

Preparing Contract Document

Anil Chawla, B. Tech. (IIT Bombay) , L.L.B.

Senior Partner,

Anil Chawla Law Associates LLP,

Business Lawyers & Strategic Advisers

www.indialegalhelp.com

Nature of Contract

- A promise of future performance
- A set of promises forming consideration of each other is agreement
- Agreement enforceable by law is contract
- Enforceable must be at the option of both parties and not at the option of one
- Void if not enforceable by law

Essentials of Contract

- Communication of Proposal
- Communication of Absolute and Unqualified Acceptance
- Communication of acceptance in some usual and reasonable manner unless proposal describes manner of acceptance
- Consent to be free

Competent to Contract

- Of age of majority according to the law to which he is subject
- Of sound mind
- Not disqualified from contracting according to the law to which he is subject

Consent is Free when not caused by

- Coercion
- Undue influence
- Fraud
- Misrepresentation
- Mistake

Forms of Letter of Contract

- Tenders , Acceptance of Tender
- Quotation, Purchase / Work Order
- Letter of Intent
- Job Application, Appointment Letter
- Formal Agreement

Parts of Formal Agreement

- Description
- Date
- Parties
- Recitals
- Testatum
- Consideration

Parts of Formal Agreement – Contd.

- Receipt
- Operative Words
- Parcels
- Testimonium
- Signatures and Attestation

Description

- Describes the nature of transaction
- Usually written in capitals
- If transaction is complex and difficult to describe, best to use the words, “**This DEED**” or “**This AGREEMENT**”
- It is an advisable (not necessary) feature

Date

- Extremely important but strictly speaking not necessary; Undated contracts are valid
- Should be written in words
- Generally appears immediately after the Description but can also be at the end
- Do not put on both the beginning and the end
- If two parties are signing on different dates, different dates may be mentioned - Avoidable

Parties

- Decide the parties
- Full description of parties
- In case of individuals, name, parentage, address
- In case of partnerships, firm name, names of partners, office address
- In case of companies, company name, registered office address
- In case of Government, comply with Article 299, Constitution of India
- Not unusual to mention PAN
- Customary to give some easy short name

Recitals

- Set out facts prior to the contract
- Instruments prior to the contract
- Relation of parties to the subject-matter
- Motive for preparation and execution
- Why and How the state of things previously existing is changing by Agreement
- Recitals control the operative part in case operative is ambiguous
- Mistake of fact established by Recital can render the agreement void (sec. 20)

Testatum

- Now the parties hereto agree as follows:
- Now this deed witnesses as follows:
- Now, therefore the parties hereto agree to the following covenants, understandings, terms and conditions:
- Words are of no importance as affecting the operation of the Agreement
- Sometimes, consideration and receipt included as part of Testatum – Not advisable

Consideration and Receipt

- Consideration must be mentioned clearly in figures as well as words
- Not mentioning consideration does not render the deal void though may attract penalty under Indian Stamp Act
- Receipt may or may not form part of the Agreement
- Best to include the two as part of Operative Words

Operative Words

- Should be split into paragraphs and numbered
- Must include all that the parties have agreed to
- Consideration and receipt should also be included here
- Any exceptions or reservations or special conditions must also be included here
- Rules for interpretations, termination, amendments etc. should be included here

Parcels

- Describes the property transferred
- May be part of operative words or may form a separate Schedule or Annexure with reference in operative words
- Accurate, complete description necessary
- In case of real estate, map should be included
- In case of intangible assets, what is included and what is excluded should be mentioned

Testimonium

- In witness whereof, the parties hereto have signed this deed on the date first above written
- In witness whereof the first party has signed this deed and the duly authorized officer of the second party has signed this deed on the date mentioned hereinabove
- Not an essential part of Agreement
- Customary; can easily be dispensed with

Signatures and Attestation

- Attestation by witnesses necessary in case of some instruments like mortgage, gift, bond, will, revocation of will
- Witnesses not necessary for Contract, but advisable
- For signing on behalf of a firm or company or society etc. seal should be affixed
- When a person signs on behalf of an organization, in most cases, advisable for other party to take authorization document

Rules for Drafting

- Complete – no external source should be needed to understand the contents
- Use words in their primary or natural or normal meanings
- Use abbreviations only after giving the full form
- Meaning of the Agreement will be as read by an outsider / common man

Rules for Drafting – Contd.

- Use simple language
- Use small sentences
- Be careful about punctuation
- Make paragraphs carefully with only one issue in one paragraph
- Use paragraph headings
- Draft to make it idiot-proof
- **Never repeat**

Thanks!

Hope that it was useful

In case you ever need any help in preparing an Agreement

Please feel free to contact us

Anil Chawla Law Associates LLP

info@indialegalhelp.com

Anil Chawla – 09425009280

Note: This Presentation is Free. However, generally speaking, we do not provide free legal advice. Kindly consult your advocate for assistance / advice on any specific matters.

We follow a transparent system for fees. Please look at our [Indicative Rates](http://www.indialegalhelp.com/files/indicativerates.pdf) (<http://www.indialegalhelp.com/files/indicativerates.pdf>) before contacting us.