



LEGAL ENGLISH COURSE

Torino, 10-17-24 Ottobre 2014

LESSON 2

Extracts and Exercises



MISCELLANEOUS

CONFIDENTIALITY

For purposes of this Agreement, confidential information (hereinafter referred to as “Confidential Information”) shall mean all information regarding strategic and development plans, data, accounts, customers lists, business procedures, information related to processes, technologies, disclosed by one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”), in written or other tangible form and marked as such or, if disclosed orally, then submitted in written or other tangible form within 30 (thirty) days following the original oral disclosure.

All Confidential Information shall be held in confidence by the Receiving Party which shall protect the Confidential Information by using the same care used to protect its own confidential information, and shall take steps as may be reasonably necessary to prevent disclosure in any manner to any third party without the prior written consent of an authorized representative of the Disclosing Party.

FORCE MAJEURE

No failure, omission or delay of either Party in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement nor create any liability hereunder, if the failure, omission or delay shall arise from acts of God, laws, rules or regulations of any governmental authority, floods, fires, explosions, storms, earthquakes, acts of war (declared or undeclared), rebellion, insurrections, riot, sabotage, shortages of fuel, power, energy resources, and/or raw material, invasion, epidemic, accident, strikes, lockouts, labor disputes, or any other comparable cause beyond the reasonable control of the Party concerned.



HARDSHIP CLAUSE

It is hereby agreed that if during the term of this Agreement there should occur such unforeseen event as to materially affect the original and fundamental economic balance of the obligations as set forth in this Agreement, then the Parties shall meet to negotiate in good faith terms and conditions of this Agreement to restore such original and fundamental economic balance of obligations.

WAIVER OF RIGHTS

The failure of either Party at any time or from time to time to exercise any of its rights or to enforce any of the terms, conditions or provisions under this Agreement shall not be deemed to be a waiver of any such rights nor shall it prevent such Party from subsequently exercising or enforcing any such rights.

ENTIRE AGREEMENT

This Agreement (together with all agreements and documents executed contemporaneously with it or referred to in it) constitutes the entire and only agreement between the Parties in relation to its subject matter and replaces and extinguishes all prior agreements, undertakings, arrangements, understandings or statements of any nature made by the Parties or any of them whether oral or written (and, if written, whether or not in draft form) with respect to such subject matter. Each of the Parties acknowledges that it is not relying on any statements, warranties or representations given or made by any of them in relation to the subject matter hereof, save those expressly set out in this Agreement, and that it shall have no rights or remedies with respect to such subject matter otherwise than under this Agreement (and the documents executed at the same time as it or referred to in it) save to the extent that they arise out of the fraudulent misrepresentation of the other Party.

SEVERABILITY

The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.



SUPPLY AGREEMENT (clauses)

SUBJECT MATTER. Throughout the duration of this Agreement, Seller shall manufacture, supply and deliver to Buyer and Buyer shall purchase from and take delivery of, such quantities of Products as ordered by Buyer, according to the terms and conditions set forth hereunder.

QUANTITY AND SCHEDULING. Each month, at least within the 20th day of the previous calendar month, Buyer shall communicate to Seller its rolling three months forecast starting with the forthcoming month, broken down by types and quantities of Products. Subject to Seller's acceptance, the first month of each of such forecasts will constitute a firm and binding Purchase Order of Buyer and shall in addition set out the required dates of delivery and the types and quantities of Products to be delivered on each such dates. For the avoidance of doubts, the second and third month of the rolling three months' forecast shall be provisional and non-binding.

RETENTION OF TITLE. Title to the Products shall pass to the Buyer only upon payment in full of the sale price of the Products. In the event of payment default by the Buyer and save as provided under article 3 hereunder, the Seller shall be entitled, without any formalities, including notice of default, to repossess all of the Products with respect to which title has not yet passed to the Buyer, wherever said Products may be situated; in addition, the Seller reserves the right to seek any other judicial remedies available to it in respect of the damages suffered and has the right to retain any part payment received for the Products by way of penalty.

WARRANTY. Seller warrants that Products materially conform to the description hereto attached as Annex 1. Any claim regarding the quality of Products shall be made in writing and notified by Buyer to Seller within seven (7) days of the date of receipt by Buyer of the relevant Products.

Non-conforming Products subject to a warranty claim shall be returned by Buyer to the nearest Seller's facility within a reasonable period following delivery, not to exceed thirty (30) calendar days, transportation charges prepaid for the account of the 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 repaired or replaced Products shall be warranted by Seller for the remainder of the original Warranty Period or for three months, whichever is longer, free of charge and return-shipped to Buyer with transportation prepaid by Buyer. Seller shall not be responsible for any offshore transport costs.



Except as expressly set out in this Clause, all warranties whether express or implied (including without limitation any implied warranty as to merchantability, operability or fitness for purpose) are excluded.

DISTRIBUTION AGREEMENT (clauses)

EXCLUSIVITY. 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.

NON COMPETE. 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 hereby declare that specific compensation for the said undertaking has been considered in the price of the Products.

AGENCY AGREEMENT (clauses)

APPOINTMENT. The Company hereby appoints the Agent to be the agent of the Company for the promotion and solicitation of order(s) and contract(s) for the Products of the Company with the Customer(s) in the Territory, and the Agent agrees to act in that capacity subject to the terms and conditions of this Agreement.

As provided for in Annex 2, as a full and sole compensation of its services, the Company shall pay the Agent a fee based on the total value of the order/contract received by the Company, change orders included.

The Agent has authority only to promote the sale and use of the Products in the Territory and is not authorised to negotiate or conclude contracts or to enter into any commitment on behalf of the Company.

The Agent shall not, without the Company's prior written approval, commit the Company in any way to the performance of any contract whatever nor incur any liabilities on behalf of the Company nor make any representations nor give any warranty on behalf of the Company.



EXERCISES - LESSON 2

Exercise n. 1. Contract duration.

In a short while you're going to read a conversation between John and Margaret. Margaret is a qualified lawyer and John is a trainee. They work in the same law firm.

John: Hi Margaret, do you have a minute? I need some advice on this contract.

Margaret: Sure. Tell me.

John: Well, the parties entered into this agency agreement and they provided a “term and termination” clause, whereby the contract will come into force on 31 December 2010 and expire on 30 June 2012.

Margaret: Okay.

John: But they actually signed the contract on 15 November 2010.

Margaret: That's correct, though the effective date of the contract is the date provided in the “term and termination” clause, which is 31 December 2010. The contract will come into force at that date, whereas 15 November is the date of signature. On this date the contract is valid, since it has met all the legal requirements provided by the law, but it's not effective yet.

John: I see. So, the effective date and the date of signature do not always have to match.

Margaret: Not necessarily, it depends on the parties' agreement.

John: And what about the expiry date? Will the contract last until then?

Margaret: If the parties do not breach the contractual obligations and no event of termination occurs, then the contract will cease to be effective as from the expiry date agreed in the “term and termination” clause.

John: Okay, it's all clear now. Thank you so much, Margaret.

Margaret: You're welcome John.

Mark “true” or “false” for the following sentences.

1. John is a qualified lawyer
2. John asks Margaret to clarify some provisions of a contract
3. The contract provides a “term and termination” clause
4. The contract provides a date of entry into force and an expiry date for the contractual relationship

5. In the contract, the effective date matches with the date of signature
6. The effective date is the date on which the contract comes into force
7. The date of signature is the date on which the parties sign the contract
8. The expiry date is the date on which a contract terminates because a breach of contract has occurred

Exercise 2. Certainty of terms in contracts: a case study.

In *Carlill v Carbolic Smoke Ball Co* (U.K., 1893), the company placed advertisements in a number of newspapers, declaring that it would pay £ 100 to anyone who caught the flu after using its smoke balls according to the product instructions. The company further stated that it had deposited £ 1.000 at the Alliance Bank as a guarantee against any possible claims. Mrs Carlill bought one smoke ball, used it as indicated in the instructions, but still caught the flu. She claimed the sum of £ 100 stated in the advertisement but the company refused to pay her. Mrs Carlill then sued the company, which argued that the advertisement was too vague to be considered a contract. The court eventually held that the product instructions were sufficiently clear and defined to constitute the terms of a contract and that the reference to the £ 1000 deposit was evidence enough of the company's intention to be bound. The court concluded, therefore, that Mrs Carlill was entitled to recover the £ 100 stated in the advertisement.

Mark “true” or “false” for the following sentences.

1. Carbolic Smoke Ball Co advertised its smoke balls as a product which would prevent people from catching the flu.
2. Mrs Carlill bought a smoke ball but did not follow the instructions for their use.
3. Carbolic Smoke Ball Co had provided a bank deposit of £ 1000 as a security for the reliability of its smoke balls.
4. Mrs Carlill was awarded £ 100 by the Carbolic Smoke Ball Co because she had caught the flu despite having used the smoke ball.



5. Carbolic Smoke Ball Co argued that its advertisement on the smoke balls was too vague to be considered a contract.

6. The court held that Mrs Carlill was not entitled to the sum of £ 100 since the advertisement was too vague to be considered a contract.

Exercise 3: Give the correct abstract noun for the following verbs.

Example: to stipulate → stipulation

1. To propose

2. To negotiate

3. To execute

4. To amend

5. To perform

6. To accept

7. To promise

8. To expire

9. To change

10. To draft

11. To waive

12. To indemnify

13. To warrant



14. To apply
15. To supply
16. To pay
17. To disclose
18. To license
19. To provide
20. To settle

Exercise n. 4. Role play. You are the Seller's lawyer and are negotiating a supply contract. You have a meeting with the Buyer's lawyer in order to discuss some legal aspects of the supply and set forth a memorandum with some essential terms of the contract.

Step 1. The parties' lawyers meet for the first time and introduce themselves;

Step 2. The Buyer has already provided the Seller with his purchase forecasts of products for the first 6 months of the supply. The Seller requests that the forecast be binding to the Buyer. The parties' lawyers discuss this point and report it in the memorandum;

Step 3. The Seller warrants that the Products will be free from defects in material and workmanship. The Buyer would also like to be indemnified and held harmless by the Seller in the event that a defective product might cause injuries to third parties or property. The parties' lawyers discuss this point and report it in the memorandum;



Step 4. The parties' lawyers agree that, according to the outcome of their meeting, the Seller's lawyer will prepare a draft supply contract and send it to the Buyer's lawyer for negotiation and further discussion.

Exercise 5. Please write a short paragraph on distribution contrasted with agency.

Useful terms/expressions: seller, buyer, principal, distributor, manufacturer, contractual relationship, to act in the name and on behalf, to market, to promote, to resell, sale and purchase, customer(s).