

CHAPTER 6 - Commercial Contract structure:

Feedback: pre-session tasks

1. The structure of a commercial contract can vary depending on its nature, however, most written contracts consists of similar essential clauses. The general pattern of individual parts can be:

Part of a contract	Description	Extract
1) title	E	(i)
2) parties	A	(iii)
4) operative (substantive) provisions	B	(vi)
5) miscellaneous clauses (boilerplate)	C	(ii)
6) signature block	F	(vi)
7) schedules (exhibits, appendices, annexes)	D	(iv)

Descriptions of parts:

A Setting out who is involved in the contract.

B Clauses which create rights and/or obligations, or create and transfer interests in property.

C Standardized clauses (which appear in all contracts) dealing with e.g. applicable law, arbitration/litigation, Force Majeure.

D Lists of relevant matters such as technical specifications, structure of documentation to be supplied, etc.

E Identifying the type of contract.

F Stating that, by signing the document, the parties are agreeing to its terms and the authentication of the agreement.

Extracts:

(i) Purchase Agreement

(ii) This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the Law of the Czech Republic.

(iii) MN Company with its office at 27 West Street, Briston, AN4 4FL, UK represented by James Smith

(iv) Annex III - Technical implementation reports and financial statements to be submitted

(v) By its signature below, each Party signifies its agreement to the foregoing.

Agreed:

By: Richard A. Wattson By: John S. Wrigth

(vi) Purchaser shall deliver to Agent the Letter of Credit which shall be held and released as provided in Section 3.3.

Based on James Faulkner, Course for Legal English Teachers, Ulm 2012.

2. In the text above, find the translations for the following terms:

- vyšší moc – Force Majeure (*Act of God*)
 - rozhodné právo – applicable law (*governing law, choice of law*)
 - příloha – appendix, annex
 - soudní spor – litigation
 - ustanovení/ujednání – provision, clause
 - koupě – purchase
 - práva a povinnosti jsou interpretovány v souladu s – rights and obligations are **interpreted/construed** in accordance with
 - sídlo společnosti – office (*registered office*)
 - akreditiv - letter of credit
 - finanční výkazy, které mají být předloženy – financial statements to be submitted
- Created by the team of authors.

Seminar work:

1. Examples of contracts

clauses from a contract: which part

look at the following examples and identify the main parts? Are all parts from the pre-session task included in them? (in class: extracts from two contracts - divide plus orally which parts are missing and what is described there)

compare the language - legalese X plain English
examples of legalese:

(iii) This Agreement and the rights and obligations of the parties **hereunder shall be governed** by, and construed and interpreted in accordance with, the Law of the Czech Republic.

(vi) This Agreement is made on this 8th day of September 2013 **by and between** ...

(ix) Purchaser **shall deliver** to Agent the Letter of Credit which shall be held and released as provided in Section 3.3.

1)

http://www.intracen.org/uploadedFiles/intracenorg/Content/Exporters/Exporting_Better/Templates_of_contracts/3%20International%20Commercial%20Sale%20of%20Goods.pdf

or:

http://www.intracen.org/uploadedFiles/intracenorg/Content/Exporters/Exporting_Better/Templates_of_contracts/4%20International%20Long-Term%20Supply%20of%20Goods.pdf

2)

Sample Contracts of Sale

2. Preparing a contract - Negotiations

Class discussion - how often do you negotiate? do you know any strategies for being successful?

Signing a contract is usually preceded by a series of negotiations. These can be carried out either in person or through electronic means. The contract negotiation deals with issues such as price, timeframe, special considerations, or exact wording of clauses.

2.1 Reading

Negotiating skills can be improved mainly by experience, but also by learning general negotiating techniques. Read the following text, identify the text type, the author and the audience, and summarize its purpose:

text type: memorandum

author: J. Thornton

audience: All members of the legal department of IBN

purpose: to inform about and invite for a seminar

Memorandum

To: All members of the legal department of IBN

From: John Thornton

Date: 10 February 2014

Subject: In-company seminar on contract negotiations

As part of our in-company training programme focusing on professional communication skills, we have arranged for the well-known communication trainer and practising lawyer, Mr Tom Boland, to hold a half-day workshop on the topic of Successful Contract Negotiations.

We would like to invite all members of the staff in the legal department to attend this workshop, which will take place on 25 April, 9—11.30 a.m., Conference Room 12.

The workshop consists of a theoretical part, followed by practical role-plays offering an opportunity for negotiating skills training and personal feedback from the trainer. Thus it is imperative that you arrange your schedules so that you can be present for the entire workshop.

Please let me know by 9 a.m. on Monday, 14 April by email (j.thornton@lawfirm.com) whether you can attend.

J. Thornton

Modified from: Amy Krois-Lindner, International Legal English, CUP, Cambridge 2011

2.2 Writing an informative memo

The word “memorandum” (or a memo) means something that should be remembered or kept in mind, it serves to circulate information, it can inform a group of people about a specific issue (an event, policy, resource, ...), or to clarify a point or to provide a brief opinion or a report.

Match the halves of the following sentences explaining the elements of a memo:

- 1 A heading
- 2 The subject line
- 3 The context
- 4 In the main message,
- 5 The action close

- a) refers to any sentences providing background information about the project in question (such as a reference to an event or to a previous request for information).
- b) individual points should be organised in descending order of importance, i.e. most important ones first, subordinate or supporting points later.
- c) is a clear call to action — an explanation of what should be done in what way, by whom and by what date.
- d) includes the components Date, To, From and Subject.
- e) states the main idea of the memo in less than ten words.

KEY:

A heading {includes the components Date, To, From and Subject.}

The subject line {states the main idea of the memo in less than ten words.}

The context/introduction {refers to any sentences providing background information about the project in question (such as a reference to an event or to a previous request for information).}

In the main message, {individual points should be organised in descending order of importance, i.e. most important ones first, subordinate or supporting points later. }

The action close {is a clear call to action — an explanation of what should be done in what way, by whom and by what date.}

Identify the elements in the memo in 2.1 and underline useful expressions (sentence openers, phrases, ...) for writing memos.

Modified from: Amy Krois-Lindner, International Legal English, CUP, Cambridge 2011

More about writing memos: <http://www.wikihow.com/Write-a-Memo>

2.3 Listening - negotiating techniques

a) Listen to the first part of an excerpt from the seminar on contract negotiations and tick the topics that the speaker will cover:

- 1 preparing for a negotiation
- 2 phrases and expressions for negotiators
- 3 using agreement templates and term sheets
- 4 classic 'tricks' used by negotiators
- 5 general negotiating techniques
- 6 dealing with objections from the other side
- 7 different types of agreements usually encountered

8 recognising a good deal

9 role-plays

10 horse-trading

Key: 1,3,5,6,8,9

b) Listen to the second part of the seminar and fill in the gaps (one or two 'words) in the following summary:

General negotiating techniques:

Separate issues:

- What you can never (1) _____
- Major points
- (2) _____ points
- Issues you do not need

Then make (3) _____ with the other party - one item for another: e.g. "I'll change this (4) _____ if you agree to (5) _____ the one that I want."

When discussing numbers:

- It is good if the (6) _____ suggests the first number.
- You should (7) _____ the number you want to end up with.
- The intended number should be the (8) _____ of the proposed numbers.

the memo and listening modified from: Amy Krois-Lindner, International Legal English

Key:

General negotiating techniques:

• *Separate issues:*

• *What you can never (1) accept*

• *Major points*

• *(2) minor points*

• *Issues you do not need*

Then make (3) trades with the other party - one item for another: e.g. "I'll change this (4) provision if you agree to (5) add the one that I want."

When discussing numbers:

• *It is good if the (6) other side suggests the first number.*

• *You should (7) know the number you want to end up with.*

• *The intended number should be the (8) average/middle of the proposed numbers.*

2.4 Speaking - useful language

a) Diplomatic language

Match the direct phrases (1-5) with their more diplomatic equivalents (a-e):

- | | |
|--------------------------------|---|
| 1 That's totally unacceptable. | a I'm afraid I can't really agree to this. |
| 2 I cannot agree to that. | b I'm not sure that idea is realistic. |
| 3 That is impossible! | c I don't think we can accept that. |
| 4 That's a stupid idea! | d I'm sorry, but that's not really a possibility. |
| 5 I know you don't like that. | e I understand your concern. |

1. C
2. A
3. D
4. B
5. E

Make these sentences more diplomatic:

1. That's out of question.
2. I can't accept that.
3. That's not good enough!
4. That's far too expensive.
5. Your delivery times are extremely slow.

b) Phrases and their functions:

One party made a proposal The other party reacted with the following phrases.

Connect the phrases to their function:

A = accepting the offer

B = bargaining/offering compromise

R = rejecting the offer

P = agreeing partially

R I'm afraid we can 't agree to ...

B We might agree to ... if you accept that ...

A I think we are prepared to accept that.

P I would tend to agree, however, have you taken into account the fact that ...

R We're not entirely happy with that.

P I basically agree. However, I have the following reservations...

R We are unable to accept that.

B If you can guarantee that ... then we'll accept the proposal.

Based on: Simon Sweeney, *English for Business Communication*, CUP 2003, Susan Lowe, Louise Pile, *Vyjednávání v angličtině profesionálně a úspěšně*, Computer Press, Brno 2009.

2.5 Speaking - practice

a) Making concessions - pair work:

example: a better warranty / quicker payment terms

A: Our client would be happy if you ensure a better warranty of the product.

B: Well, we could offer a better warranty if you could agree to quicker payment terms.

1. free delivery / larger order
2. 5% discount / payment on delivery
3. extra 50,000 euro compensation / agreement not to sue
4. promise to improve safety for staff / agreement on new contracts
5. better working conditions / shorter breaks

based on: Simon Sweeney, *English for Business Communication*, Susan Lowe, Louise Pile, *Vyjednávání v angličtině profesionálně a úspěšně*

b) role-play

Practicing negotiation

- remember to use diplomatic language
- support your demands/offers by reasons
- don't give everything you can immediately
- make notes - you are going to report later!!!
- prepare carefully - what you want, where you start, ...

Student A

You are negotiating on behalf of the A-Tools Inc.:

A-Tools is in discussion with B-Instruments to buy a machine – M123.
You have the following instructions from A-Tools:

A-Tools

- wants to buy the machine M123 with about 10% discount
- is interested in the future cooperation (planning to buy other two machines after 3 months, if the first machine is ok)
- can become a very important customer for B-Instruments
- can pay shipping and installation of the machine
- is not willing to pay insurance (it's quite expensive in their country)
- would like extended 5-year warranty

Student B

You are negotiating on behalf of the B-Instruments – selling machines for making tools:

B-Instruments is in discussion with A-Tools to sell a machine – M123.

You have the following instructions from B-Instruments:

B-Instruments

- wants to sell to A-Tools, they can become an important customer
- can offer a discount 5%
- the discount can be more only if some other costs are paid by A-Tools:
 - 7% discount + shipping costs
 - 9% discount + shipping costs + installation
 - 11% discount + shipping costs + installation + insurance
- can offer 5-year warranty

based on: Simon Sweeney, *English for Business Communication*

After-session task: Based on Negotiations between A-Tools and B-Instruments from Chapter 6:

write an email to Mr Adam Black from your company (A-Tools, or B-Instruments):

- state the purpose for writing
- summarize the results of your negotiation
- evaluate the results
- express your vision for the future cooperation
- length: 100 - 150 words