THE VOCABULARY OF COMMERCIAL CONTRACTS

A Practical Guide to the English Vocabulary used in International Commercial Contracts

By C.M. Mason

Director of Cambridge Law Studio, Cambridge, England

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Vocabulary (A)

1. **ABOVEMENTIONED/AFOREMENTIONED/AFORESAID:** these words mean 'already mentioned in this document' or 'just mentioned'. Similar words are 'said' and 'such'. Modern drafting advice is to avoid these words if possible as they are 'archaic'. Archaic means belonging to a much earlier time, antiquated or old-fashioned. If it is not possible to avoid these words then it is a good idea to try to limit use of them in a modern contract. Most law firms issue a drafting guide and all modern drafting guides recommend that these words are not used. If these words appear often in a contract, it often means that the word they are referring to needs to be defined in the definitions section. However, most lawyers overuse these words out of habit and it is often possible to delete them without changing the meaning of the sentence.

2. **ACCOUNTING PERIOD:** within a commercial contract this means a clearly defined period of time during which one of the parties will provide financial information to the other. It could be an entire year or a period of several weeks or months. A year is a normal accounting period for a business. When purchasing a business it is normal to look at previous accounts, such as 'five years accounts'.

3. **ACCRUE/ACCRUAL:** to accrue means to accumulate over time. It is the correct way to describe how debt or interest accumulates or builds over time. An accrual is something such as money, interest on a debt or holiday entitlement that has built up over a period of time.

4. **ADMINISTRATION:** when a business goes into administration it means the business is in the hands of a trustee, known as an administrator, who must act in the interests of the creditors of the business. This does not necessarily mean selling the assets of the business, as administration also includes the possibility of rescuing the business as a 'going concern', meaning as a functioning business.

5. **ADVERSE MATERIAL BREACH:** this is a breach of contract that is so significant that it usually leads to the right to terminate the agreement. It is sometimes called a 'repudiation' of the contract. Under English law, a less significant or 'minor' breach will usually give the injured party the right to claim damages (financial compensation) but will not give the right to terminate the agreement in the way that an adverse material breach does.

6. **ALTERNATIVE DISPUTE RESOLUTION:** this is usually known by the abbreviation 'ADR'. ADR is an alternative to litigation, which is the process of using the courts to bring a dispute to a conclusion. ADR is an attempt to avoid litigation and includes arbitration, negotiation, mediation and collaborative law. Mediation is currently the most common form of ADR in the UK.

7. **ARISING OUT OF/FROM:** this phrase is commonly used in contracts and means 'as a result of' or 'created by'.

8. **ARREARS:** this refers to money that is owed to someone but was not paid on the agreed date. In most commercial contracts the payment clause says that interest will accrue on any arrears at a specific rate. Arrears is not the same as debt. Arrears is a debt that has not been paid on time.

9. **ASSIGNMENT:** an assignment is the unconditional legal transfer of the ownership of something. Something that is sold to someone is assigned to that person. Granting a licence for the use of something is a temporary situation and so is hiring something. An assignment is permanent.

Vocabulary (A)

10. **ASSIGNOR/ASSIGNEE:** an assignor is a person who transfers the right of ownership to another person and an assignee is a person to whom an assignment is made.

11. **ASSIGNS:** contracts often refer to people or organisations as ‘assigns’, which means the same as assignees (above).

12. **ASSOCIATED COMPANY:** this is a company that is joined to another company or is controlled by another company.

13. **AVOIDANCE OF DOUBT:** this phrase is often used in contracts to clarify something that has just been stated. It means ‘to make absolutely clear’ or ‘to make sure that no mistake of interpretation can be made’.

14. **AWARDED AGAINST:** contracts often require one party to pay certain costs of the other party under certain circumstances. ‘Costs awarded against’ means costs that a court has ordered one of the parties to pay to the other. The word ‘awarded’ means the costs are a result of the decision of a court.

Practice Sentences (A)

A. This Agreement shall terminate without notice in the event that the Buyer commits any ____________________ ____________________ ____________________ of these terms and conditions.

B. The Licensee shall at his own expense indemnify and hold harmless the Licensor and the Licensor's successors, ____________________ and employees from and against any liability, cost and expense arising from any breach of this Agreement.

C. In the event of any dispute arising from this Agreement the parties agree to submit to arbitration or some other form of ____________________ ____________________ ____________________.

D. The seller of the copyright shall be hereinafter referred to as the '____________________' and agrees to transfer full title and ownership in the Work to the Assignee.

E. The Haulier is a contractor and a sole trader and has no relationship of employment with Regal Furniture Limited. For the ____________________ ____________________ ____________________ the Haulier expressly confirms that he is not an employee of Regal Furniture Limited.

F. The '____________________ ____________________' shall mean each calendar year from 1 May until 30 April and shall continue until the expiry or termination of the Agreement.

G. The Seller warrants that the Seller will keep the Buyer indemnified against all claims, actions, proceedings and loss suffered or incurred by the Buyer or ____________________ ____________________ the Buyer by a court arising out of any breach or non-performance of the warranties set out in this Agreement.

H. Unless agreed in writing by Martex Group Plc or an ____________________ ____________________ ('the Company') the following terms and conditions shall be deemed to be incorporated into all contracts and agreements for the sale of goods ('the Goods') by the Company to the customer named above ('the Buyer').

I. All Goods, if delivered by the Company's vehicle, shall be deemed delivered when left at the Buyer's premises or the delivery address specified by the Buyer, whether or not signed for. Risk in the Goods shall pass to the Buyer upon delivery at ____________________ premises or specified address.

J. Interest on the sum stated in clause 1 of this Loan Agreement shall ____________________ at the rate of 9% per annum.

K. This Agreement shall terminate if the Buyer makes a voluntary arrangement with its creditors, becomes bankrupt, or being a company enters ____________________ or goes into liquidation.

L. Payment for Goods shall be made on or before 28 days after delivery. In the event of delayed payment resulting in ____________________, interest on such overdue payment shall accrue at the rate of 1.5% per month from the date that payment became due, until actual payment.

Practice Sentences (A)

M. The parties shall attempt to resolve any dispute ____________________ ____________________ or relating to this contract through negotiations between senior executives of the parties, who have authority to settle the same.

N. THIS ____________________ OF INTELLECTUAL PROPERTY RIGHTS is made on this first day of June 2022.

Vocabulary (B)

1. **BALANCE:** this word appears in contracts in relation to money. The balance is what remains when an amount of money has been paid into or has been withdrawn from an initial amount. For example, if I have £100 in the bank and I take out £20 then my remaining balance is £80.

2. **BANKRUPT/BANKRUPTCY PETITION:** if an individual is bankrupt it means a court has declared that he or she is unable to pay his or her debts. The word is not appropriate to describe companies, which are usually referred to firstly as 'insolvent' and then 'in liquidation'. A bankruptcy petition is an application to the court to make a person bankrupt. If one of the parties to a contract is bankrupt it is usually sufficient grounds for the other party to terminate the contract between them.

3. **BASE RATE:** this phrase is often found in payment clauses. If payment is late there is usually a penalty to pay, which is calculated as a certain percentage above a particular bank's base rate. The base rate is the rate of interest used by individual commercial banks as a basis for their lending rates.

4. **BEAR/BORNE:** these words are found in contracts in relation to paying for something. To bear means to carry the burden of something or to pay for it. Borne is the passive.

5. **BEST ENDEAVOURS:** an obligation to use 'best endeavours' to achieve something has no fixed definition in law but has been interpreted to mean using every reasonable course of action available to make sure that something is achieved. 'Reasonable endeavours' is a lesser obligation, which only obliges one of the parties to use some of the reasonable courses of action available. Modern drafting advice is to avoid both phrases and instead state very clearly what is expected.

6. **BILL OF LADING:** this is a document used when goods sold under a contract are being transported by ship. It is a list that is usually issued by the master of the ship. A bill of lading has several legal functions, including serving as evidence of loading the goods, stating the terms and conditions of carriage and providing a statement as to ownership of the goods during the journey.

7. **BOARD:** this usually refers to a board of directors. A board is the group of people responsible for making decisions and the board of directors of a company are the group of directors elected by the shareholders to run the business.

8. **BOILERPLATE CLAUSES:** this phrase is sometimes used to refer to certain sections of commercial contracts and means the 'standard' or 'miscellaneous' clauses found towards the end of every commercial agreement. The clauses described as 'boilerplate' usually include clauses such as force majeure and governing law.

9. **BOUND:** 'bound' is the passive of 'bind'. It means to be legally obliged to do something.

10. **BREACH:** to breach a contract means to fail to fulfil an obligation. It is more usual to use the word 'breach' in relation to a commercial contract than the alternatives 'violate' or 'infringe'.

11. **BREACHING PARTY:** this phrase is often found in the section of the contract that deals with remedies for any breach of obligations. When one party fails to fulfil its obligations it is often referred to as 'the party in breach', or 'the breaching party'.

Vocabulary (B)

12. **BREAKDOWN:** this word usually relates to money. A breakdown in this sense is an itemised list that demonstrates how a total was reached. For example, if a professional gives you a bill for his or her services that is higher than you expected, you will probably ask for a breakdown of the total amount.

13. **BUSINESS DAY:** this means normal working days. In the U.K. this usually means Monday to Friday during the hours of 9am-5pm and excludes Saturday, Sunday and public holidays. It has been interpreted as meaning days upon which banks are open. In cross-border contracts the term ‘business day’ or ‘working day’ is usually defined.

14. **BY:** ‘by’ is a time expression in contracts and is used when stating a deadline. For example, ‘the buyer must pay for the goods by 29 April’. A problem of interpretation is the question of what ‘by’ precisely means. Is 28 April the last possible date for payment? Or can I pay on 29 April? Modern drafting advice is to avoid any ambiguity by using the phrase ‘on or before’ instead of ‘by’. ‘The buyer must pay for the goods on or before 29 April’.

Practice Sentences (B)

A. Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 5% above Barclays Bank plc's ____________________ ____________________ from time to time in force and shall accrue at such a rate after as well as before any judgment.

B. The Company shall use its ____________________ ____________________ to make delivery within the time and date specified but failure to do so by the Company shall not permit the Purchaser to deduct or withhold any sum of money properly payable to the Company in respect thereof.

C. These Terms and Conditions apply to the provision of all Courier Services when shipping between various international points. In the event of any conflict or inconsistency between these Terms and Conditions and any other written or oral statement (including any ____________________ ____________________ ____________________ or other transit documentation), these Terms and Conditions shall govern.

D. All appointed directors of the ____________________ shall be jointly and severally liable until such time as they shall resign or be removed.

E. If the Buyer fails to make payment for the Goods in accordance with this contract, or if the Buyer offers to make any arrangement with its creditors, or if any ____________________ ____________________ is presented against the Buyer, all sums outstanding in respect of the Goods shall become payable immediately.

F. The Customer will notify the Company of any ____________________ by the Company of these terms and conditions and the Company shall have 7 days in which to provide a remedy or a full refund.

G. The Seller agrees to pay any sums claimed by the Buyer under the indemnities provided in clause 10 above only upon receipt of a full ____________________ of any total sum claimed, including any damages, loss, costs or expenses.

H. '____________________ ____________________' shall mean any day other than a Saturday, Sunday or other day upon which banks are not open for general business in London.

I. The Licensee agrees to make full payment to the Licensor of all sums due under this Agreement ____________________ 1 September 2021.

J. If the Buyer fails to notify the Seller within 14 days of delivery of any defect in the Goods then the Buyer shall not be entitled to reject the Goods and shall be ____________________ to pay for the Goods as if the Goods had been delivered in accordance with the Contract.

K. The Seller shall bear the costs of transport of the Goods and all customs duties or Value Added Tax, present and future, will be ____________________ by the Buyer.

Practice Sentences (B)

L. In addition to the foregoing remedies, the non-breaching party shall be entitled to recover from the ____________________ ____________________ all of the non-breaching party's costs and expenses, including its reasonable attorneys' fees, in connection with enforcing its rights under this Agreement.

M. ____________________ ____________________ are standard clauses, drafted using commonly used and understood language, whose function is to save legal drafters time. Examples include an 'entire agreement' clause or a clause concerning the service of legal notices.

N. Any outstanding ____________________ remaining unpaid by the Client after the initial due date stated in the invoice will accrue finance charges at the rate of 0.667% per month or 8% annually.

Vocabulary (C)

1. **CALENDAR MONTH:** a 'calendar month' is a term often used in a contract for certainty, although 'a month' is generally interpreted as a calendar month. In ordinary, non-legal English 'a month' can be interpreted in various ways but in legal English 'a calendar month' means, for example, February or March and not 28 days, 30 days or 31 days. A calendar month can start on any date (it need not start on the first day of a month) and is usually interpreted as ending on the same date in the next month. For example, 15 June to 15 July is a calendar month as well as 1 March to 31 March.
2. **CEASE:** this is a formal word used in legal agreements. It means to stop.
3. **CHARGE:** a charge is a type of security for a debt and can also be described as a type of encumbrance. It means a creditor of a business has been given the right to force the sale of certain assets which have been offered as security for a debt if the debtor fails to make repayment. In English law a charge is usually defined as a 'fixed charge' or 'a floating charge'. A fixed charge exists on a specific and identifiable asset or assets. A floating charge, however, is a charge over a group of changeable or moving assets (such as stock, which the debtor can continue to sell) and will only fix to a particular asset if a particular thing should happen, such as a default in payment. Many contracts require a seller to give a guarantee that the item being sold is sold 'free of any charge'.
4. **CLAUSE HEADINGS:** these are the headings that describe the different parts of a commercial contract, such as 'INDEMNITIES' or 'DELIVERY DATE'. They are not usually part of the binding terms and conditions of the contract but are there for information only.
5. **COMPLETION DATE/CLOSING:** 'completion' refers to the date when the main purpose of the contract takes effect. For example, in a contract for the sale of shares, the completion date is the day upon which the parties exchange the shares for the price the buyer pays. In the USA the term 'closing' is more common.
6. **CONDITIONAL ON/UPON:** 'conditional upon' means that something will only happen if something else happens first. It means the same as 'subject to' and 'provided that'.
7. **CONDITIONS PRECEDENT:** many commercial agreements have 'conditions precedent'. This means that there are pre-contractual conditions, such as 'Unless this happens...' , or 'If this happens....', which may mean the contract never becomes binding because these conditions have not been fulfilled. It may also mean that one party to the contract cannot demand performance from the other until certain conditions have been met.
8. **CONFLICT OF INTEREST:** this is a situation where a person who has the power to make important decisions may be able to profit from his or her position because he or she has connections with certain people or organisations. A director of a company, for example, would have a conflict of interest if his or her company was entering into contracts with another company which was owned by a relative of that director.
9. **CONSEQUENTIAL LOSS:** many commercial agreements have a clause in which liability is excluded for consequential loss. This means that if there is a breach of contract, the party in breach does not want to be responsible for any loss which is not a direct result of a breach.

Vocabulary (C)

10. CONSIDERATION: most commercial contracts drafted in the UK or in the USA contain a statement at the start of the agreement as to what consideration the parties will exchange. The thing that each party gives is described as 'consideration'. Consideration can be, for example, money, shares, goods, services and a promise to do or not to do something in the future. Contracts drafted in English always directly mention consideration because it is one of the essential elements of a contract in common law systems along with offer, acceptance and intention to create a legal relationship.

11. CONSTRUED/CONSTRUCTION: the term 'construed' is usually found in the governing law or jurisdiction clause of a contract. It means 'interpreted'. To 'put a construction' upon a word or phrase is to interpret that word or phrase in a certain way.

12. CONTEMPLATED BY: this means 'within the scope of' this agreement.

13. COUNTERPARTS: sometimes the two or more parties to a contract are not able to sign the same document, especially if the parties are in different cities or different countries. A contract may therefore be made up of two 'counterparts', which means two identical copies of the same agreement. Many contracts contain a clause with the heading 'COUNTERPARTS' in which they agree that they intend for there to be two signed copies of the agreement.

14. CREDITORS: creditors are people or organisations to whom a business owes money. A creditor can be described as a 'secured creditor' or an 'unsecured creditor'. A secured creditor has a mortgage or some other kind of charge on the debtor's property.

Practice Sentences (C)

A. These terms and conditions of business shall be ____________________ in accordance with English Law and both parties shall submit to the exclusive jurisdiction of the English Courts.

B. The manner and method of providing the Entertainment Services ____________________ ____________________ this Agreement are to be under the sole direction and control of the Artist, with the exception of the minimum and maximum length of the Artist's performances.

C. Each payment shall be due on the 10th day of each ____________________ ____________________ until the total amount of £4000 is paid.

D. The ____________________ ____________________ are included for reference only and shall not affect the interpretation of this Agreement.

E. The Company shall be entitled to terminate this Agreement by giving Written Notice to the Hirer if the Hirer closes or winds up his business or threatens to ____________________ to carry on business.

F. The Company may waive the requirement to satisfy any ____________________ ____________________ prior to the Franchise Commencement Date pursuant to paragraph 15.1 hereunder, attaching such conditions to any such waiver as the Company deems appropriate.

G. I agree in my role as Procurement Manager for the Company to take all reasonable steps to avoid any ____________________ ____________________ ____________________ with any prospective Contractor who seeks work with the Company by not putting myself in a position of obligation towards any of them; for example, by not accepting any favour or lavish gift or entertainment.

H. Any Bookings made verbally by the Advertiser shall be ____________________ ____________________ and subject to acceptance by Global TV plc pursuant to the conditions set out in this Agreement.

I. In ____________________ of the provision of Services the Customer shall pay to the Supplier the Service Charges specified in clause 8.1 hereto.

J. The Seller warrants that each Product and each Service shall be sold free from any lien, encumbrance, ____________________ or other adverse third party right of any kind.

K. The ____________________ ____________________ is the date when all Works carried out by the Contractor are concluded to the satisfaction of and as certified by the Project Manager, in accordance with clause 23.1 above.

L. IN WITNESS WHEREOF, this Agreement is executed in two ____________________, each of which shall be deemed an original of equal validity.

Practice Sentences (C)

M. The Publisher shall not be liable for any direct, or indirect, or ____________________ ____________________, loss of profit, revenue, or goodwill arising from the use of this site or information contained on this site.

N. The Client may terminate the Contract with immediate effect by notice in writing where an application is made for the appointment of a liquidator to realise the Company's assets or a ____________________ meeting is convened in relation to the Company pursuant to section 98 of the Insolvency Act 1986.

Answer Key

A

A. adverse material breach
B. assigns
C. Alternative Dispute Resolution
D. Assignor
E. avoidance of doubt
F. Accounting Period
G. awarded against
H. Associated Company
I. abovementioned/ aforementioned/ aforesaid
J. accrue
K. administration
L. arrears
M. arising from
N. ASSIGNMENT

B

A. base rate
B. best endeavours
C. bill of lading
D. board
E. bankruptcy petition
F. breach
G. breakdown
H. Business Day
I. by
J. bound
K. borne
L. breaching party
M. Boilerplate clauses
N. balance

C

A. construed
B. contemplated by
C. calendar month
D. clause headings
E. cease
F. conditions precedent
G. conflict of interest
H. conditional on/upon
I. consideration
J. charge
K. completion date
L. counterparts
M. consequential loss
N. creditor's