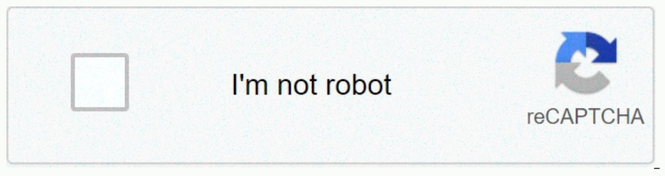

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Mutual termination agreement template uk

By Roqiyah Nur Mohd. Sharifuddin Construction industry is a huge and big industry. The industry involved so many works; so many trade, workers, material, contract document and so many things. The contract document usually is from the (Request for Proposal) that submitted by the tenderer that then be evaluated by the tender committee. If the entire requirement is fulfilled, the Request for Proposal is usually converted to the Agreement of Contract or Contract Document or called Condition of Contract. The Condition of Contract may be altered by the client to suit the price tendered by contractor. There will be some terms added by the client to make the Condition of Contract clearer and understandable. One of the terms is mutual termination agreement. Most of time, the mutual termination clause is like a silent in a Condition of Contract. Nobody bother about it. There are no mutual termination clause in PWD 203A (2010), PAM (2006), CIDB (2000) etc. Surat Pekeliling Perbendaharaan (SPP) Bil. 3 Tahun 2008 Pelaksanaan Syarat Perubahan Harga Di Dalam Kontrak Kerja was issue that suits the situation for increment in price for that year. They introduced Clause 32 Mutual Termination. The existing of Mutual Termination Agreement by Amran (2009) is to explain the Clause 32. There are 14 clauses all of them. The problem is, the 14 clauses are not covered all field in construction industry. That is why, in this study, the author will include few more terms to complete the existing Mutual Termination Agreement. Thus, the objective of this study is to add the terms for existing mutual termination agreement. Lastly, this terms; mutual termination agreement will be delivered and understood by all, especially by the contractor who are mostly involved in construction industry Topics: TH Building construction Year: 2015 OAI identifier: oai:generic.eprints.org:50689/core392 Provided by: Universiti Teknologi Malaysia Institutional Repository Downloaded from There are 4 main ways contracts terminate or can be terminated (there is a difference): by performance: The contract runs its course, and the contract is performed by agreement: The parties agree to end the contract by agreement, with another contract by breach of contract: The innocent party has a right of termination for breach of contract, when party does not deliver what was promised and is in repudiatory breach, or another agreed standard of breach by the law of frustration: the underlying circumstances of contract change, which material alter the performance requirements of the contract They're only the general grounds in law that are available in all contracts: they can be qualified or excluded by the agreement itself. More on that further down. Termination vs Rescission Focusing on outcomes for a moment. Labels of legal terms is important in law. Using the same label for the same thing means less room for confusion. Termination as a Remedy Termination of a contract assumes that there is a contract in force. It ends an existing contract. Rescission as a Remedy The remedy of rescission is fundamentally different to termination of a contract. To rescind a contact is not to terminate a contract. Rescission is a legal remedy, like termination. When it is available as a remedy, it unravels the entire contract. That is, renders a contract null and void - as though it never existed in the first place. Misrepresentation and Mistake There are a series of causes of action where rescission is available as a remedy. That's when contracts are made by two parties, and of the parties has relied on: a misrepresentation of fact (a false statement) made by other parties, and/or a fundamental mistake of understanding by one of the parties, to enter the contract. There are other grounds for rescission. Misrepresentations and mistakes can effect the status of the agreement reached by the parties and the understanding between them at the time the contract is formed. In cases such as these, it is said that agreement has not been reached at all, and the effect of the contract should be entirely reversed. Rescission however is not available in all cases to cancel a contract. Cancellation of a Contract Is the cancellation of a contract to be only for the future, or is it to unravel the entire agreement? Using common language, "cancellation of a contract" can mean two things. It can mean: terminating the contact: the parties have no further legal rights against one another, from the day of termination and into the future, or rescinding the contract: treating it as though it never existed, and taking the steps required to undo the steps that have been taken to perform it - assuming that can be done. When it comes time assess whether a party has a right to cancel a contract, break it or back out of it, it's fundamentally important in law to know whether rescission is available as an option, or whether a business to business contract has moved so far along that only rights of termination are available. It depends what the objectives of the party which wants to end the contract. Contract Performance Delays Contract law has an eye for events in the real world, when it comes to terminating contracts. Events on the ground can develop which create opportunities for business to revisit the terms of contracts, and take advantage of those situations when opportunity comes knocking – and terminate contractual relationships. Failures to perform contracts - for any reason - can lead to a serious breach of contract and then in turn give rise to a right to discharge the contract: ie termination of the contract. For example, unexpected events can cause delays in delivery of goods contracted to be supplied on a timetable (and for that matter, contracts for supply of services) whatever they may be: electronic components, finished goods, professional services and/or performance of building works, to name a few. Delays caused by unexpected events affect a contracting parties' ability to perform contract. A party may no longer be able to deliver on the contract - which in turn can give rise to rights to terminate the contract altogether. 1. Termination by performance When both parties to a contract have performed all their obligations under a contract, including all express and implied terms a contract comes to an end. Each of the parties have performed their obligations with “perfect precision”: exactly as was specified by the contract. And if the contract is for a fixed time – say 2 years – if the contract has been performed with that perfect precision as at the end of the 2 years. A few words about contract performance: any deviation from the contractual obligations will amount to a breach of contract. In Bolton v Mahadeva (1972), the contractor was required to install a central heating system. The heating system didn’t work. Contractor couldn’t claim payment: he didn’t fulfil the primary obligation to heat the house. In contracts for services by a contractor, the obligation to perform may not be so strict. The obligation is usually not to achieve a specific result, but just to exercise reasonable care and skill when performing the contractual services. But is depends on the precise terms of the contract - what the contractor is promised to do. Circumstances of the contract may allow payment for part performance of a contract on a quantum meruit basis. A reasonable price is required to be paid for work performed at the request of the other party. This enables the performing party - the contractor or supplier - to get paid fair and reasonable remuneration for their work. It requires a contract where the obligations to perform are divisible, such as by phases or milestones. Payment may be recovered for the obligations completed, where: partial performance has been accepted by the other party the other party prevents complete performance by a party ready willing and able to perform, or a substantial part of the contract has been completed. An IT consultant to a contract "tenders performance" by attempting to perform their obligations under the contract. They are prevented from performing by the other party. Depending on the type of contract, the tendering party - in this example, the IT consultant - may be considered to have discharged their obligations under the agreement, and the contract terminates. If the consultant's tendered performance is refused by the other party, they may be sued for breach of contract. Further performance is not required but the debt arising under the contract for products or services is not discharged. In debtor-creditor relationships, if a debtor tenders payment for the debt and the creditor refuses it, then they still need to pay. If the debtor is paid after tendering performance, the money is usually paid into court as part of the defence of tender. 2. Termination by Agreement It is always open to parties to agree to variations to their contractual arrangements. That includes terminating it by agreement. Both parties are able to consent to termination of a contract. When they do, the mutual obligations to perform contractual obligations come to an end. Variations to Terminate This termination by agreement is actually a variation of the contract. As such it must be supported by fresh consideration to be legally binding. So, where both parties have performance obligations (ie executory consideration) outstanding under a contract, an agreement to discharge one another from further performance will usually be fresh consideration. That’s enough to satisfy the requirement for consideration, making the termination by agreement legally binding. Legally binding variation for Termination For the agreement to be legally binding there must be either: fresh consideration from both parties a deed releasing the other party from their obligations – there is no requirement for consideration in a deed a separate agreement supported by fresh consideration, to amount to accord and satisfaction, or a promissory estoppel applies on the facts. Broadly speaking, an estoppel is made out when: a promise is made to end the contract by one party to the other that promise intended to be binding and acted upon by the other party the other acts on the promise, and changes their position as a result. The contract doesn’t need to say that the parties intend to change the agreement in the contract itself. Even where a variation clause says that no variations or changes may be made to the contract, changes can be made to it by a varying its terms. If there is a contractual procedure in a variation clause to change it though, that procedure should be followed. Conditions Subsequent Terms of contract can be built into a contract to terminate it. These are known as conditions subsequent. A condition subsequent stipulates a state of affairs which causes existing contractual obligations to come to an end. The state of affairs - whether an event takes place or does not take place - does not have to be out of the control of the parties. 3. Termination for Breach of Contract Termination for breach of contract requires a repudiatory breach of contract. Here’s the tldr. Conduct is repudiatory if it “deprives the innocent party of substantially the whole of the benefit”, intended to be received for performance of the obligations under a contract. This is known as the “substantially the whole benefit” test. Repudiatory breach is often expressed as a breach goes "to the root of the contract”. Is the breach serious enough? it needs to be a serious breach – not a breach of warranty - that is: a breach of a condition or breach of an innominate (aka "intermediate") term which deprives the innocent party of substantially the whole benefit of the contract, are repudiatory breaches of contract and therefore sufficiently serious to terminate a contract. These alternative terms don’t necessarily mean “repudiatory breach” – it depends on a proper interpretation of those words within the context of the contract. If the parties to a business to business contract agree to terminate by reference to those terms, are they are able to do so. And just because there’s no express right stated to permit a party to terminate in a contract, doesn’t necessarily mean that it can’t be terminated. Anticipatory Breach When one party expresses an intention to: not perform their obligations under the contract; or perform them in a way in which is inconsistent with the original contractual terms, it is an anticipatory breach. It entitles the other party to terminate. Conduct or behaviour amounting to an anticipatory breach may be either explicit or implicit. Express words or writing aren’t required. Anticipatory breach may be communicated by conduct, such as a contractor behaving in way that indicates they won't perform when their strict legal obligations fall due for performance When a defaulting party commits an anticipatory breach, the innocent party: may wait and allow the party in breach to properly perform its contract obligations. If the party in breach does so, then the right to terminate is lost may sue for damages as soon as the anticipatory repudiation occurs, and not wait for the date of performance also has the option of affirming the contract by performing their obligations under it. In the case of White and Carter Limited v McGregor (1962), the defendant tried to terminate the contract. The claimant refused to accept the termination and continued with performance under the contract, later suing the defendant for the full contract price. The claimants were successful in recovering the full contract price The option of accepting the repudiation or terminating the contract is not available where the innocent party requires the cooperation of the other party to perform the contract or if they have no real interest in performance of the contract. When there is a Repudiatory Breach When there is a breach of contract, it does not automatically discharge the contract Once you have a right to terminate, it must be exercised to terminate the contract. The exceptions to this rule are rare and limited Until the right has been exercised, the contract continues in force The right to terminate is exercised by telling the party in breach that the contract is terminated (it helps to explain all the reasons why, too when you do) When a contract is terminated: the performance obligations under that contract are discharged at the date of termination however, performance of secondary obligations are not discharged and continue in force, such as: maintaining the confidential information of the other party the obligation to pay damages for any losses caused to the innocent party. Wrongful Termination Attempting to terminate a contract in the absence of a repudiatory breach is a repudiatory breach in its own right - even if you are mistaken, and think that a repudiatory breach has been committed. When that happens, it means that the other party to treat the contract as discharged, and claim damages. This happens when an innocent party thinks they have a serious – repudiatory – breach. And they don’t. For example: In Federal Commerce and Navigation v Molena Alpha (1979), the owner of a ship wrongly believed it was entitled to repudiate the contract. It wasn't. The repudiation was wrongful and therefore the other (now innocent, for legal purposes) party could treat the contract as discharged. That’s because the owner was in repudiatory breach itself.