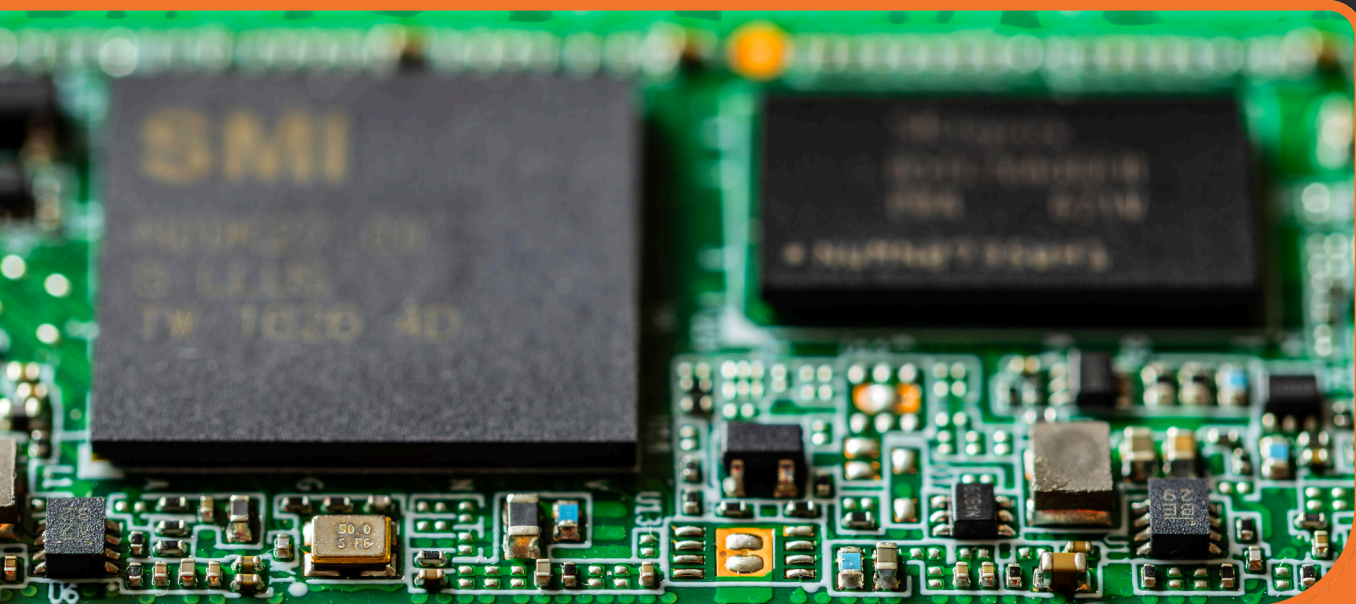


**International  
Comparative  
Legal Guides**



Practical cross-border insights into technology sourcing

# **Technology Sourcing** **2023**

**Third Edition**

Contributing Editor:

**Mark Leach**  
Bird & Bird LLP

**ICLG.com**

## Expert Analysis Chapters

- 1** **Sourcing AI Solutions**  
Mark Leach & Will Bryson, Bird & Bird LLP
- 7** **Modern Sourcing and the Standardisation Revolution**  
Global Sourcing Association, Kerry Hallard

## Q&A Chapters

- 11** **Australia**  
Bird & Bird: Hamish Fraser, Kate Morton & Madeleine Clift
- 19** **Canada**  
McMillan LLP: Robert Piasentin, Greg Johns, Yue Fei & Anika Klassen
- 28** **Germany**  
Fieldfisher: Dr. Felix Wittern & Kirsten Ammon
- 36** **Greece**  
Kyriakides Georgopoulos Law Firm: Konstantinos Vouterakos, Elisabeth Eleftheriades, Victoria Mertikopoulou & Constantinos Kavadellas
- 48** **Hong Kong**  
Bird & Bird: Wilfred Ng & Olivia Cheng
- 57** **Ireland**  
Bird & Bird (Ireland) LLP: Deirdre Kilroy & Megan Kearns
- 64** **Japan**  
STORIA Law Office: Yuko Tashiro, Kenji Sugiura, Naotaka Yamashiro & Kosuke Sakata
- 72** **Malaysia**  
Imaduddin & Lew Chambers: Brian Lew & Imaduddin Suhaimi
- 77** **Mexico**  
BSN, Bufete Sánchez-Navarro, S.C.: Rafael Sánchez-Navarro Caraza, Salvador Sánchez López & Damián Alejandro Gómez Corona
- 84** **Nigeria**  
Ikeyi Shittu & Co.: Josephine Tite-Onnoghen & Ebube Nwobodo
- 92** **Philippines**  
Angara Abello Concepcion Regala & Cruz: Leland R. Villadolid Jr., Chrysilla Carissa P. Bautista, John Paul M. Gaba & Erwin Jay V. Filio
- 99** **Singapore**  
Bird & Bird ATMD LLP: Jeremy Tan & Chester Lim
- 107** **Sweden**  
Synch Advokat AB: Josefin Riklund, Karolina Pekkari, Johan Ragnar & Mathilda Nordmark
- 114** **Switzerland**  
Arioli Law: Martina Arioli
- 122** **Turkey/Türkiye**  
Solak & Partners Law Firm: Elçin Karatay & Begüm Ergin
- 130** **United Kingdom**  
Bird & Bird LLP: Mark Leach & Nikita Manro
- 143** **USA**  
Norton Rose Fulbright US LLP: Sean Christy, Chuck Hollis & Derek Johnston

# Modern Sourcing and the Standardisation Revolution

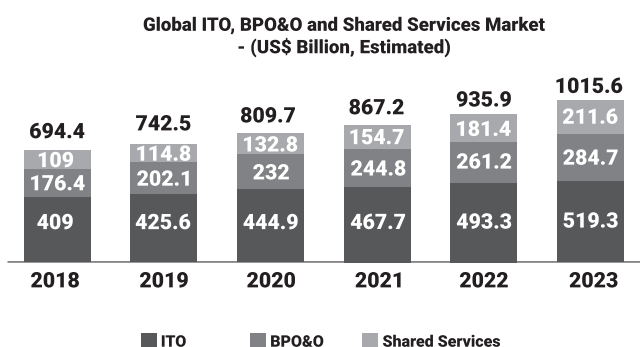
Global Sourcing Association



Kerry Hallard

## A Trillion Dollar Industry

The technology and business services industry has been on a positive growth trajectory for years, and this was accelerated by the pandemic. In 2023, the global outsourcing and shared services market will tip the trillion-dollar (US\$) industry market size according to Genesis Global Business Services.



Sources: Genesis Global Business Services, Gartner, Deloitte

The five biggest business trends that businesses need to act on in 2023, according to *Forbes Magazine*, are:

- Accelerated digital transformation.
- Inflation and supply chain stability.
- Sustainability.
- Immersive customer experience.
- The talent challenge.

So, despite an uncertain economic outlook, the outsourcing industry looks certain to continue to boom, as outsourcing will be essential to enable businesses to address these challenges. There will be more outsourcing, but not as we know it.

## Modernising Sourcing

It is not my favourite term, but it is the current term being used across the industry and we are rapidly witnessing the advent of “modern sourcing”. At the GSA’s Festival of Sourcing in June this year, we asked delegates the question: “What does modern sourcing mean to you?”. For the majority, modern sourcing means agile sourcing, which is accelerating in its adoption.

## ChatGPT on Agile

According to ChatGPT: “Agile sourcing refers to an approach in procurement and supply chain management that emphasises flexibility, adaptability, and responsiveness in sourcing

strategies. It involves the use of agile methodologies and practices to effectively manage and optimise the sourcing process.

In an agile sourcing approach, organisations aim to quickly and efficiently identify, evaluate, and select suppliers or sourcing options that best meet their needs. It involves iterative and collaborative processes, allowing for frequent adjustments and improvements based on changing market conditions, customer requirements, and business goals.

Agile sourcing often involves cross-functional teams, transparent communication, and the use of technology and data analytics to streamline processes, enhance supplier relationships, and achieve cost savings. The goal is to achieve greater agility, innovation, and competitive advantage in the procurement and supply chain function.”

Here at the Global Sourcing Association (GSA), we are seeing that agile sourcing is having a significant effect on the contracting process too, with lawyers being brought in much earlier in the process and aspects of the deal being negotiated in the tendering process, qualifying out unsuitable partners much earlier on – saving time and money for both the buy and supply side, whilst simultaneously solutionising with prospective partner/s.

But modern sourcing is more than agile sourcing for the GSA. Modern sourcing also encompasses all of the following:

- Sustainable sourcing.
- Social sourcing.
- Impact sourcing.
- Standardisation.
- Outcome-based.
- Gainshare.
- Open Talent.

## The ESG Agenda

With ESG high on every board agenda, enterprise buyers are scrambling to understand the ESG performance across their supply chains and most notably across their tier one service providers. We have witnessed that every enterprise buyer has drafted a questionnaire which they have furnished to all their service providers. Meaning that every service provider has recently been inundated with questionnaires from all their customers – but the difficulty is that every questionnaire is different and even if there is consistency in a few of the questions, the metrics they are asking for are different. This is one area that GSA has undertaken a programme of work, creating an industry standard ESG questionnaire that all buyers can use to understand the ESG-related performance of their service providers. The next evolution will be for the GSA to hold the data across all service providers, with the view to potentially creating an industry-wide sustainability maturity index for service providers.

This is one example of a long-needed move to industry standardisation and how a standardised approach can drive sustainability. Another fabulous initiative is the work being done by the Chancery Lane Project (TCLP). The TCLP, a charity, is the largest global network of lawyers and business leaders using the power of climate contracting to deliver fast and fair decarbonisation.

TCLP has written 100+ climate clauses, glossary terms and tools to help organisations decarbonise their contracts.

The clauses are freely available for anyone to incorporate into commercial agreements and legal documents to encourage rapid decarbonisation and reduced climate impact. They have been written and peer reviewed by sector and legal specialists to provide high-quality, commercially viable climate solutions.

## GSA Standard Terms

Here at the GSA, we are delighted to have further advanced the standardisation revolution with the launch of the GSA's standard terms for professional (and IT) services (GSA Terms). This is believed to be a UK industry-first launch of a framework agreement for professional (and IT) services where an industry body, top-tier law firms and a legal technology provider have closely collaborated. This professional services agreement, along with the GSA's NDA, are the first contracts to be published in the GSA's suite of industry standard terms.

The GSA Terms have been developed to address a number of significant issues and deliver numerous benefits to both buyers and providers around the world. The benefits include:

1. reduced time in negotiation;
2. reduced fees in contracting;
3. accelerated time to commence projects;
4. a level playing field for small and diverse suppliers, a critical initiative as the industry increases its focus on supplier diversity;
5. security for all parties, large and small, to be confident that they are working to a fair contract;
6. a way for both parties to focus their resources on contract terms that are important to them; and
7. giving control back to business users.

The GSA Terms were launched at leading global law firm Reynolds Porter Chamberlain's offices in London. The GSA's Contracting Workstream, comprising industry professionals including some of the leading legal minds in the industry, worked collaboratively and extensively over the past 12 months to create the GSA Terms through a process of role-playing by representing the views of both the buyer and the provider to come to a balanced contract. The first draft of the GSA Terms was launched at pioneering law firm Ashurst LLP's offices in Q4 2022 and have been circulated across the sourcing ecosystem as part of the industry consultation process, with feedback from multiple organisations and lawyers incorporated to ensure that the GSA Terms are balanced and reflective of best industry practice.

Market research undertaken by the GSA in advance of the launch revealed that 96% of respondents personally think the time is right for industry standard terms for services agreements and 88% believe their company is likely to agree to using industry negotiated standard terms for services agreements, with 28% being highly likely and 60% likely, with persuasion.

Chris Bates, Partner at Ashurst LLP, and Chair of the GSA's contracting workstream commented: "I believe that industry standard terms are essential to help the industry thrive and I am delighted to have played a part in a movement towards standardisation in the contracting space. This has been a fascinating process – to be able genuinely to collaborate with lawyers from

other organisations to arrive at a commonly held goal of fair contracting positions. It demonstrated just how much time can be saved if the parties have a reliable and balanced place from which to start."

Mark Crichard, Partner at RPC LLP, added: "These GSA Industry Standard Terms are key as the industry moves towards ever more agile contracting. Businesses have more than enough challenges to progress and deliver their objectives without being distracted by negotiations on clauses that really should not need to be negotiated. These Standard Terms have been developed by the industry for the industry to improve collaboration."

The GSA Terms will also be made available for the technology and business services industry to use and will be available to view via the GSA's website: [www.gsa-uk.com](http://www.gsa-uk.com).

The GSA Terms will also be housed in Clausify, a legal tech company specialising in digitised, standardised contracts, which will ensure that the GSA Standard Terms cannot be edited, whilst designated negotiable terms can be edited/populated.

## Clausify – A Unique Legal Technology Platform

The GSA Terms, powered by Clausify, will revolutionise contracting across professional services through promoting a balanced and fair contract structure. Although a set of standard terms in and of itself is not novel, its combination with a bespoke legal technology platform offers users the certainty around the integrity of standard language. Clausify achieves this through locking critical clauses of the agreement so that they cannot be edited, allowing only designated negotiable terms to be edited/populated. The platform offers complete transparency and a clear, time-stamped audit trail of any amendments made to the areas of the contract that are open to negotiation.

The additional benefits of having the GSA Terms powered by Clausify are manifold to include:

- Complete confidence that the GSA Terms are unaltered.
- A clear audit trail of amendments made to any of the editable clauses.
- Automatic population of pre-drafted clauses to reflect commercial optionality.
- Centralised Change Requests sent to all parties following changes in legislation.
- Automated Version Control to avoid duplicate documents being worked on.
- Automated and standardised "versioning", following consistent logic.
- Comment boxes at clause level which can be hidden from counterparties.
- Document status reporting and prompts to better manage progress.
- Automatic categorisation (following a consistent naming convention) and filing.
- Electronic signing within platform for security.
- Intuitive, tablet-friendly, user experience – crafted with lawyers and deal-makers in mind.

David Jones, founder of Clausify, said: "In my almost 20 years' experience as a lawyer I was increasingly frustrated by the amount of time that was wasted on negotiating what I deemed unnecessary clauses. It often seemed like a futile point scoring exercise. I have lost track of the number of times that business people complained that lawyers were slowing down their deals – and that negotiations were not sufficiently focussed on what matters to them – the commercials (e.g. the scope of the work and fees), but instead on various legal points that they place much less importance on. It was from this frustration that the concept of Clausify was born – a platform built to make all aspects of the

contracting process easier, but uniquely focused on standardised agreements. We are delighted to be partnering with the GSA, an organisation that shares the same values as to the importance of standardised terms as we do.”

This movement to standardisation is so critically important. Far too much time and money has been wasted negotiating clauses that really should not need to be negotiated. Industry

standard terms give control back to business owners and give companies great confidence that the contract they are signing is fair – essential as we at last move to better embracing supplier diversity. It has been great to partner with Clausify, a platform that has standardisation at its heart. Please see [www.gsa-uk.com](http://www.gsa-uk.com) and [www.clausify.co](http://www.clausify.co) for more information.



**Kerry Hallard** is the Chief Executive Officer of The Global Sourcing Association (GSA), the industry association and professional body for the buying and provision of global technology and business services. The GSA is a social enterprise striving to make a difference and promote positive change across the technology and business services industry.

The GSA is the consistent voice for the future of the industry and the professionals working within it; promoting sustainable and ethical sourcing to create a positive future for our businesses and our shared planet.

**Global Sourcing Association**

Kemp House  
152–160 City Road  
London, EC1V 2NX  
United Kingdom

Tel: +44 77 7469 0447  
Email: [kerryh@gsa-uk.com](mailto:kerryh@gsa-uk.com)  
URL: [www.gsa-uk.com](http://www.gsa-uk.com)

Now in its 36<sup>th</sup> year, the Global Sourcing Association was established to help develop the best practice of how buy-side organisations source and then manage complex technology and business services arrangements. It started life as the National Outsourcing Association and underwent a rebrand in 2016, as its focus broadened to embrace all sourcing strategies, to include outsourcing, insourcing, shared services and automation on a global level. The GSA is the founding member of the Global Technology & Business Services Council, an alliance of a dozen of the leading industry associations from around the world focused on looking at the macro factors affecting the industry globally. The GSA is also a founding member of the Council for Supplier Diversity UK, the focus of which is to develop the best practice for building and managing a diverse supply chain. The GSA welcomes buyers, providers and advisors, as well as technology start-ups into its ecosystem.

[www.gsa-uk.com](http://www.gsa-uk.com)



# ICLG.com



## Current titles in the ICLG series

Alternative Investment Funds  
Anti-Money Laundering  
Aviation Finance & Leasing  
Aviation Law  
Business Crime  
Cartels & Leniency  
Class & Group Actions  
Competition Litigation  
Construction & Engineering Law  
Consumer Protection  
Copyright  
Corporate Governance  
Corporate Immigration  
Corporate Investigations  
Corporate Tax  
Cybersecurity  
Data Protection  
Derivatives  
Designs  
Digital Business  
Digital Health  
Drug & Medical Device Litigation  
Employment & Labour Law  
Enforcement of Foreign Judgments  
Environment & Climate Change Law  
Environmental, Social & Governance Law  
Family Law  
Fintech  
Foreign Direct Investment Regimes  
Franchise  
Gambling  
Insurance & Reinsurance  
International Arbitration  
Investor-State Arbitration  
Lending & Secured Finance  
Litigation & Dispute Resolution  
Merger Control  
Mergers & Acquisitions  
Mining Law  
Oil & Gas Regulation  
Patents  
Pharmaceutical Advertising  
Private Client  
Private Equity  
Product Liability  
Project Finance  
Public Investment Funds  
Public Procurement  
Real Estate  
Renewable Energy  
Restructuring & Insolvency  
Sanctions  
Securitisation  
Shipping Law  
Technology Sourcing  
Telecoms, Media & Internet  
Trade Marks  
Vertical Agreements and Dominant Firms