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# **Legal English**

## **for**

# **International Commercial Contracts**

# Negotiating an agreement

## ➤ **Letter of Intent/Memorandum of Understanding/Letter of Understanding**

- Preliminary and generally non-binding agreement between the parties to a negotiation

### *Tips for drafting:*

- avoid terms referring to duties and obligations of the parties
- provide an exemption for binding provisions, if any

# Negotiating an agreement

## Examples

- avoiding terms expressing an obligation:
  - *“The parties undertake to negotiate and agree on the essential terms of their legal relations”*
- in case of binding provisions, provide an exception
  - *“This Letter of Intent will not be binding on the parties....”*

# Negotiating an agreement

- **Confidentiality Agreement / Non-disclosure Agreement (NdA)**
  - Agreement between Disclosing Party and Receiving Party to protect Confidential Information (“C.I.”) exchanged during contract negotiations

# Negotiating an agreement

## Example

*“Confidential Information disclosed by Company A hereunder shall be treated as confidential by Company B”*

How can we reword the clause from one-sided to reciprocal?

# Sale agreement

## Glossary

### **ownership – title –property**

Are they synonyms?

*“The transfer of property in the goods”*

*“The transfer of ownership of the goods”*

*“The transfer of title to the goods”*

# Sale agreement

## Contracts of Sale of Goods

**Parties:** seller/provider/vendor (supplier in supply agreements) and buyer/purchaser

**Object:** a consideration/price is paid in return for the sale of products/goods

**Performance:** terms for performance (time, place, etc.) of the parties' obligations

# Sale agreement

## General duties of seller:

- to have good title to the goods
- to provide the buyer with the goods

## General duties of buyer:

- to take delivery of and pay the price for the goods



# Sale agreement

**Retention of title:** supplier retains title to the goods until buyer has fulfilled its payment obligations (property will pass to buyer on final payment)

Ex: *“Title to the Products shall pass to the Buyer only upon payment in full of the sale price of the Products.”*

# Sale agreement

**Lien on the goods:** if the buyer became the owner of the goods prior to delivery, the seller has a lien over goods in its possession for which it has not received payment

**Late/overdue payment interest:** the unpaid seller is entitled to interest and compensation for recovery costs for late/overdue payments by the buyer (E.U. Directives 2000/35/EC and 2011/7/EU)

# Sale agreement

**Minimum commitment of purchase:** obligation undertaken by buyer to purchase a minimum quantity of products within a stated period of time. The parties may also agree on contractual remedies to the buyer's default, such as the payment of a penalty or contract termination.

# Sale agreement

## Example

*“During the term of this Agreement, the Distributor shall purchase the minimum quantities of Products as indicated in Annex [•]hereto.*

*.....”*

How can we provide contract termination in case of default?

# Sale agreement

**Refusal to take delivery of the goods:** the buyer is entitled to reject goods which do not comply with description, satisfactory quality and fitness for purpose or which are delivered late when time is of the essence (implied terms under English law).

# Sale agreement

*Ex: “The Buyer shall be under no obligation to accept delivery of Products other than in accordance with this Agreement. Any unacceptable deliveries may at the Buyer’s discretion, be returned to the Seller at the Seller’s expense and risk. Time is of the essence, and this Agreement may be terminated if delivery is not made in compliance with the Delivery Dates hereunder”*

# Glossary

- **damage or damages?**
- **obligation or liability?**
- **penalty or liquidated damages?**
- **termination**
  - **by default**
  - **at will**

# Distribution agreement

**Parties:** principal/supplier and distributor

**Object:** the supply of products/goods or services for resale to customers/clients in a given territory

**Exclusivity:** sole distribution/exclusive distribution

**Other provisions:** minimum commitment of purchase, non-compete obligation



# Distribution agreement

## Exclusivity clause

*“The Principal and the Distributor grant each other the right of exclusivity within the Territory. Therefore the Principal shall not sell the Products in the Territory to any third party other than the Distributor and the Distributor undertakes not to sell in the Territory, directly or indirectly, products which may be considered in competition with the Products.”*

# Distribution agreement

**Non-compete clause:** *“Following the expiry or termination for whatever reason of this Agreement, the Distributor shall refrain from promoting, marketing and selling, directly or indirectly, in the Territory products which may be in competition with the Products for a period of two years. The Parties acknowledge that specific compensation for the said undertaking has been considered in the price of the Products.”*

# Agency agreement

**Parties:** principal and agent

**Object:**

**marketing agency:** marketing and promoting

**sales agency:** marketing and selling

the principal's products and services in a

**Territory**

# Agency agreement

**Commissions** due by the principal to the agent

**Indemnity** due to the agent on contract termination

## **Glossary:**

- **agent**
- **authority**
- to act **in the name and on behalf of/on behalf** of the principal – to have **authority** to represent the

# Licence agreement

**Parties:** licensor and licensee

**Object:** the right to use the licensed property generally against payment of royalties

**Extent:** gratuitous/for consideration,  
exclusive/non exclusive licence,  
transferable/non transferable, grant of sub-  
licensing rights, territory.

# Franchise Agreement

**Parties:** **franchisor** and **franchisee**  
(independent entrepreneurs)

**Object:** the grant of a **business format** and related IPR, training and technical assistance to the franchisee

**Consideration:** **front fee** (lump sum)/**royalties** (fixed rate or turnover percentage)/price of products/services

# Land law: conveyance deed

Generally, the law requires contracts for the sale of land to be in writing in the form of a witnessed document, i.e. a **deed**, which has to be registered.

**Parties:** vendor / purchaser

**Object:** conveyancing of land (real estate, real property) against consideration

**Formality requirements:** written form, witnessed document, registration

# Land law: lease/tenancy

A land may be enjoyed for a fixed period of time by way of a **lease agreement** (or tenancy agreement, generally not exceeding three years).

**Parties:** landlord/lessor and tenant/lessee

**Object:** to rent a property against payment of a rent

**Typical contents:** rent, deposit, use of the property



# Bibliografia e sitografia

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