

Simplifying the Art of Contract Management



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Introduction

Negotiating on a project or already bagged one for the company? Great, and congratulations!

In general terms, a **Contract** is a *legally binding agreement which recognises and governs the rights and duties of the parties to the agreement.*

There are primary requisites that constitute a document as a legally binding contract. It must be made by people who are in the capacity to make the contract, i.e. the parties should not be minors, or under the influence of any drugs, or in any other way considered incapacitated to make a particular promise; the parties must define the terms of the contract, clearly describing the intent for which this document is made, for example:

- A) A contract for sale of a house must list out all the details of the house in question, the present owners, the price agreed upon, etc;
- B) It must be for a lawful purpose, a contract to “rob a bank” cannot be considered valid;

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- C) There must be offer and acceptance, that is if one party doesn't offer to sell his house, there cannot be an acceptance to purchase by the other party;
- D) And lastly, there must be consideration, which is quite important as it is common knowledge that there is no transaction without benefits, and consideration is a monetary token given in return of the performance of the obligation agreed upon.

A Project commences with execution of a Contract and any new Contract carries a lot within it:



While the first three blocks in the diagram above looks lucrative, we can always work on making the fourth item 'risk and opportunities' less bothersome for us.

As a general business practice, we are tempted to hear good news of being awarded a new Project and often stands unwilling to spoil the celebrations by negotiating hard on contractual clauses. This is also induced from the pressure of reaching the laid down revenue targets.

That is Where the Problem Begins

We will appreciate that, "any good project can fall flat if it has a bad contract". If no one is managing the performance of the contract, an organization is likely to fail to meet its goals that it had for the project associated with the contract. Such failures may include delayed timelines, cost overruns, mismanaged deployment and many more.

Some success factors for Contract Management:

- the arrangements for service delivery continue to be satisfactory to both customer and provider;
- expected business benefits and value for money are being realised;
- the provider is co-operative and responsive;
- the customer knows his/her obligations under the contract;
- there are no disputes;
- satisfactory delivery progress is demonstrated.

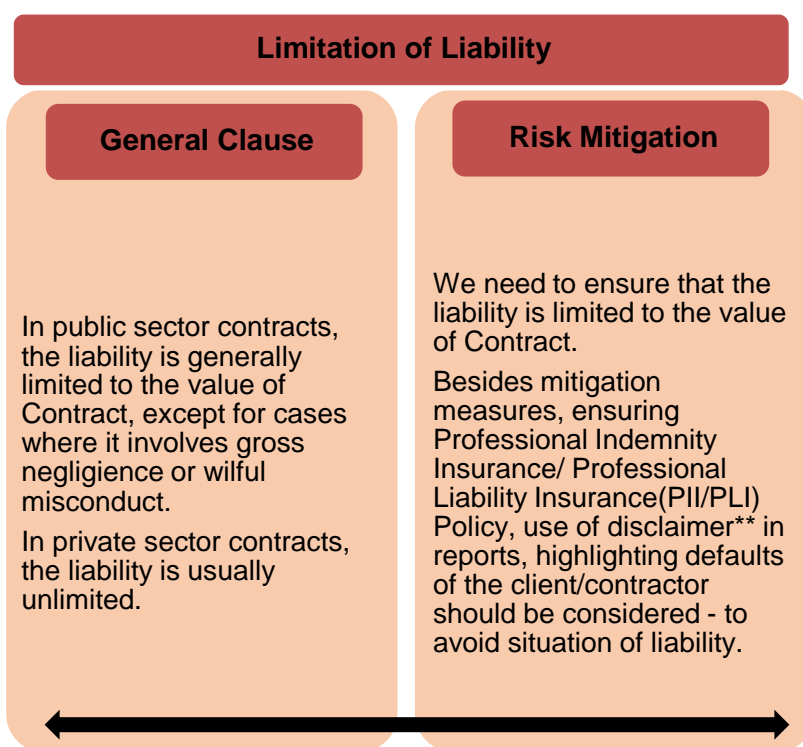
"Organisations that do not manage their contracts effectively will be at a tremendous competitive disadvantage."

This paper attempts to raise awareness on Contract Management and Risk Mitigation, and helps readers to be more mindful when drawing up contracts.

Decoding Contract Clauses

It is important for any given organisation to carefully look through draft contracts prior to rushing to sign off the documents. There are instances where unconscionable contracts happen, i.e. it is a type of contract that leaves one party with no real, meaningful choice, usually due to major differences in bargaining power between the parties.

The undermentioned are some general clauses to look out for in contracts, in order to mitigate risks and liabilities between the consultant and client.



Delay and Damages

General Clause

Generally, there are two types of damages:-

1. **Delay damages**, which usually arise in cases of delay in meeting the timelines stipulated in the Contract Agreement.

2. **Liquidated damages** in cases of negligence, which arise in situations wherein the deliverables/services provided fail to meet the Client's level of expectation and fall short on the primary obligation to ensure due skill and care is provided.

Risk Mitigation

Please ensure that all events of delay that are not attributable to us are reported to the client in a timely manner and the damages are quantified and limited. Also, we must make use of Disclaimers in our reports so as to safeguard our interest against third party reliance and liabilities on account of factors not attributable to us.



Indemnity and Insurance

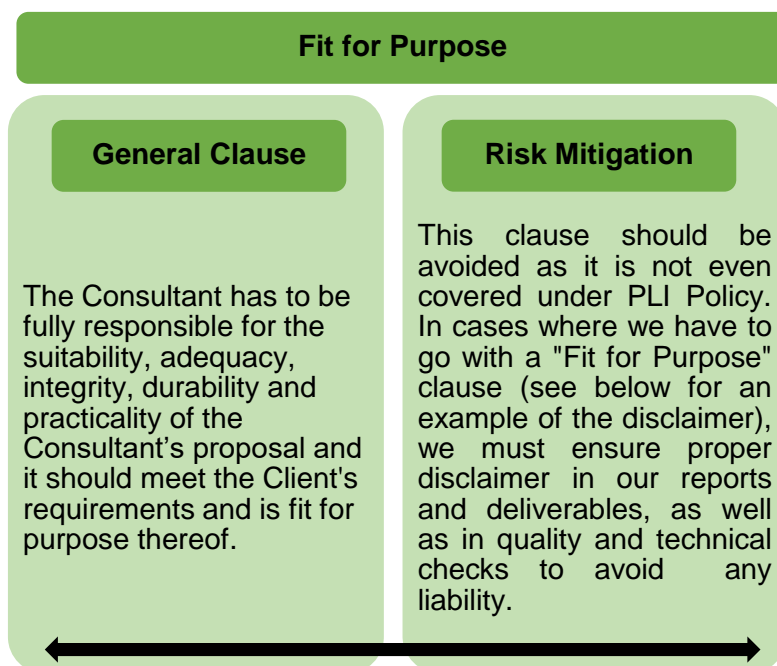
General Clause

The Consultant has to indemnify the Client against any damage, expense, liability, loss or claim which may arise from any breach of the Consultant's responsibility.

Risk Mitigation

We must ensure proper and adequate insurances throughout the lifespan of the Contract. To name a few, we must have Professional Liability Insurance (PLI) with a minimum Contract value, besides having valid vehicle and third party liability insurances throughout the duration of the Contract.





Example: DISCLAIMER

_____ (Name of Consultancy Company) wishes to confirm that the information in this Report has been prepared based on information collected from primary and secondary sources. Wherever information was not readily available, reasonable assumptions have been made, in good faith to draw meaningful inferences and these have been mentioned in the respective sections of the report. The information and analysis presented in this Report is not and does not purport to be comprehensive or to have been independently verified. This report has been prepared by (Name of Consultancy Company) for its client, _____ (Name of the Client) for its use on the project. No external agency or third party shall use any part of this report and shall not put any reliance on the information and data shared in this Report without prior written consent from (Name of Consultancy Company). Any reliance on this report by any third party or external agency shall be solely at their risk and cost, with no obligation/liability on part of (Name of Consultancy Company).

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Modifications and Variations

General Clause

The Contract can be modified including modification in contract amount and scope by agreement between the Parties.

Risk Mitigation

The variation should always be approved by the written consent of both Parties and a proposal in this respect should be sent to the Client in timely manner.



Replacement of Personnel

General Clause


The Consultant has to provide a replacement Key Expert with equal or better qualifications and there are penalties on replacing Key Experts.

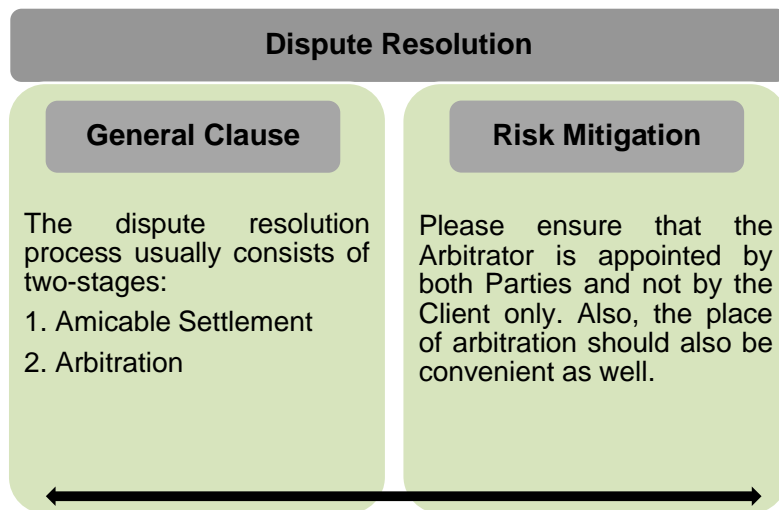
Most of us must have come across cases wherein the Client has gone ahead imposing penalties on the Consultant due to replacement of personnel approved in the Contract. At times, the Contract restricts the number of replacements and any move to replace the CV beyond the laid down threshold results in termination of the Contract.

Risk Mitigation

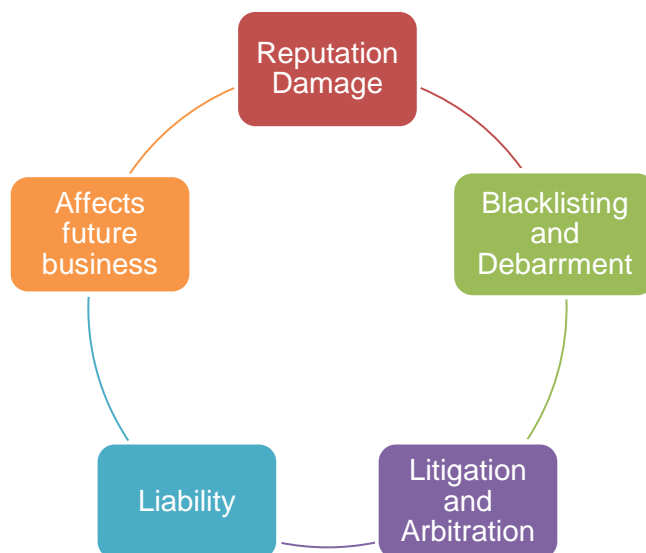
Please ensure that there are no or minimum penalties on the replacement of Key Experts.

Also, the approval process is time bound, i.e. if the CV is not approved within specific days from submission, it should be considered or deemed approved.





Consequence of Poorly Managed Contracts



The above diagram describes the consequences an organisation may have to face if it manages contracts that lack skill, care and proficiency. The extent of damages that can potentially arise, as a result of non-performance of the contractual obligations/scope can be serious – sometimes resulting in termination of contract and further blacklisting of the organisation. A poorly managed contract does not only spoil the reputation of an organisation, it can also damage the current state of affairs, and impact future plans as well.

Conclusion

Contract management is a critical and integral component of project management and therefore it needs to be given due weightage, time and thought. When one is given the opportunity to manage a contract, do spend some time in understanding the rights and obligations that it brings to him/her and the organisation, apart from the technical deliveries and payment terms. Project Managers must seek due advice and support from the local contracts and commercial teams and make due notes on the key obligations and risk elements. Also, as soon as any contractual action or even a communication citing contractual implication is received, it should be handled with due seriousness and the contracts team must be consulted immediately.

On the other hand, it remains the responsibility of the contracts team to do continuous capacity building and awareness with the technical teams - to help them manage their contracts more effectively and successfully. While we are still juggling with the conventional contracts, the world is slowly moving towards "Smart Contracts".

At this juncture, we do not recommend "Smart Contracts", but we suggest *smart handling of contracts*.

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