

Types of Commercial Contracts and their variations

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What is the extent of exercising rights and obligations under commercial contracts and why are they essential to determine the legal implications and create liability over parties which enter into commercial agreements? What is a commercial contract and can it be simplified for general understanding? In this article, we address questions relating to the concept of commercial contracts, and the principles, types of commercial contracts and liabilities under such contracts.

What is a Commercial Contract?

Commercial contracts in India or any other country is a legally binding agreement that regulates business relationships between entities or individuals, which involves the performance of the matter prescribed in the contract. Under such contracts, parties are obligated to do or restrain from doing stipulated acts and usually include binding terms, in regard to all aspects of business such as hiring, wages, leasing, insurance, loans, termination and employee status and safety. Such contracts may be oral or written agreements; however, business entities prefer to have such legally binding agreements in writing. Commercial contracts determine and create liability over the parties that are privy to the contract. [1]

The Contracts Act, 1872 and Special Relief Act, of 1963 are the governing legislations that regulate the terms of a contract which includes the formation, execution and rescinding of the contents of the contract. The purpose of a commercial contract is to create an obligation of acts like payment of wages, hiring procedure, lease deeds, attainment of insurance or borrowing of a loan amount.

Fundamentals of Commercial Contracts

To begin with, it is relevant to understand the fundamentals of a commercial

contract. The power to enter into contracts and to formulate the terms of contractual relationships are integral to the success of any business. There is also a longstanding moral dimension to entering into a contract. One is legally and ethically obligated to keep one's promise. Another fundamental value of contracts is that it is sensitive to the imposition of contractual obligations through coercion and dishonesty resulting from a power imbalance. Because contracts concern themselves with economic exchanges, the same must inevitably be economic in its purpose. In India, the basic philosophy of contract has been capitalized and geared towards fair trade and an ideal of a free market.

Principles of Commercial Contract Drafting

In contracts, the boilerplate clauses differ from other transaction-specific elements, which comprise the heart of the agreement, and are typically regarded as non-substantive provisions. They are the standard clauses or principles in a contract. The most important of boilerplate clauses are:

1. Entire Agreement: attachments and annexures in an agreement provide a holistic understanding of the entire agreement. This clause enables the parties to get assurance of the terms of the entire agreement and an understanding of the purpose of the contract.
2. Notice: This clause provides for the communication of the exchanges between the parties and an evidentiary document to ensure communication.
3. Force Majeure: This clause relieves the parties from any liability to perform contract obligations when performance is impossible due to force majeure events. This may include events which is not in human control or the "acts of god". This clause helps in avoiding diverse interpretations of the performance of the contract.
4. Severability: This clause provides for protection in cases where the agreements are unenforceable or invalid due to changes in the applicable law when subject to amendments.
5. Governing law: This clause helps in setting up or agreeing to the jurisdiction based on which the contract will be executed and enforced.
6. No Waiver clause: A provision which provides that a contract must not have any delay or failure in compliance with the terms and that no clause of the contract can be renounced.

There may be many such principles dictating the terms of the contract.

However, it is important to have precision while drafting contracts. Precise language in contracts provides firm standards for compliance and enforcement. This avoids vagueness and avoids multiple interpretations.

Types of Commercial Contracts/Agreements in India

1. Memorandum of Association and Articles of Association (MOA & AOA):-This is a mandatory agreement or contract which is required under the Companies Act 1956/2013. MOA is a charter document and is filed with the registrar of companies. It contains the basic information pertaining to the operations and scope of business activities carried out by a company. The AOA contains the power and clauses of the management.
2. Partnership Agreement:- This is a written agreement signed between the partners of a firm wherein they agree to the clauses mutually. It contains clauses like the rights, duties, profit sharing clause, capital contribution, the procedure for dissolution, and other clauses, which enables and binds the partners to carry out the contractual obligation.
3. Service Agreement:- This is executed by the parties where they agree to the

terms and conditions of the services provided by one party to another and outlines various clauses like payment of consideration to the service provider, rights and duties of the parties, and liability arising out of such contracts. It creates an obligation upon the party that receives the service, to duly pay the consideration to the service provider for the services rendered by them.

4. **Non-Disclosure Agreement:-** Another type of commercial agreement includes the Non-Disclosure Agreement (NDA). It is signed by a company's employees, contractors, suppliers, service providers, consultants, and independent contractors to bind them and prevent them from disclosing any trade secrets, client information, business plans, or other sensitive and confidential information related to the company's operations.
5. **Loan Agreements:-** This is an agreement between two parties which captures the conditions and terms of the borrowing or lending of a term loan and has clauses related to repayment, interest rates, default liability, security pledged and other related clauses.
6. **Licensing Agreement:-** The licensor and licensee get into an agreement to grant and attain rights over a particular product or intellectual property which bestows them with the permission and right to make use of the same.
7. **Shareholder agreement:-** A shareholder agreement essentially spells out the contractual arrangement between a corporation and its shareholders, including their rights and duties. The business guarantees that shareholders are treated properly and that their rights are upheld by adopting a shareholder agreement.
8. **Employment Agreement =:** - It is generally used with regard to new hires, recruits, and current workers who are changing job positions. An employment agreement is a legally enforceable agreement that controls the working relationship between the employer and the employee. It mainly covers the tenure, schedule of work, leaves, remuneration, duties, intellectual property rights, confidentiality, and reasons for termination, among other things. There may be other such agreements in a business, depending on the nature of the entity. There may be agreements like share purchase agreements, listing agreements, joint venture agreements, contracts of sale, distribution agreements, or lease agreements.

Dispute resolution clauses while drafting commercial contracts in India [2]
In every contract, the importance of a dispute resolution clause not only avoids the tedious and expensive process of court litigation in the event of any breach or non-performance of the contract, but it also acts as a saving clause which helps in the settlement of disputes in an amicable and cost-effective manner. These clauses in a contract are enforced in case of a dispute arising out of a contract.

This clause extends to opting for the means of alternative dispute resolution as per the Arbitration and Conciliation Act of 1996. This clause acts as a protectionist clause against probable disputes. These clauses usually contain the place, procedure, language and means of arbitration. This clause gives reassurance to parties to resolve the dispute in a hassle-free and cost-effective manner.

Factors to be kept in mind while negotiating any contract

While drafting a commercial contract, there are certain conditions or factors that must be taken into consideration with respect to negotiating the terms of the contract. It is important to negotiate certain terms such as the

representation of the party, indemnity, limitation of liability, termination of the contract, and clause of dispute resolution. Although such clauses may seem dismissible at a glance, it is important to remember that the other party in contact may find loopholes when these clauses are not drafted in a way which favours one party.

It is important to come into agreement with the terms of the contract by mutual consent of the terms of a specific contract. The dispute resolution clause also acts as a negotiating clause to avoid litigation.

The parties must choose all clauses of the agreement with careful consideration in order to ensure the following:

1. There is a mutual agreement between both parties about all the clauses of the agreement;
2. There are reasonable insertions of the provisions of the contract dictating the recourse of the agreement;
3. The clauses of the contract are not open-ended and they are clearly laid out in the agreement.

There may be several instances that may give rise to potential disputes if the clauses are not properly negotiated.

Conclusion

King Stubb & Kasiva is one of the leading law firms in India which has expertise in contracts and document drafting. The assistance provided by the team ensures a transparent process that is made based on good faith and reliable sources. There is an involvement of a majority of laws and care must be taken towards such drafting. Immaterial to the size of the firm or entity, the commercial contracts must be drafted and checked before any assent is given.

FAQs

What are the different types of agreement?

There are several types of commercial agreements including partnership deeds, licensing agreements, shareholders agreements, MOA and AOA, and other such agreements.

What are commercial contracts?

Commercial contracts in India or any other country is a legally binding agreement which regulates business relationships between entities or individuals which involves the performance of the subject matter prescribed in the contract.

How do you solve commercial disputes?

A dispute resolution clause is one of the most important clauses that describe the manner of resolution of any dispute arising from the contract.

[1]<https://www.mod.gov.in/sites/default/files/DraftChVISCD.pdf>

[2]<https://iica.nic.in/images/presentation/Drafting-of-Commercial-Contracts.pdf>