

Business Contracts Handbook

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Glossary

Note: The following are general descriptions of how certain words and phrases are used in this book – they are not legal definitions!

acceptance	Agreement that something has been done or delivered as per contract.
account of profits	An alternative to damages in IP claims by seeking a share of the other party's benefits rather than compensation for own loss.
ADR	Alternative dispute resolution – such as a form of non-binding mediation.
agent	A party authorized to act on behalf of another.
agreement to agree	A contract that lacks certainty on a vital term.
arbitration	An alternative to litigation in which the dispute is heard by, typically, one or three arbitrators who will make a decision based on the evidence heard.
Articles 81 and 82	The main anti-competition rules of the European Treaty.
articles of association	The internal constitution of a limited company.
assignment	The transfer of intangible rights/obligations, such as a contract, licence, trademark or copyright.
attest	Witness.
bailment	Lodging of goods by one party with another with an express or implied obligation to look after the goods.
best endeavours	A very high standard of effort.
block exemptions/ specific exemptions	Specific exemptions from Article 81.
blue-pencil test	A test operated by the courts as to whether offending parts of a restrictive covenant or similar term can be deleted.
boilerplate	A contract or clause of general application.
claim	A demand for compensation or other remedy for breach of contract or other civil wrong.
claimant	A party making or threatening to make a claim.

claims handling	The process of making, defending or otherwise dealing with claims.
collateral contract	An agreement running alongside main terms of the contract.
comfort letter	A side letter which may or may not be legally binding.
common law	Judge-made law developed from decisions on individual cases.
conflict of laws	Where there is an international element to a contract and the laws of the countries involved differ on the issue in question.
connected	A specific degree of association between two or more parties, such as associated companies, relatives or those having common interest in a business.
consequential loss	Loss arising from breach of contract, negligence or tort other than the immediate physical or financial damage or injury directly arising.
consideration	Money or some other obligation of value.
constructive dismissal	Resignation of an employee as a result of breach of contract by the employer.
construe (also 'construction' of documents etc.)	Interpret/decipher the meaning of.
consultancy	Appointment of a person (other than an employee) to assist or advise in relation to a project or business.
consumer	An individual buying products or services in a personal (and generally) non-business capacity.
contra proferentem	The principle that an onerous clause will be interpreted by the courts, in case of doubt, against the party seeking to impose it.
contract	(For the purposes of this book) an agreement which is legally enforceable.
control (of companies)	The ownership of [more than] 50 per cent or the right to direct the affairs of a company.
copyright	The right to prevent another person from reproducing all, or a substantial part of, an original work.
corporate veil	The protection of incorporation given by company law.
counter-offer	A revised offer made on different terms.
counterpart	One of several signature parts of a contract or deed.
course of dealing	One or more previous transactions between the same parties relating to a similar subject-matter.
damages	Compensation awarded by the courts for breach of contract, negligence and other appropriate cases.
deed	A document which is expressed to be and is 'signed as a deed' and witnessed.

defendant	A party defending court proceedings.
del credere agent	An agency where the agent guarantees to the principal that the third-party customer will perform the contract.
de minimis	A low-level threshold, often used in relation to competition law, but also sometimes used in relation to matters such as warranty claims.
directives	European laws required to be implemented by each of the member states in their respective territories.
disclaimer	A contract item or notice seeking to exclude or limit liability for loss (see also exemption clause).
distance selling	Selling (usually to a consumer) without meeting face-to-face – typical of an Internet transaction.
distributorship	Relationship whereby a supplier appoints a distributor to buy and resell the supplier's goods.
domain name	The name used, particularly by an organization or business, to identify itself on the Internet or World Wide Web.
dominant	A business may be dominant in the market if it has the ability in effect to behave to a large extent independently of its competitors.
due diligence	Checking information regarding the other contract party, or details supplied by that party, that are basic to the contract.
drafting	Preparing the written layout and wording of a contract.
EEA	European Economic Area, comprising the European Union, together with the additional states who were previously members of the European Free Trade Association (Iceland, Liechtenstein and Norway).
eiusdem generis	The general proposition will apply to the particular examples given.
end-user	Consumer using a technology product or service.
entire agreement clause	A clause stating that all relevant terms are included in the one contract.
equity	Decisions of the courts of equity initially based on correcting any unfairness of common law, subsequently developing into even stricter rules, now giving the basis for 'equitable remedies'.
escrow	The holding of funds or a document (including details of a computer source code) pending the occurrence of a pre-stated event.
estoppel	The rule that someone is prevented from denying that which they have previously stated or accepted as correct.
European Treaty	The formal constitution of the European Union (formerly the Treaty of Rome).

European Union (EU)	The economic and political union, currently of 27 states, previously the Common Market or the European Economic Community.
exclusion clause	An exemption clause that seeks to exclude certain liability altogether.
exclusivity	A term denoting that one or more parties agree not to take specified action in a specific area.
exemption clause	A clause in a contract seeking to exclude or limit the liability of one or more parties to the contract. (Cf. limitation clause and exclusion clause.)
expert	A person qualified and experienced in a particular discipline, who will make a decision from personal knowledge of the subject in question.
fiduciary duty	A duty to act honestly and in good faith in relation to another party.
force majeure	An event beyond the control of one or more of the parties to a contract.
franchising	The grant of the right to use a brand name and certain other intellectual property rights in relation to an established business format.
frustration	The point when a contract becomes impossible to perform through no fault of the parties.
further assurance	The obligation to take any further action necessary to perfect a contract or deed.
good faith	An honest approach (but not necessarily a legal commitment).
goods	Items which have a physical character (other than money), but which may be specifically defined by individual statutes or regulations.
guarantee	<ol style="list-style-type: none">a) An undertaking that goods or services will perform to a stated level (cf. warranty);b) An undertaking from an individual or company to pay money on behalf of another if that other fails to pay.
horizontal agreements/restraints	Agreements/restrictions between two or more parties operating in parallel, such as competitors in relation to similar products (cf. vertical agreements).
incapacity	Legal inability to do something, such as enter into a contract.
incorporation	<ol style="list-style-type: none">a) The point at which a limited company is legally established;b) The inclusion of a term in a contract.
Incoterms	Recognized terms used in international trade, published by the ICC.
indemnity	Requirement in a contract or deed to repay another party for a claim made against them or loss incurred by them.

independent contractor	An individual or firm who provides services to a party but who is not an employee of that other party.
injunction	A court order requiring a person to do something or preventing a person from doing something.
insolvent	Bankrupt or unable to pay debts (including liquidation, receivership and administration).
intellectual property rights	Patents, trademarks, copyright and other non-physical rights given legal protection.
interpretation clause	A clause giving the precise meaning attributed to a word or phrase in the contract.
jurisdiction	The right of a particular court or the courts of a particular country or a tribunal to hear and adjudicate on a particular dispute.
know-how	A process or way of doing business.
legislation	Statutes, regulations and directives.
licence	The right to do or use something, such as intellectual property, for a period of time.
limitation clause	An exemption clause that seeks to limit (but not totally exclude) certain liabilities.
limitation period	The period within which legal action must be commenced.
liquidated damages	A specified level of compensation as an agreed pre-estimate of loss.
liquidation	The point at which a company finally ceases to exist and is wound up.
litigation	A dispute pursued in court.
milestones	Predetermined markers of progress – for example, in a technology project.
misrepresentation	A representation that turns out to be incorrect.
mitigation of loss	Proper efforts to reduce the loss caused by breach of contract.
necessaries	The essentials of life, such as food, drink, clothing, housing, vital medicine and their modern equivalents.
negligence	Breach of a duty of care to a third party, causing loss or damage.
nemo dat	The rule of law that you cannot give what you do not have.
non-compete clause	A restrictive covenant (see below).
non est factum	A document that was not the type of transaction that the relevant party intended or agreed to enter into.
novation	The replacement by one party to a contract of another party.

null and void	Deemed never to have come into existence in the first place.
operative clause	A clause setting out what a party has to do or how the contract works.
outsourcing	Arranging to have carried out externally a business or project previously carried out in-house.
part performance	A situation where a person or company partly performs an agreement which they are led to believe exists.
passing-off	Representing goods or services as being associated with another company or brand.
personal contracts	Contracts which, by their nature, are personal to the original parties and cannot be assigned without the consent of the other party.
privacy	The human right to a private and family life.
privity (of contract)	The principle that only the parties to a contract (or those intended to have a defined benefit under it) may enforce the contract.
public domain	The accepted level of general public knowledge or information.
quantum meruit	Payment of a fair rate for the work actually done (as opposed to a pre-agreed amount).
reasonable endeavours	Commercial efforts to achieve a result but less than best endeavours.
recital	A preliminary clause explaining the background to a contract.
rectification	The legal process of amending a contract to reflect the actual intentions of the parties.
regulations	Statutory instruments and other delegated legislation brought into force by the government as authorized by statutes; also laws passed by the European Commission having direct application in member states.
regulatory body	An official body with powers to oversee certain activities, such as the the Financial Services Authority (FSA) in respect of certain financial dealings.
representation	A statement of fact about goods or services.
repudiation	A fundamental breach of contract by one party which entitles the other or others to treat the contract as at an end.
resale	A subsequent sale – by retail or otherwise.
rescission	Cancellation of a contract as if it had not been in force.
restitution	An order to restore another party to their original position – for example, by returning goods or money to them.

restraint of trade	A limitation on the ability of one or more parties to trade freely.
restrictive covenants	Provisions in a contract preventing one or more of the parties from undertaking certain specified activities.
retention of title	Reservation by the owner of goods to title in them until an event (such as payment for those or other goods) has occurred.
revocation	Withdrawal or revoking an offer.
satisfactory quality	An obligation as to the condition of goods implied by the SGA.
service levels	Stated expected levels of performance of a service with regard to objective criteria.
severance	Deleting words from a contract.
sole remedy clause	A form of exemption clause in which the innocent party's rights in respect of a breach by the other are limited to a specific remedy.
statutes	Laws formally passed by parliament.
statutory duty	A legal duty set out in a statute.
subject to contract	Words used to indicate that there is no intention to enter into a legally binding agreement.
subrogation	The principle that an indemnifying party, such as an insurer, can take action on behalf of the party they are indemnifying.
subcontract	Delegate all or part of a contract to another party.
takeover	Taking control of a company (normally by buying the majority of the shares).
term	<ul style="list-style-type: none"> a) A provision in a contract (sometimes used by courts to mean a fundamental provision); b) the period a contract is due to run.
termination	The end of an agreement.
time of the essence	Stipulation in the contract that an obligation be performed strictly on time, failing which a material breach of contract will arise.
title	Legal ownership.
tort	A civil wrong, such as negligence.
transfer regulations	Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).
undertaking	<ul style="list-style-type: none"> a) A commitment to do something. b) An active business (cf. transfer regulations).
undue influence	Exercise by one person of excessive influence over someone else relying on them.

unenforceable	An agreement or deed which the law, for a particular reason, will not be prepared to enforce.
vertical agreements/restraints	Agreements/restrictions between parties in a vertical relationship, such as supplier and distributor (cf. horizontal agreements).
vicarious liability	Legal liability for another party, such as an employee.
voidable	An agreement or deed which is subject to a defect that can destroy it.
waiver	The effective acceptance by one party to a contract of a breach of that contract by another party.
warranty	a) A guarantee of quality or performance; b) A statement that certain things are, or will be, true at a stated date.
without prejudice	Words used to protect a genuine attempt at negotiation from being produced in court as evidence.
writing	Representing or reproducing words in a visible form.
wrongful trading	Continuation of trading by the directors of a company after the point when insolvent liquidation has become inevitable.