(Asset Sales where creditors and debtors are not the same\)](#)
[Schedule - Purchase Price Accounts with ESCROW \(Asset Sales where creditors and debtors are not the same\)](#)

[Guidance for Landlords on Tenancy Agreements](#)