Encyclopedia on Commercial Contract Management

By

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This article will give you complete encyclopedia level understanding of commercial contract world.

Abstract: It is common knowledge that contracts are heart and soul of any business activity. A full proof contract requires vast knowledge of business world, a thorough understanding of drafting knowledge. Commercial contracts form the backbone of many commercial transactions from vendor agreements to client engagement agreements.

A Chartered Accountant is a professional with multi-disciplinary talent. He is looked upon as a complete business provider. A Commercial contract management is one such area where this professional may sharpen their expertise.

Introduction:

Today's business relationships are in many ways more complex than those of the past. Factors such as globalization, increased regulation, innovative technologies, and the speed of change have all contributed to an environment in which it is often difficult to define and manage the many factors involved in a successful contract. This has led many organizations to see the contract & commercial management as an instrument of control.

Contract and Commercial Management: A Contract can be defined as an agreement which enforceable by law and latter one is making and managing of commercial contracts in the day to day business pursuits.

The contract is an agreement between two or more parties. Contracts can be verbal or written. Obviously the written form is more easily enforced. Contracts are used every day in the management of businesses

List of commercial contracts:

1. Commercial contracts
    a. Consultancy agreement
    b. Employment contract
    c. Event management agreement
    d. Non-disclosure agreement
    e. Exclusive agreement
    f. Memorandum of understanding

g. Agency agreement
h. Advisors agreement
i. Non Circumvention and Fee Protection Agreement
j. Purchase agreement
k. Letter of intent
l. Commission agreement
m. Staffing agreement
n. Management service agreement
o. Operations and maintenance agreement
p. Franchise agreement
q. Distribution agreement
r. Power of attorney
s. Event merchandising agreement
t. Sponsorship agreement
u. Affiliate Program Services Agreement
v. Business Collaboration Agreement
w. Management Service Agreement
x. Hire Purchase Agreement

Basics of Contract law:

Each contract creates certain rights and duties in an express or implied manner. The law which provides the guidelines and principles relating to the contractual relationships is 'The Indian Contract Act, 1872'. It is applicable to all states of India.

Meaning & Essentials of Contract

- According to Section2 (h), "Contract is an agreement enforceable by law".
- Agreement means a promise. It is created when a person makes an offer to another person and other accepts it for consideration.
- All agreements are not contract, only those agreements which create legal right and are enforceable by law are contracts.

The following are the essential elements of a valid contract:

- **Plurality of Parties**: There must be at least two parties in a contract. Generally they are called promisor and promisee.
- **Offer and acceptance** (Agreement): One party should make offer and other should

accept it according to the conditions of offer.

- **Intention to create legal relation** (Enforceable by law): Both the parties should have an intention to create a legal relationship.
- **Contractual Capacity**: Parties under contracts should be major and of sound mind. They should not be disqualified from contracts bylaw.
- **Consen**t: It means parties should agree on the same thing and in the same sense.
- **Free Consent**: Consent is free, if it is not due to coercion (force), undue influence, fraud, misrepresentation and mistake.
- **Consideration**: It means something in return whose value is in terms of money.
- **Lawful Object**: Every contract must have lawful object otherwise it is called void ab initio. It should not be fraudulent in nature or declared against public policy by the court.
- **Certainty of Meaning**: Every word written in the contract should have a certain meaning. No ambiguity should be there.
- **Possibility to Perform:** Agreement should be physically and legally possible to perform.
- **Agreement not declared void**: Agreements which fulfilled the conditions of lawful contract can also be declared void bylaw.
- **Compliance of legal formalities**: All the legal formalities should be fulfilled. Any agreement to be enforceable by law must have above features otherwise it will not be enforceable by law.

TYPES OF CONTRACT TERMS

Every contract will have key terms and they fall into different categories. The terms of a contract can be expressly agreed, orally or in writing. In addition, terms may even be implied by law, the conduct of the parties, custom in a particular trade, previous dealings or the parties' intentions.
There are three types of term which are conditions, warranties or in nominate terms. This may be specified in the contract, implied by the nature of it, or implied by law.

A condition is a term that, if breached, gives the aggrieved party the right either to terminate the contract or affirm it. In addition, the aggrieved party can also claim damages.

A warranty is a term that, if breached, does not give the aggrieved party the right to terminate the contract; it gives rise only to a right to claim damages.

In between, there are in nominate terms, where the remedy for breach will depend on the effect of that breach at the time it happens. If there is a substantial effect on the aggrieved

party, it will be likely a fundamental term and give the right to that party to terminate the contract (and claim damages). If not, that party may only claim damages.
Express terms-

Not all statements made by the parties during negotiations are intended to have contractual force. Some are only representations, meaning they are intended to induce the other party to enter into the contract, but not to be capable of imposing liability for breach of contract.
Whether a statement is a term or representation will depend the parties' intentions and therefore a variety of factors, such as the period of time between the statement being made and contract being formed;
The importance of the statement; whether the statement is written into the contract; and whether one or both parties possesses the skill and knowledge to determine if the statement is true.

Implied terms-
Terms may be implied by a number of methods:

Usage or custom relating to a particular place or trade, provided that there is nothing contrary in the contract.
Previous course of dealings, in which case a court may imply certain terms which have been regularly and consistently used before between the parties, provided there was a reasonable expectation that the term would apply again and there is no contrary term in the contract.
Intention of the parties where, for example, there is a gap in the contract and it is apparent that the parties must have intended that term to form part of the contract.

Law, for example, those implied by the Sale of Goods Act 1930, contracts act,1872 etc

BREACH OF CONTRACTS

It means non-fulfilment of the promise made by any of the parties to a contract. There are two types of breach of contract:

I. Actual Breach: It takes place when a party to a contract refuses or fails to perform his obligation when it is due.
   Effects: Claim for damages & can sue in the court.
II. Anticipatory Breach: When a party disables himself or declares that it will not perform the contract prior to the date of performance. It is also called anticipatory or constructive breach of contract.

Effects: Promisee is excused from further performance and he can put an end to the contract & sue other party for default. Alternatively, he may wait till the due date of performance of contract & then avail legal remedies against other party.

Remedies for Breach of Contract

A remedy is the means given by the law for enforcement to fright. In case of breach of contract, the injured party or aggrieved party has one or more of the following remedies:

Rescission of the Contract

Rescission means cancellation or putting an end to the contract. When a promisor makes a breach of contract, the promisee can rescind the contract.
Court may grant rescission when contract is voidable or unlawful. Court may refuse rescission in the following cases:
Where the aggrieved party has expressly or impliedly ratified the contract

When there is no fault of both parties & situation arises due to change in circumstances then the parties cannot restore their original position.
When third parties has, during the subsistence of contract, acquired rights in good faith
E.g. X fraudulent bought a diamond bracelet from Y & pledged it to P who kept it for value& without any notice of fraud. Y cannot rescind the contract.

TERMINATION OF CONTRACTS

Governed under the provisions of the Indian Contract Act, 1872 (hereinafter referred to as the "Act"), failure to fulfill the duties set out under the contract entails liability on the party causing the breach.

Some of the circumstances which result in termination of a contract between the parties are listed as below:

- Coercion – A contract can be terminated on the account that a party has exercised coercionbycommittingorthreateningordetainingtacticstoobtaintheconsentofthe other party (Section 15 of the Act).
- Undue Influence – Where a party is in a position to dominate the will of another and exercises such position to obtain unfair advantage over the other party by obtaining their consent, such party has the option to terminate such contract (Section 16 of the

Act).

- Fraud – A contract may be terminated by a party in the event where the other party has committed a fraudulent activity to obtain the consent of the innocent party by deceiving them (Section 17 of the Act).
- Misrepresentation – Where consent of a party is obtained on account of false statement made by party which believed it to be true, the innocent party has the option to terminate

Effects: Claim for damages & can sue in the court.

Consequences of termination

In the event where the contract between the parties is terminated, payment of consideration should be made in respect of the fulfilment of the promises by the other party in terms of delivery of goods or services. Even if the contract is discharged and the other party has fulfilled their obligations as stated in the original contract which have been accepted by the first party, payment of consideration is required to be made on Quantum Merit basis.

In the case of breach of the conditions of the contract committed by either party, the other party may be made liable for compensation in terms of recession, liquidated/ unliquidated damages, injunction or specific performance subject to the terms of the contract.

IMPORTANT CLAUSES RELATING TO COMMERCIAL AGREEMENTS

There is both an art and science to drafting them and the following provisions are some of the most critical in forming a complete commercial contract.

- Names – The full legal names of the entities or signatories.
- Obligations – The obligations or actions required by each party must be crystal clear regarding the commencement of the agreement, delivery and payment terms, and must succinctly define what constitutes completion of the obligations.
- Force Majeure – A French phrase, which means greater force. It is a clause that alleviates a party from their contractual obligations as a result of forces or events beyond their control, and limits their liability. Some examples are riots, strikes, wars and floods. It is equally important to include clauses that concern inherently necessary actions performed by third parties before performance of contractual obligations.

These are sometimes seen as subject to clauses, for example, Party A would only be able to satisfy its obligation subject to Party B delivering the parts, material, data, etc. by a certain date.

- Compensation for Non-Stipulated Failure to Satisfy – Should one party fail to satisfy their contractual obligations due to an unforeseen event, or for any reason which is not stipulated within the terms of the contract, damages will need to be paid to the party that has been wronged. The terms of these damages should be as sharply defined as possible in the contract negotiation.
- Legal Jurisdiction – Whether one is negotiating a contract within the same country or across international borders, the civil laws of the respective jurisdictions may be fundamentally different. A solid contract must specify which jurisdiction and location will litigate a contractual disagreement.

- Incorporate Arbitration Features – Legal costs can be horrendous, but by implementing an agreed upon arbitration process to handle disputes should they arise, both parties may achieve a less expensive and quicker means of settling potential disputes.

- Intellectual Property Rights: This clause will help to know who shall own the intellectual property (patents, copyright and trademark) that is created out of contract and whether such intellectual property can be assigned or transferred to a third party.

- Non Competition: During the term of this Agreement, the Parties shall not compete with each with respect to subject matter of this Agreement

- Warranties and Indemnity: It is basically about shifting the risk to another party. In case breach of any provision by one party causes loss to another party, the defaulting party has to make good the losses caused to the non-defaulting party. How indemnification will be done should also be mentioned in this clause.

- Insurance: The Parties will be responsible for obtaining all insurance covers with reference to their roles and responsibilities as defined in this Agreement. Respective Parties shall be responsible to bear insurance costs as may arise therein.

- Expiry and Termination of Agreement: Circumstances when the agreement can be brought to an end by either party shall be mentioned. Also, how many days prior

written notice period is mandatory should be specified.

- Applicable laws and dispute settlement: A governing law clause in a contract expresses the parties' choice of legal system under whichtheprovisionsofthecontractaretobeinterpreted.Intheeventofanydisputebetween the parties as to the meaning of the contract, it is intended that the specified governing law will be applied in interpreting the relevant provisions. The dispute resolution clause in a contract usually details the agreed procedures in settling any contract disputes. Dispute resolution through an arbitration process, which is typically subject to governing law, where disputes can be settled by independent third parties

- Assignment: This Agreement cannot be assigned by a Party without the written consent of other Party.

- Modification: This Agreement and any attachment here to shall be modified only by an instrument in writing and signed by the Parties.

- Entire of Agreement: Whether the Agreement between the Parties supersedes all previous communications, representations, understandings, either oral or written, between the Parties or any official or representative thereof.

- Form of Notices: Any notice given by a Party under this Agreement must be in writing and in English language only unless the other Party otherwise notifies in advance.

- Interpretation: Headings are inserted for ease of reference only and have no legal effect. References to articles, clauses, and subclasses are references to articles, clauses, and sub clauses of this Agreement.

- The singular shall include the plural and vice versa. Words like "it", "he" "she" "her", "his", "their" shall be understood and construed with reference to the subject matter referred therein.

- Signature

- Company: By a person authorized under the articles of association or by a resolution of board/shareholders.

- Firm: by any partner or partners of the firm, authorized (impliedly under sec.19, Partnership Act, or expressly by power of attorney), on behalf of the firm.

- Individual: Self or by a representative duly authorized by Power of Attorney.

- Minor or person of unsound mind: it must be signed by his natural guardian or where a guardian has been appointed by a competent court, then by such guardian.

- Illiterate persons: Illiterate person who is not able to sign may put thumb mark (as per usage, left thumb mark in the case of males and right thumb mark in the case of females), and if that hand or thumb is defective or injured, then other hand or thumb shall be used,and other person should make an endorsement above or under the mark to show whose mark and of which hand's thumb it.

- INDEMNIFICATION CLAUSE

According to the dictionary meaning, indemnity is protection against possible damage or loss, especially a promise of payment, or the money paid if there is such damage or loss. It is a security against, or compensation for loss, etc. This is where a claim for indemnity arises, in such a case there are two persons one who agrees or promises for the reimbursement or incurring the loss such a person can be called as "indemnifier", and the other person to whom such a loss has been caused is the "indemnity holder" or "indemnified". This is how in such cases the loss gradually shifts from one person to another person.

When a suit is instituted against the indemnity holder or the indemnified, he may be compelled to pay damages, and incurred costs, etc. Similarly, he can bring an action against the indemnifier to compensate for the damages and costs, paid by the indemnity holder himself, if the indemnifier has agreed in such a case for reimbursement. Section 125 of the Indian Contract Act contains the provision regarding the rights of the indemnity holder.

An indemnity is slightly different in commercial contract than in common law. Indemnity clause is the commonly used elements in the commercial contracts. The purpose of inserting the indemnity clause in a contract is to shift or allocate the risk, or cost from one party to another. More precisely it can be said that business transaction between the two

parties by obligating one party to pay the expenses incurred by the other party under certain circumstances.
In commercial Contracts, the indemnity clauses are drafted in a wide manner in order to include the third parties by whose conduct, action or negligence any loss or anticipated circumstances might occur, which are beyond the ordinary circumstances of breach actionable under common law.
In certain special cases or circumstances, the indemnity clauses might apply even when no breach of contract has occurred. Indemnities in such cases extend into unintended obligations which the common law might not impose otherwise.
While drafting an indemnity provision in a contract, the following points must be considered-

Who is the indemnity-holder and who is the indemnifier?
Whether or not there is any need for indemnity at all or the indemnity provides greater protection for the breach of contract than would normally be available for the breach of contract under the common law? If not, indemnity is not needed.

An indemnifier must limit the amount of indemnities that is to be given in a contract.

An indemnity-holder should make sure that the indemnity clause must never be drafted in a wide manner as it risks the effect of achieving the desired claims and might even exclude some anticipated liabilities,

Indemnity for breach of contract and breach of negligence must be considered in addition to the common law rights.

CONSEQUENTIAL AND ECONOMICAL DAMAGES

Consequential damage or loss usually refers to pecuniary loss consequent on physical damage, such as loss of profit sustained due to fire damage in a factory. It arises due to the existence of certain special circumstances.
The basic rule for determining scope and extent of consequential damages, which Defaulting Party would be liable to pay to Non-Defaulting Party, was first elaborated in the judgment of Alderson B in the English Court of Exchequer, in the case of Hadley v. Baxendale
Some important aspects which are needed to be ascertained while determining the scope of consequential damages are:

Proximity/natural consequence: The first thing which is needed to be ascertained by the

courts and established by the plaintiff is that the loss for which the plaintiff is claiming damages arose due to the consequence of the breach of contract.

It is evident from the perusal of Section 73 of the Indian Contract Act, 1872 that the aggrieved party cannot seek damages for any remote or indirect loss. To ascertain the proximity, the principle of the remoteness of damages is applied.
Reasonable Contemplation: In order to understand the remoteness of damage, the first thing which is needed to be determined is whether such loss on the event of a breach was contemplated or anticipated by the party while entering into contract.
When the terms of the agreement are formulated the parties envisage the possible/potentialoutcomesarisingoutofthebreachofcontract.Ifsuchlossforwhich the consequential damages are claimed, was genuinely contemplated by both the parties, then the defendant party cannot evade liability to pay consequential damages by saying that such loss was remote or indirect.

But for Test: To establish the connection between default committed and loss is suffered is the necessary concomitant for claiming damages, the breach has to have the real and effective cause for the loss. So basically, the impact of the breach which transcends actual loss and causes other ancillary damages closely related to the subject matter of contract can be recovered in the name of consequential damages.

Principle of Mitigation: This principle imputes responsibility on the plaintiff to take all reasonable actions to mitigate the effect of injury/loss caused by the default of the defendant.

The Law of Damages under Indian Contract Act 1872

Sections 73 deals with actual damages following breach of contract and the injury resulting from such breach which is in the nature of unliquidated damages, since these damages are awarded by the courts on an assessment of the loss or injury caused to the party against whom breach has taken place, while Section 74 deals with liquidated damages, referring to damages that are stipulated for. Thus, for a claim of damages, there has to be a breach of the contract. In cases, where there is a valid termination of the contract, without any violation of the terms of the contract, the question of claim for damages should not arise since there is no breach perse.

Liquidated and Unliquidated Damages

Damages are said to be liquidated once agreed and fixed by the parties. It is the sum

agreed by the parties by contract as payable on the default of one of them. Section 74 applies to such damages. In all other cases, the court quantifies or assesses the damage or loss ; such damages are unliquidated. The parties may only fix an amount as liquidated damages for specific types of a breach, and then the party suffering from another type breach may sue for unliquidated damages resulting from such breach.
Where, under the terms of the contract, the purchaser was entitled to claim damages at the agreed rate if the goods were not delivered before the fixed date and if they were not delivered within seven days of the fixed date, the purchaser was entitled to cancel the contract and pay guarantee amount to the bank, but the goods were delivered within the extendedperiod.Itwasheldthatthebuyerwasonlyentitledtoclaimdamagesattheagreed rate and that the banking guarantee confiscation clause could not be invoked as the contract was not cancelled.

DISPUTE RESOLUTION AND JURISDICTION CLAUSES

The dispute resolution clause in a contract usually details the agreed procedures in settling any contract disputes. Dispute resolution through an arbitration process, which is typically subject to country's law, where disputes can be settled by independent third parties

The following considerations may be taken into account when developing this clause:

- What is the process for settling disputes or issues arising under the contract?
- Does the contract specify governing law and a forum for dispute settlement?
- If the contract contains an arbitration provision, are the rules, the location and the language of the arbitration specified?
- Can the arbitral decision be appealed to the courts? Who pays for the costs of the arbitration?
- Does the contract allow time for the parties to seek an amicable resolution prior to initiating court or arbitral proceedings?

A governing law clause in a contract expresses the parties' choice of legal system under whichtheprovisionsofthecontractaretobeinterpreted.Intheeventofanydisputebetween the parties as to the meaning of the contract, it is intended that the specified governing law will be applied in interpreting the relevant provisions. In the absence of a governing law clause, the parties won't know which laws may ultimately be invoked in construing or

enforcing the contract.

Non-Indian parties should consider the following general approach:

First, consider whether Indian law is required.

If it is not required then, if it can be done so as a matter of commercial bargaining power, choose a non-Indian law with which they are familiar and comfortable
If you are obliged to choose Indian law (whether under a legal requirement to do so or as a matter of commercial bargaining power) ensure that you have a qualified person review the contract to ensure that it takes account of areas where Indian contract law differs from the contract law system(s) with which you are familiar.

Many commercial contracts include provisions requiring one or other of the parties to effect insurance. Such clauses are inserted into commercial contracts because the parties wanton transfer to an insurer the financial consequences of one or more of the risks that may arise from the performance of the contract.
Several points to keep in mind when drafting insurance provisions in contracts:

Ensure the contract clearly sets out which party has the responsibility for arranging the relevant insurances and the parties to be covered under the policies. Further, consider the basis upon which the insurance cover will be accessible by them.

Contracts often include indemnities. The basic principle of an indemnity is an agreement or promise by one party, to pay for damage and/or loss that may be suffered by another party. With regard to provisions in contracts requiring a party to procure insurance for a counter party, where indemnities are also given, consideration must also be given to how the indemnity and insurance provisions are intended to work together.

It is most important to consider all exclusions from the relevant policies, to ensure that there are no unexpected uninsured liabilities. A particular exclusion to look for in reviewing liability insurances is what is known in the market as the "contractual liabilities" exclusion.

In circumstances where a policy of insurance will cover multiple insured, it is worth consideringtheinclusionofseverabilityandnon-imputationclausesininsurance.

Insurance always follows the liability: there are significant difficulties in attempting to make liability follow the insurance. It is, however, possible to impose a liability cap that is equal to the limit of indemnity under policy.

Itisimportanttopayattentiontotheobligationtomaintaininsurance,throughout a prescribed period, usually construction and defects maintenance periods in the case of construction risks insurance or over the term of a lease for property and liability insurances. These are insurances which respond to events which happen during the policy period.

Avoid cutting and pasting insurance clauses.

IMPORTANCE OF COMPETITION ACT WHILE FINALIZING THE CONTRACTS

Breach of competition law can have a serious impact on a business, leading to agreements being void, fines based on global turnover, criminal prosecution for directors involved, third party actions for damages and reputational harm.
As such, compliance with competition law should be high up on the business agenda and thereshouldbeclearproceduresinplacetoensureemployeesunderstandandcomplywith the legal requirements. Businesses which hold dominant market positions should ensure their employees are properly trained on what behavior will be considered abusive.
Types of common commercial agreements or clauses which should be considered carefully for anti-competitive features are:

- Agency agreements;
- Distribution agreements;
- Restrictive covenants;
- Exclusivity agreements;
- Supply contracts;
- Intellectual property licenses and agreements;
- Agreements or practices where undertakings exchange or share information;
- Tendering.

Competition concerns are taken care by drafting exclusivity clauses in commercial agreements. Exclusivity clauses in commercial agreements are entered into, both between directcompetitorsatthehorizontallevelaspurenon-competerestrictions (say, between two parent companies while setting up a joint venture) as well as between firms operating at

vertical levels, i.e. manufacturers and their dealers.
While non-compete restrictions at horizontal levels are evaluated more rigorously under Section 3(3) proviso to the Act, the exclusivity clauses at the vertical levels are evaluated under the Rule of Reason after balancing both pro and anti-competitive factors given under Section 19(3) of the Act.

An exclusive dealing agreement or Dealing restrictions arise when one firm agrees not to deal with the competitors or some categories of competitors of another firm which operates at a different stage of production. They occur when a seller agrees to sell all or most of its outputofaproductorserviceexclusivelytoaparticularbuyer.Itcanalsooccurinthereverse situation: when a buyer agrees to purchase all or most of its requirements from a particular seller.

CLAUSES RELATING TO OWNERSHIP, TRANSFER OF PROPERTY AND TAXATION

It is essential to remember that every word in the contract has a legal effect, and clarity is important. The intangible property interests and rights may be valuable to your company going forward. For this reason, it's important that the contract is concise and clear when it comes to addressing who owns the intellectual property. This is an advantage if your company has ownership of the property. If that's the case, there needs to be an express, clear provision that identifies the property and states that ownership is with the company.
An example of this is a work-for-hire agreement that refers to an author's ownership of their original works under an agreement. If they hire someone to create a software program or design graphics for the business, the company gets the product but not the copyright.
Important Clauses which are related to ownership and transfer of property are:
Indemnity Clause
It is highly possible that a property may come under dispute for varied reasons. About 40 percent of the properties in any City are in a dispute, many of them spanning over a few decades. An indemnity clause secures the interests of the buyer; it must be drafted with diligent foresight to avoid any dispute in the future.
Indemnity clauses in an Agreement for Sale are designed to seek compensation from the seller should there be any losses or expenses in the future. All possible scenarios must be taken into account before drafting the indemnity clause.
Penalty Clause
Token amount is generally paid by the buyer to the seller to assure his interest in buying the property. Sometimes, the sale may not happen for a genuine reason or the seller might

find a better deal and he may not return the token amount. To ensure the seller does not make a business out of such transactions a penalty clause misadvised.

Transfer of Memberships/Advances/Deposits

This clause prescribes the seller to pass on all privileges and conveniences that he may have had during his ownership. Deposits made by the seller for club memberships, electricity, gas, gym subscription are a few examples.

Right to call off the deal

The right to refuse and call off the agreement helps the buyer or the seller to cancel the deal without any implication. Reasons to call off the deal may range from personal disputes and financial constraints to loan refusal.

Outstanding Dues

It helps to have this clause in the Agreement to sell as it prevents the seller from passing his outstanding dues to the buyer. Taxes, electricity/sewage/water bills etc are covered in this clause.

OBLIGATION TO PAY TAXES

It is very important to define in the contract on whom responsibility of payment of taxes lie. Agreement should clearly state that which kind of taxes, duties or rebate is payable by either party. Since taxes are statutory in nature, default in payment of taxes can create a huge liability on either party.

Contract should state modes, time, and nature of payment of tax if the contract is of going nature.

Few examples of taxation clauses are as follow:

For purposes of this Agreement, "Tax Obligations" shall mean taxes, withholding, certification and reporting requirements, claims for exemptions or refund, interest, penalties, additions to tax and other related expenses. To the extent that the CustodianhasreceivedrelevantandnecessaryinformationwithrespecttotheFund's account, the Custodian shall perform the following services with respect to Tax Obligations:

The Borrower shall, and shall cause each Subsidiary (other than any Allied Unrestricted Subsidiary, any Securitization Subsidiary or any Republic Insurance Entity) to, pay and discharge, as the same shall become due and payable all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets unless the same are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary

The Art of Negotiating Contract:

Negotiations are the starting point of any commercial relationship. There after commercial

agreements are drafted to record the negotiations between parties in writing.

Negotiation is the principal way that people redefine an old relationship that is not working to their satisfaction or establish a new relationship where none existed before. It is a dialogue between two or more people or parties, intended to reach an understanding, resolve point of difference, or gain advantage in outcome of dialogue, to produce an agreement upon courses of action, to bargain for individual or collective advantage, to craft outcomes to satisfy various interests of two people/parties involved in negotiation process.

The aim of contract negotiation is firstly to achieve certainty, to record what is being supplied, when, in what quantities and to what standard, and what are the consequences of delay or failure to meet the agreed requirements
Many a dispute is caused by the failure of the parties to define at the beginning of their relationship, exactly what is going to happen. This is especially important in the case of complex projects, where project plans and methodologies will normally be prepared as part of the contractual documentation

The importance of the pre-contract stage is often underestimated but it is vital to invest time and effort at this point not only for the clarification of the respective roles and responsibilities but also to facilitate the drafting process and minimise the risk of future misunderstandings.

How to negotiate a successful contract?

1) Research all pertinent information – Understand everything about the company and the people with whom negotiations will be done. Similarly, in case of business negotiations, one should ensure that other departments involved in the upcoming negotiations are also in alignment with the expectations and obligations.
2) Contract Negotiation Preparation – This is the most crucial phase. Before entering the negotiation, one must clearly define the goals and objectives and their relative importance to each other.
3) Define your Position–Your position will form the backbone of the proposal or offer you are prepared to make to your negotiating counterpart. A backup position should be formulated prior to you making your proposal, in the event that your counterpart does not deem the initial offer acceptable. Leave yourself room to manoeuvre, to allow yourself and your counterpart flexibility in the contractual negotiation process. Also, ask yourself what your backup position would be, should the negotiation fall apart. What options are available and what is the best possible alternative for you, in case you are unable to reach an agreement?
4) Evaluate the Other Side – Sit back and think about what your prospective contractual

partner's position will be in relation to their expectations, as well as your own. You must also consider what would be of relative importance to them and try to estimate their goals and objectives. Consider what objections or issues they might raise and how you might counter them in a mutually productive manner.

5) Introductory Meeting – Before you make an offer or proposal, be sure that you are both in agreement about the objectives and goals of the contractual agreement you are about to negotiate.
6) Listen – A successfully negotiated contract is not a one-way street, and it is important that you take the time to listen to what your prospective contractual partner has to say. This is not the time to talk, but to listen, and by doing so you will learn what is important to your counterpart. Reaching an agreement will become easier if you pitch your position in a manner that gives your counterpart more opportunity to say "Yes".
7) Concessions – Don't rush to accept or make concessions. Take your time, and if necessary, put the request for a concession on the back burner. Most importantly, avoid making a concession without ensuring you will receive something of equal or greater value in return. Preparation is important for maneuverability in a negotiation, as it enables you to cover various scenarios that may occur.
8) Don't Be Afraid to Say No – A bad agreement can be worse than no agreement at all. If what your prospective partner proposes does not satisfy your own goals and objectives, you must be prepared to say "No".
9) Confirm Your Prospective Agreement – Once you have made a tentative agreement on the contractual obligations of both parties, you should verify the terms of the pending negotiated contract both verbally and in writing.
10) Expect the Unexpected – Unfortunately, a common negotiation ploy that many negotiators face in contract negotiations is a final demand or additional concession request by the other party – usually, just when you thought the deal was sealed. Again, don't be afraid to say no, as this is not what you had initially agreed upon.

Conversely, this could also be an opportunity to convince them to offer you an additional valuable concession – but only if it is warranted.

C**onclusion** :With all the changes in the way that customers view suppliers and the shifts in what suppliers of commercial goods and services have to do to get and retain business, the contract becomes more significant than ever.

Flexibility in terms and conditions, creative contractual agreements, being easy to do business with—these are all areas of importance for both buyers and sellers. Effective commercial management can bridge the interests of both parties and balance rewards and responsibilities. It can also protect both parties from unintended commitments and from

making agreements that cannot be fulfilled.

While relationships can become extremely complex, to be effective, the contract should thoroughly address the basic business, contractual and technical elements of the purchase. In general, the more simple and straight forward the contract is, the more likely it will achieve its purpose.