

MINE ACTION CONTRACTING

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1. Introduction to Contract Law

- Offer
- Acceptance
- Consideration
- Contract

2. Formation of Contract and Type of Agreements

- How is the agreement likely to be formed?
- Is the agreement a one-off agreement or is it to form a set of standard terms which are to apply over a series of engagements?
- How is the agreement to be documented?
- “Battle of the forms”.
 - Geneva International Centre for Humanitarian Demining (“GICHD”) has a model mine action contract that can be used as a template.
 - GICHD Mine Action Contracting Checklist.

3. Date

- The agreement will often be dated once both parties have signed the contract.
- Do not back-date contracts.
- “This agreement has an effective date of”

4. Parties

- Is the parties properly identified in the contract?
- Legal Capacity to enter into a contract.
- Due diligence is recommended before entering into a contract. to confirm that the counter-party does not pose undue reputational risk.
- Scope of due diligence
 - To confirm that the counter-party is legally existing.
 - To confirm that the counter-party does not pose undue reputational risk.
 - To confirm that the counter-party is of sufficient technical and financial standing.
- Beware of "as agent" or any suggestion the party is contracting on behalf of someone else.

5. Responsibilities of the Contractor

- To perform the obligation under the contract.
- Are there any additional obligations with which the contractor must comply, for example:
 - Compliance with specific legislation;
 - Maintenance of time sheets;
 - Procuring the availability of key personnel or the continuity of personnel;
 - Provide mission reports and monitoring reports;
 - Are there any limitations on the scope of Contractor's responsibilities; and
 - Others.

6. Services

- What are the services?
- Will the services be agreed by the time the agreement is entered into or will they be determined in accordance with a process to be set out in the agreement? If so, what form is this process to take?
- "Agreements to agree" are unenforceable as a matter of English law.

7. Duration

- When will the agreement commence?
- When will the services commence?
- What will be the term of the agreement?
- When will the services be completed by?
- Is Contractor exposed to a claim for late completion?
- Do “liquidated damages” apply for late completion?

8. Responsibilities of the Client

- In addition to payment, are there any specific obligations with which the Client must comply, for example:
 - To provide Contractor with specific information, for example; for the purpose of establishing a project specification;
 - To designate a project manager;
 - To make arrangements with local authority;
 - To provide site access, food, accommodation and/or transport;
 - To provide security, medical facilities and visas/permits.
 - To provide a completion/handover certificate on completion of the services.

9. Responsibilities of the Client's Price & Payment

- How will fees be charged, on a fixed price or time and materials basis?
- If fees are charged on a time and materials basis is there a fee cap?
- When will fees be paid, for example, on the attainment of agreed milestones or at monthly intervals?
- How will fees be paid, for example, what will the invoicing procedure be?
- Is the Client entitled to set-off any monies from the fees due to Contractor?

10. Change Control

- Does the Client have a right to request or make changes/ impose additional work?
- If the Client requests a change in services, can Contractor charge for the additional work?
- Are any items reimbursable at cost or cost plus a margin?

11. Restrictions

- Will restrictions be placed on either party and if so:
 - What kind of restriction?
 - For how long?
 - In respect of what business and what geographical area will these apply?
 - Non Competition
 - Exclusivity
 - Do not poach each other staff

12. Warranty

- What, if any, warranty will Contractor be required to give?
- What remedies, if any, will Contractor be required to give in the event of a breach of warranty?

13. Personnel

- To what extent will the Client have the right to select or reject key personnel, Contractor's manager or all of Contractor's team?

14. Intellectual Property Rights

- Which party is to own the intellectual property in products created as a part of the services?
- Will any licences or consents be required to allow either party to use products already in existence, in order to supply the services?

15. Indemnities

- Is Contractor to give the Client an indemnity in relation to any claims arising out of
 - Death or personal injury to Contractor's employees; and
 - Damage to Contractor's property?
- Is the Client to give Contractor an indemnity in relation to any claims arising out of:
 - Death or personal injury to the Client's employees; and
 - Damage to the Client's property?
 - Are these indemnities restricted to the contracting parties or extended to members of their respective groups?

16. Limitations of Liability

- Will Contractor cap its liability and if so how will this be determined?
- Are consequential losses excluded?
- How are residual liabilities addressed post completion of the work?

17. Insurance

- Will Contractor be obliged to take out insurance and, if so, what type and for how much?
- Will the Client be obliged to take out insurance and, if so, what type and for how much?
- Will the Client's insurers waive any subrogation rights?
- Generally, the recommended minimum insurance for the Contractor should be:
 - Employer's liability insurance
 - Public liability insurance
 - Motor vehicle insurance

18. Confidentiality

- What obligations relating to confidentiality will the parties enter into? Will these be reciprocal?

19. Force Majeure/ Security Constraints

- “Force Majeure”
- Excuses delays in performance
- Need to specify what constitutes “Force Majeure”.
- Security Constraints

20. Anti-Corruption

- Does the contractor have an anti-bribery/corruption policy in place?
- Does the contract prohibit bribery?
- Is the contractor obliged to comply with a code of conduct which regulates interaction with local communities (sexual discrimination, child labour etc)?

21. Termination

- What events will give rise to a right of early termination?
- What procedure will be adopted in the event that a party has a right of early termination?
- What will be the respective parties' obligations in the event of early termination?
- Which provisions of the agreement will survive termination?

22. Assignment and Sub-contracting

- Will either party have a right to assign or sub-contract their rights and obligations under the agreement?

23. Choice of Law and Jurisdiction

- Law
- Jurisdiction



Two Different Concepts

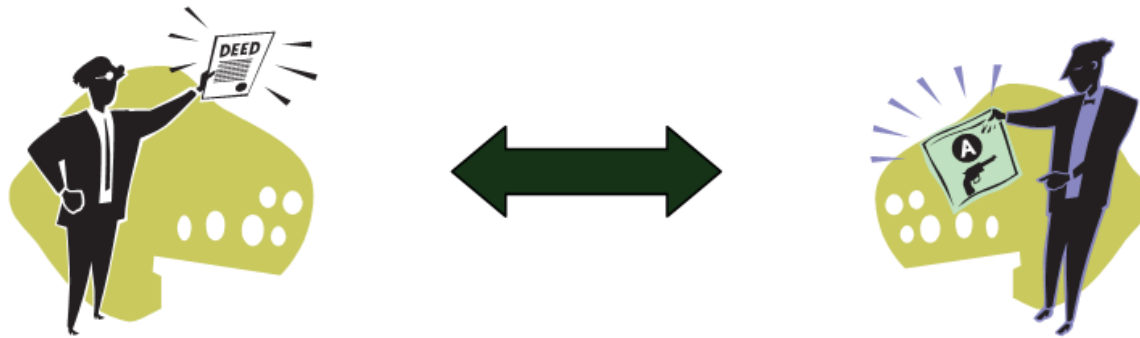
- Will the Client accept English law?

24. Jurisdiction

- **Jurisdiction** (from the Latin *ius*, *iuris* meaning "law" and *dicere* meaning "to speak") is the practical authority granted to a formally constituted legal body or to a political leader to deal with and make pronouncements on legal matters and, by implication, to administer justice within a defined area of responsibility. The term is also used to denote the geographical area or subject-matter to which such authority applies.
- i.e. the Court which has the legal right to make judgment on a matter.

25. Dispute Resolution

- Negotiation



- Mediation



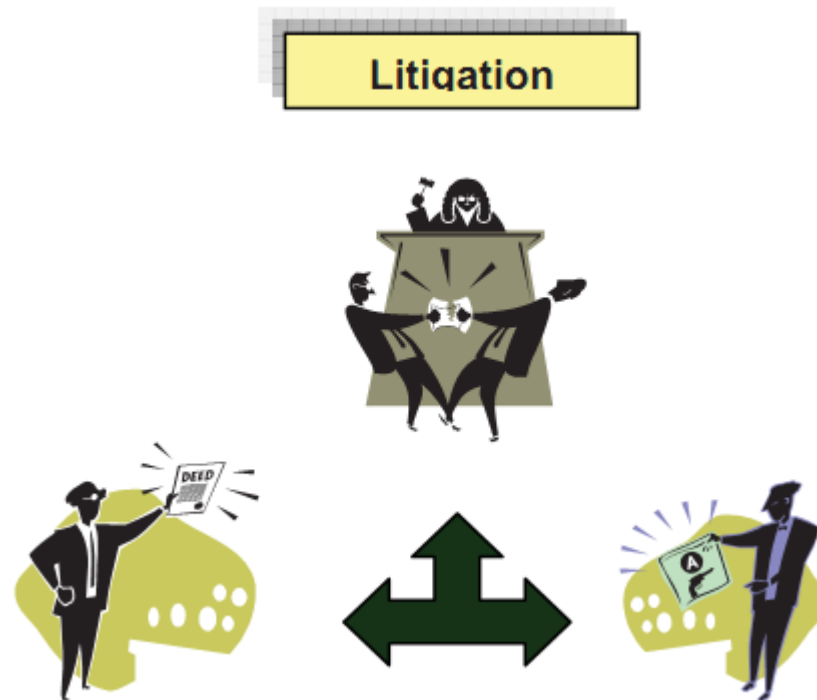
26. Dispute Resolution

- Arbitration



26. Dispute Resolution

- Litigation



Conclusion

Recommendation

Question & Answer