

## BASIC LEGAL CONCEPT OF 'CONTRACT'

A contract is an agreement (expressed or implied) enforceable by law between two or more competent parties to do or not to do a particular thing. For a contract to be valid, a few preconditions must be satisfied. Of these, the most important are:

- Two or more competent parties
- Legal subject-matter
- Consideration
- Consent of the parties

When one of these precondition is missing, no valid contract is created. Although contracts can arise through words or actions, the ones considered here will and should be reduced to writing. The basic contents of a contract are briefly described below.

A written contract usually begins with a statement of the date, the names of the parties and their place of residence. In many written contracts, the parties are referred to as "party of the first part", "party of the second part" according to the order in which their names first appear.

However, that there is no legal significance to this order, and it is immaterial which of the parties names is written first.

Next, there often appears a statement of the consideration. Consideration is the substantial cause or reason inducing the parties to enter into an agreement. The statement of the consideration is usually followed by a full statement of all that the first party agrees to do and all that the second party agrees to do, including events excusing performance, e.g., force majeure

Then there may be provisions concerning the consequences of default and the remedies, penalties or forfeitures in case either party does not faithfully and fully perform or offer to perform his part of the agreement. Often these arbitration or exclusive jurisdiction of the courts of a particular country or with the law governing the contract according to which it and the rights and obligations of the parties there under will be interpreted in case of dispute.

The contract may also call for some security to ensure performance, e.g., performance bonds or bank guarantees, retention money, letters of credit. The contract ends with the signatures of the parties (whose authority to make the commitments in the contract should be checked) and the signatures of witnesses.

On the above back-drop the contents of the draft of a model contract of any kind may be suitably divided in to the following heads:-

1. Commencement or description of the Deed
2. Parties to the Deed
3. Recitals
  - a) Narrative recitals
  - b) Introductory recitals
4. Subject Matter of the Deed
5. Operative Part
6. Arrangement
7. Testimonium

Keeping in view the above principles for drafting a contract, three sets of model contracts on different subjects have been prepared and attached as Annexure-I, II & III for perusal. These are sent to all the Departments of the Government seeking their valuable opinion/views on the same so as to modify by inclusion or exclusion of any necessary/redundant clause or clauses respectively, as the case may be, inviting at the same time, their suggestions to draft any other model contracts as per their requirements, at an early date.

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