



## ENGLISH FOR LAW - International Commercial Contracts

### EXERCISES

#### Exercise n. 1. Conversation: a legal advice.

**Mrs Williams is the legal counsel of A.V.O. Ltd. She explains to Mr Cartridge, the managing director of A.V.O. Ltd, that it would be advisable to sign a Letter of Intent with Redcat S.p.a., a potential buyer of A.V.O.'s products.**

Mr Cartridge: Hi Eleonor, how are you? Have you read my email about our new potential client, Redcat S.p.a.?

Mrs Williams: Yes, I have. So A.V.O. Ltd is carrying out contract negotiations with Redcat S.p.a. to enter into a supply agreement.

Mr Cartridge: Exactly. We are negotiating the essential terms of the supply agreement. As you know, it will probably take a while before we get to the final draft of the contract.

Mrs Williams: I see. So it would be advisable to sign a Letter of Intent as soon as possible.

Mr Cartridge: A Letter of Intent?

Mrs Williams: Yes. It's a non-binding document describing the actual intention and objectives of the parties.

Mr Cartridge: All right. So we won't be bound to enter into the final contract if we eventually don't agree on the essential terms of the supply.

Mrs Williams: Exactly. The Letter of Intent should prelude to a final contract but neither party is bound by it. However, we'll draft a pro-seller oriented Letter of Intent, in order to protect ourselves against any claim by the other party as to entering into a final contract.

Mr Cartridge: All right Eleonor. Can you draft such a Letter of Intent and let me have it as soon as possible? I'd like to propose it to Redcat and get their views on it.

#### True or false?



1. Mrs Williams works as a legal counsel for A.V.O. Ltd.
2. A.V.O. Ltd is carrying out negotiations with Redcat S.p.a. in order to enter into a license agreement.
3. Mrs Williams suggests that the parties sign a Letter of Intent during contract negotiations.
4. Generally, a Letter of Intent is deemed to be binding upon the parties.
5. A Letter of Intent summarises the intention and objectives of the parties.
6. In the event the parties sign a Letter of Intent they will then be bound to enter into the final agreement.
7. Mr Cartridge asks Mrs Williams to draft a Letter of Intent for contract negotiations between A.V.O. Ltd and Redcat S.p.a..

**Exercise n. 2. Legal correspondence. As Seller's lawyer, please prepare an answer to the letter below, where Buyer complains about some defective products supplied by your client and threatens to terminate the supply agreement if the default is not remedied. Your answer should take into account the warranty clause below, provided in the supply agreement.**

**Buyer's letter**

Dear Sirs,

**Re: supply of defective products**

We refer to the supply agreement dated 24<sup>th</sup> March 2013, (the "Agreement"), between you and my client, BROWNEYE s.p.a., relating to a supply of \_\_\_\_\_ (the "Products").

In September 2013 my client complained about a supply of defective products (the "Defective Supply") delivered on 30<sup>th</sup> June 2012.

According to Clause 7 (Warranty Clause) of the Agreement, supplier has an obligation to replace any defective products. Such Clause furthermore states that failure to comply with the obligation to replace defective products should be treated as an event of termination of the Agreement.



Furthermore, since the Seller did not comply with its replacement obligation of the Defective Supply, my client lost some business opportunities concerning the resale of the products to third parties.

Since you breached the warranty obligations under the Agreement, please note that should you fail to remedy the breach within 30 (thirty) calendar days from receipt of this letter, my client will exercise its right to terminate the Agreement with immediate effect.

Furthermore, my client reserves the right to bring a lawsuit against you to recover damages caused by this substantial breach of contractual obligations. In addition to general damages, my client will be seeking compensation for loss of profits and business opportunities caused by your breach.

Yours faithfully,

Phil Stern

Attorney-at-law

**Warranty clause.**

Seller warrants that Products materially conform to the specifications hereto attached as Annex 3. Any claim regarding the quality of Products shall be made in writing and notified by Buyer to Seller within 15 days of the date of receipt by Buyer of the relevant Products.

In the event of defective Products supplied by Seller to Buyer, Seller's obligation and Buyer's sole remedy under this Clause is, at Seller's option, the repair or replacement of any non-conforming Products.

The parties agree that any breach of warranty hereunder shall be treated as an event of termination, which entitles the non breaching party to terminate this Agreement forthwith.

Seller will not bear any liability for any indirect or consequential damage caused to Buyer, except for injury or death caused by defective Products supplied hereunder.

**Your reply to the Buyer's letter:**

[www.sligeducation.com](http://www.sligeducation.com)  
[info@sligeducation.com](mailto:info@sligeducation.com)



**Exercise n. 3. Please add a provision to this clause, stating that the non-breaching party is not prevented from claiming any further loss or damage to the breaching party (equivalent to the Italian provision “salvo maggior danno”).**

*“In the event one party fails to perform or delays performance of its contractual obligations, the non-breaching party shall be entitled to payment of € 1000,00 by way of penalty, provided that*

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**Exercise n. 4. Please read the following clause of termination by default (“risoluzione”) and change it into a clause of termination at will (“recesso”).**

**Termination by default:** *“The non-defaulting Party may terminate this Agreement by notice in writing to the defaulting Party if the latter commits a material breach of its obligations under this Agreement and fails to remedy the breach within 30 business days of being specifically required to do so in writing”*

**Termination at will:**

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**Exercise n. 5. Role play: giving legal advice.**

**Your client is an Italian shoe manufacturer, wishing to enter into a distribution agreement with a French company for the sale of its shoes in France. Please advise your client as to the legal objectives and contents of a distribution agreement.**

Step 1. The client and the lawyer meet for the first time and introduce themselves;

Step 2. The client introduces the topic (its manufacturing activity, intention to distribute its shoes in France, etc.);

Step 3. The lawyer explains to the client that he should enter into a distribution agreement with the distributor;

Step 4. The client will ask questions on the following issues:

(a) typical contents of a distribution agreement

(b) exclusivity clause

(c) EU rules applying to distribution agreements

Step 5. The lawyer will answer the questions and finally offer its services as to the drafting of the distribution agreement.

**Exercise n. 6. You're drafting a franchise contract for your client, the franchisor. Please draft a clause which provides an obligation for the franchisee to purchase the products/services exclusively from the franchisor, subject to termination in case of default.**

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**Exercise n. 7. Condition precedent in contracts.**

Buyer is interested in acquiring land to build a house. At the time of negotiations the land is registered for agricultural use, but Seller has submitted an application for registration as a residential area. If the application succeeds, the land can be used for housing development. If not, it must be used only for farming.

The parties do not know the outcome of this application, but neither wants to delay contracting for fear that the other will lose interest in the transaction. Buyer does not wish to totally commit himself at this stage, because he does not wish to be bound to purchase just farmland.

To solve this problem, the parties can make a contract now for the sale of the land and include a condition in the contract providing that it will not be effective until the new registration is granted for the land.

**Please write a short clause providing a condition precedent to the sale contract.**

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**Exercise 8. Please explain to a foreign client how conveyancing under Italian law takes place.**

**Useful terms and expressions:**

Firm and binding purchase offer → offerta irrevocabile d'acquisto

Preliminary agreement → contratto preliminare

Deed of conveyance → atto di compravendita

