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## **BEST PRACTICES GUIDE TO CONSTRUCTION LAW AND CRAFTING CONTRACTS**

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**SESSION 1: TUESDAY, DECEMBER 10, 2024 \* 8:45AM TO 12:00NN VIA ZOOM**  
**SESSION 2: WEDNESDAY, DECEMBER 11, 2024 \* 9:00AM TO 12:00NN VIA ZOOM**  
**SESSION 3: THURSDAY, DECEMBER 12, 2024 \* 9:00AM TO 12:00NN VIA ZOOM**

### **Course Outline**

#### **I. Preliminaries**

- importance of having a written construction contract (default provisions of law, risk shifting/ allocation)
- problems in contract drafting and implementation stage
- scrivener's error

#### **II. 7 Relevant Laws**

#### **III. Common Transaction Structures in the Philippines**

1. EPC or Turnkey
2. Design and Build
3. General Construction

#### **IV. Common Pricing Arrangements in the Philippines**

1. Lump Sum
2. Cost Plus

#### **V. 3 Common Template Construction Contracts used in the Philippines**

#### **VI. Breach of Contract by Owner**

- a. Failure to Make Progress Payments
- b. Misrepresentation
- c. Concealment
- d. Contractual interference
- e. Material Change of Contract / Abandonment
- f. Improper termination of contract

#### **VII. Breach of Contract by Contractor**

- a. Warranties/ Performance Standards
- b. Delay
  - i. Delays
    - Time is of the essence
    - Demand not necessary
    - Slippage
  - ii. Liquidated Damages
    - Industry standard
    - 1/10 of 1% of the contract price per every day of delay but not exceeding 10% of the total contract price

- Unperformed work



- c. Loss of Rents and Profits
- d. Fraud

### **VIII. Critical Provisions and sample clauses (with pros and cons for owner and contractor)**

- a. Parties
  - Capacity of parties
  - Authority of representatives
- b. Recitals
  - Intention of the parties
- c. Contract Documents (order, additional documents)
  - Construction or project documents
  - Order of priority
  - Additional documents
- d. Scope of Work
  - Inclusions
  - Exclusions
  - OSM
  - Permits (except PCAB)
  - Miscellaneous items
- e. Responsibilities of the Owner and Contractor
- f. Contract Price
  - Manner of Payment or Payment Schedule
  - Invoicing (progress billing less retention)
  - Disputing an Invoice (suspension of payment/ payment under protest with or without interest)
- g. Notification
  - Parties
  - Manner
  - Period
- h. Variation
  - Change orders by Owner or due to fault of contractor
  - Approval of change order
  - Article 1724 of the NCC, as amended
  - Contractor's guaranteed minimum
- i. Taxes, Duties, and Fees
  - Withholding taxes
  - Certificates
- j. Retention
  - 10% of the total contract price
  - Period of release
- k. Bonds
  - Performance Bond
  - Advance Payment Bond
  - Payment Bond
  - Retention Bond
  - Guarantee Bond
  - Warranty Bond



- l. Insurance policies
  - CARI
  - Irrevocable beneficiary
  - Co-insured
- m. Risk of Loss
  - Res perit domino
  - Acceptance and carve out
- n. Termination
  - For convenience (unilateral)
  - For a cause
  - Mutual termination
- o. Default
  - Insolvency
  - Bankruptcy
  - Abandonment
  - etc
- p. Indemnities
  - Indemnification and free and harmless clause
  - Payment of counsel of choice
- q. Set-off
  - Voluntary
- r. Certificates
  - Substantial Completion
  - Final Completion
  - Final Acceptance
- s. Option to Take Over
  - Negative slippage
  - Contractor's default
  - Step in rights
- t. Contract Period/ Completion
  - Catch up plan
- u. Force Majeure
  - Notification
  - Effects (duty to preserve and minimize effects)
  - Duration
  - List/enumeration
- v. Limitation of Liability and Consequential Damages
  - Formula
  - Cap
- w. Extension of Time
  - Other unforeseen circumstances not necessarily Force Majeure
  - Holidays (legal, local or national)
- x. Preterition of holiday
  - Non-banking days
  - Non-working days
- y. Construction Defects and Defects Liability Period
  - Article 1723 of the NCC, as amended
  - Punch list



- z. Delays
  - Time is of the essence
  - Demand not necessary
  - Slippage
- aa. LD, Penalty, and other damages
  - 1/10 of 1% of the contract price per every day of delay but not exceeding 10% of the total contract price
  - Unperformed work
  - Penalty not related to time delay (breach of reps and warranties, default such as abandonment)
  - Other damages not in relation to time delay, breach of reps and warranties, default such as abandonment
- bb. Escalation
  - Conditions
  - Basis/ formula/ Rate
- cc. Labor Cost Escalation
  - Formula
  - Cap
- dd. Other compliance
- ee. Subcontracting
  - Back-to-back penalty
  - Limitations
- ff. Assignment
  - For purposes of financing
  - For purposes of rediscounting
- gg. Cooperation
  - Deed of Cooperation
- hh. Warranties
  - Manufacturer's warranty
  - Warranty against hidden defects
  - Endorsement or assignment, if necessary
- ii. Representations and Warranties
- jj. Testing and Commissioning
- kk. Dissatisfaction
  - Curing
  - Suspension
  - No- compensation
- ll. Intellectual Property
  - Irrevocable perpetual license for free
- mm. Dispute Resolution Mechanism
  - Good faith negotiations
  - RA 9285
  - Arbitration or Litigation (take note of small claims)
- nn. Liens and Claims



- oo. Miscellaneous Provisions
  - Jointly drafted or independent legal advice
  - Governing law
  - Separability and Amendments
  - Entire agreement
  - Execution in counterparts
  - Further acts and assurances
  - Duty to keep records
  - No agency
  - No waiver

## **IX. Green Regulations and Environmental Liability**

- a. Green building regulations
  - Philippine Green Building Code
- b. Environmental and Pollution Liability

## **X. Arbitration**

- Threshold amounts
- CIAC (With sample case study)
- Opting out (With example case study)
- Termination clause (With sample case study)
- Suspension of work and payment

## **XI. Key Take Aways**

**Note:** The lectures and discussions may not necessarily follow the sequence presented in the above course outline. The use of examples are intended to incorporate several principles together to effectively impart knowledge to the audience.

**For query, consulting requirements or request for in-house training programs, please contact:**

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