

**Exercise 2**

Look at the definitions of the archaic terms below. Complete the sentences that follow with one of the archaic terms from the list. You will need to use each word only once.

- **Hereby** – by means of this document/with these words/with this action.  
'I *hereby* accept your offer.'
- **Herein** – in this document.  
'The price named *herein* is final and non-negotiable.'
- **Hereinafter** – starting from this time/later in this document.  
'ATL Electrics plc, *hereinafter* known as "the Company".'
- **Heretofore** – earlier in this document/previously/before the time of writing.  
'The property *heretofore* known as Downing House is renamed Appleby House.'
- **Hereunder** – in a later part of this document/under the terms of this agreement.  
'The terms and conditions are listed *hereunder*.'

- a Royal Airlines Limited, \_\_\_\_\_ referred to as 'RAL'. (*later in this document*)
- b The Author guarantees to the Publisher that the Work is \_\_\_\_\_ unpublished by any other company or individual. (*previously*)
- c In consideration of the sum of £10,000, receipt of which the Seller \_\_\_\_\_ acknowledges. (*by means of this document*)
- d Any products referred to \_\_\_\_\_ remain the property of the Supplier until the Customer pays for them in full. (*in this document*)
- e In case of dispute between the parties, any arbitration conducted \_\_\_\_\_ will be conducted by Arbitrators Direct of London. (*under the terms of this contract*)

**Help desk****What do these words mean?**

**in common use** – something that people use often.

**to delete something** – to remove something from a piece of writing.

**a category** – a group of things that are of the same kind.

**a leading law firm** – one of the most important law firms.

**non-negotiable** – can't be changed, fixed.

**to fall out of use** – if something falls out of use it means that people don't use it any more.

**to acknowledge receipt** – to confirm that you have received something.

**in full** – completely.

**arbitration** – the process of a third party settling an argument or a legal problem without the matter going to court.

**conducted** – done, carried out.

**Exercise 3**

Look at the definitions of some more archaic terms below. Complete the sentences that follow with one of the archaic terms from the list. You will need to use each word only once.

- **Thereby** – as a result of this or that action.  
'Your client signed the contract and *thereby* entered into a binding agreement.'
- **Therein** – in or into a particular place or thing/in that/in there.  
'The rented property and the furniture contained *therein*.'
- **Thereon** – on it/on there/on what I have just mentioned.  
'The amount borrowed and the interest due *thereon* must be repaid by 10 March 2010.'
- **Thereinafter** – later in that place or thing/later in what I have just mentioned.  
'We were defined in that contract as the Company and we were known as the Company *thereinafter*.'
- **There to** – to it, to the thing that I have just mentioned.  
'At the meeting we will discuss Mrs Jones' will and all matters related *thereto*.'

- 
- a He sold the company and \_\_\_\_\_ became a millionaire. (*as a result of that action*)
- b I enclose a copy of the contract. Please return it to me together with any amendments \_\_\_\_\_ . (*to the contract I have just mentioned*)
- c The owner of the land and any person who wishes to claim an interest \_\_\_\_\_ should contact this firm of solicitors as soon as possible. (*in the land that I have just mentioned*)
- d The defamatory story in the newspaper refers to my client in the first paragraph and refers to her \_\_\_\_\_ another four times in total. (*later in the thing that I have just mentioned*)
- e The Buyer agrees to insure the painting and to pay any import tax due \_\_\_\_\_ upon delivery to the UK. (*on that particular thing*)
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**Exercise 4**

There are certain archaic words that lawyers use in contracts to mean 'mentioned in an earlier part of this document'. These words are:

- 'said'
- 'aforesaid'
- 'aforementioned'
- 'the same'

Look at this typical example. The relevant parts of the sentences are highlighted.

'The **contract** between the claimant and the defendant was signed in August. **Said contract** was for the supply of goods.'

In this example the word 'said' is used to mean 'the contract that I have already mentioned'. The lawyer could have used the other words in the list to do the same. Alternatively, he or she could have just said 'It' or 'The contract':

'The **contract** between the claimant and the defendant was signed in August. **It** was for the supply of goods.'

*continued*

When you see one of these archaic words in a contract you must look back in the document to find the noun that it refers to. Sometimes you are lucky and the noun that is being described is near the archaic word, as in our example. However, sometimes the noun and the archaic word are far apart and that makes things more difficult.

Look at the following examples. They are all from the terms and conditions of sale of a contract. In each example you will see one of the archaic words from the previous page. In each example underline the word or words that the archaic word refers to.

- a Payment must be made upon delivery of the goods. The exception is where payment by invoice has been agreed. In the event of payment by invoice payment must be made within 30 days of receipt of the **same**.
- b Where a specific delivery date has been agreed and **aforsaid** cannot be met the Buyer will have the option to receive a full refund.
- c The goods shall be inspected by the Buyer upon delivery. All goods come with a delivery note. In the event that goods cannot be examined by the Buyer the **aforementioned** document shall be marked 'not examined'.
- d Any defective goods must be returned to the Supplier. **Said** goods must be correctly packaged.

### Help desk

#### What do these words mean?

**comments** – things that are written or said about someone or something.

**exception** – something that is not included in a general rule.

**packaged** – put into the correct box, bag or container for transporting or selling.

**meet** (met) an obligation – to fulfil an obligation. To do what you promised to do.

**refund** – the money that you get back from a shop or a supplier when you return goods.

**option** – a choice.

## UNDERSTANDING SOME COMMON WORDS

### Exercise 1

Look at the words and phrases in the blue box. They are all connected with a specific type of contract. Use the correct word to complete each definition on the next page.

● **In transit**

● **On board**

● **Carriage**

● **Copyright**

● **Staff**

● **hirer**

● **patent**

● **Import duty**

● **invention**

● **trademark**

● **Premises**

● **owner**

- a \_\_\_\_\_ are the buildings that a business uses.
- b \_\_\_\_\_ is the legal right for someone such as a writer or a singer to publish his or her own work and to be sure that no one can copy or exploit it without permission.
- c \_\_\_\_\_ is a type of tax that you have to pay when you bring certain goods into a country.
- d \_\_\_\_\_ is moving goods from one place to another.
- e \_\_\_\_\_ are all of the people who work for a particular business or organisation.
- f A \_\_\_\_\_ is a symbol such as a word or a picture that a company puts onto its products to distinguish it from the products of its competitors.
- g A \_\_\_\_\_ is an official document. The document protects a new invention, such as a new medicine or a new machine from being copied or exploited.
- h \_\_\_\_\_ means in the process of being transported from one place to another.
- i A \_\_\_\_\_ is a person or organisation that pays money to someone to use something for a certain period of time.
- j An \_\_\_\_\_ is something new that someone has made or designed for the first time.
- k \_\_\_\_\_ means placed on a plane, ship, lorry or a train.
- l An \_\_\_\_\_ is a person or organisation that has the legal right to possess something. It belongs to them.

### Exercise 2

Here are the words again. Each of the words and phrases in Exercise 1 are connected with a specific type of contract. Sort the words into the correct type of contract under the headings below.

**A contract for the hire  
of a hotel for a company's  
conference**

**A contract for the transport  
of goods by ship**

**A contract concerning a  
company's intellectual  
property rights**

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**Exercise 3**

Put the correct word or phrase from the **contract for the hire of a hotel for a company's conference** into the following sentences.

- a The \_\_\_\_\_ of the hotel bought it last year from a large hotel chain.
- b The \_\_\_\_\_ of the hotel conference room wants to book the room for three days in June.
- c The hotel \_\_\_\_\_ are very big. In fact, it is probably the biggest hotel in the city.
- d There are over 200 \_\_\_\_\_ working in the hotel.

**Exercise 4**

Put the correct word or phrase from the **contract for the transport of goods by ship** into the following sentences.

- a The goods were put \_\_\_\_\_ the ship in Liverpool and the buyer will unload them in Sydney.
- b The cost of \_\_\_\_\_ is £600.
- c The buyer agrees to pay any \_\_\_\_\_ that the customs authorities demand when the goods arrive in Australia.
- d The goods are \_\_\_\_\_. They are on a ship somewhere between England and Australia.

**Exercise 5**

Put the correct word or phrase from the **contract concerning a company's intellectual property rights** into the following sentences.

- a The computer was a new \_\_\_\_\_ in the twentieth century.
- b The publishing company and not the author has \_\_\_\_\_ in the book.
- c If you invent something new it is important to register a \_\_\_\_\_. You will get a document that protects your right to produce and sell your invention.
- d The \_\_\_\_\_ of the Victoria Bennett Jeans Company is the letters VB with a gold circle around them.

**Help desk****What do these words mean?**

**a conference** – a large meeting where people discuss important matters, especially business matters.

**a hotel chain** – a group of hotels that all have the same owner.

**to book something** – to say that you want to reserve something to use in the future such as a car or a hotel room.

**customs authorities** – a government department that collects tax on goods that people bring into the country.

**an author** – a person who writes books.

**intellectual property rights** – a person's rights in something that they have invented or created. No one else has the right to make, sell, copy or exploit the invention or creation without permission.

## THE STRUCTURE OF A CONTRACT

Read the following text about the structure of a contract. The most important words are in the key vocabulary below. Then complete the exercises that follow.

### Key vocabulary

- **drafts**
- **parties**
- **key obligations/duties**
- **delivery of goods/services**
- **drafting checklist**
- **template**
- **precedent bank/library**
- **to draft 'from scratch'**
- **recitals**
- **definitions section**
- **precedent**

A contract has a logical structure. Some lawyers say that a well-written contract is like a story because it explains the agreement from the beginning to the end in a way that a reader can clearly understand. When a modern lawyer **drafts** a contract he or she is following a tradition that has developed over many years. Let's look at the first half of a commercial contract. Most commercial contracts begin with the following sections:

- the **parties** – the people or companies who are entering into the contract
- the **recitals** – the background to the contract and the reason(s) why the parties are entering into the contract
- the **definitions section** – how certain words must be interpreted when they are used in the contract
- the **key obligations/duties** – the most important things that each party agrees to do
- the **delivery of goods/services** – the time when the key obligations will be carried out and where they will be carried out.

However, a lawyer who is drafting a contract doesn't often begin with a blank page. A lawyer would call this **to draft 'from scratch'**. Most modern contracts are not drafted from scratch but are based on a **precedent**. A precedent is an existing contract that a lawyer can use as a model for drafting another, similar agreement. A precedent also acts as a useful **drafting checklist** to make sure that everything necessary is included. Most law firms have a **precedent bank** or **precedent library** as part of the word processing facility on the company computer, or they rely on an encyclopaedia of precedents. The precedents are regularly updated, particularly when the relevant law changes.

A precedent can also be referred to as a **template**, but this is a more general word for something that you can copy. It is not so specific to contract law as a 'precedent'. Remember, a contract precedent should not be confused with the other meaning of the word precedent, which is the decision of a judge in common law that is used as a general principle of law.

### Help desk

#### What do these words mean?

**a key obligation** – an important obligation.

**carried out** – done, performed.

**a blank page** – a page with no writing on it.

**current** – existing now.

**a checklist** – a list to help you make sure that everything necessary is done.

**Exercise 1**

Here are some questions about the words in the key vocabulary. Match the questions with the answers provided.

- |  |   |
|--|---|
| a What is a contract <b>precedent</b> ?                        | They are the people or companies who are entering into the agreement. (1)   |
| b What does <b>'to draft'</b> mean?                            | It is a model contract that already exists. A lawyer can use it when he or she has to draft a similar contract. (2)                                       |
| c Who are the <b>parties to a contract</b> ?                   | Because it specifies the exact meanings of words. Both parties (and maybe a court) must be sure how particular words are interpreted in the contract. (3) |
| d What does the <b>recitals</b> section of a contract contain? | It is another word meaning 'to write'. (4)  |
| e Why does a contract contain a <b>definitions</b> section?    | It means to write a contract from the very beginning without the help of a precedent. (5)   |
| f What does to draft a contract <b>'from scratch'</b> mean?    | The decision of a judge that forms part of the common law. (6)  |
| g What is the other meaning of the word <b>precedent</b> ?     | This part of the contract contains background information and explains why the parties are entering into the contract. (7)                                |

**Exercise 2**

Here is a list of different sections that you will find in the first half of a commercial contract. Match each section of the contract with the correct extract below.

● **the delivery of goods/services**

● **the key obligations**

● **the parties**  
● **the recitals**

● **the definitions/defined terms**

- a 'Goods' means any goods or services that are ordered from ABC Printing Ltd and includes any materials incorporated in them.

This is from \_\_\_\_\_.

- b This Agreement is made on this fifth day of March 20XX

between ALT ELECTRICS Ltd

and PARSONS MANUFACTURING Ltd

This is from \_\_\_\_\_.

- c The Work will be carried out on 5 May 20XX at the Buyer's address.

This is from \_\_\_\_\_.

- d (1) The Buyer owns a shop.

(2) The Supplier is an experienced electrician.

(3) The Buyer's shop is in need of electrical modernisation and repair.

(4) The Supplier will carry out the electrical modernisation and repair to the shop upon the conditions set out in this agreement.

This is from \_\_\_\_\_.

- e In consideration of the sum of £5000 the Supplier agrees to carry out the Work listed in Schedule A of this Agreement according to current UK standards as specified by the relevant legislation.

This is from \_\_\_\_\_.

#### Help desk

##### What do these words mean?

**incorporated in** – included in.

**to carry something out** – to do something.

**set out** – written or stated.

**relevant legislation** – the part of the general law of a country that the parties to a contract must obey in a particular situation.

#### Exercise 3

Put a word from the text about the structure of a contract in Exercise 1 into these sentences.

- a The people or companies who are entering into an agreement are called the \_\_\_\_\_ to the agreement.
- b Lawyers rarely have to draft a contract from \_\_\_\_\_ as they usually have a precedent that they can use as a template.
- c The section of a contract that gives the background to the contract and the reasons why the parties are entering into the agreement is called the \_\_\_\_\_.
- d Most law firms have a collection of precedents that they refer to as a precedent \_\_\_\_\_ or a precedent library.
- e The section of the contract that deals with \_\_\_\_\_ of goods or services usually states exactly when the key obligations will be carried out.



## UNIT 6A VOCABULARY CHECK

These are the important words that you have studied in Unit 6A. You should make sure that you know these words before you go on to Unit 6B.

**a**forementioned

aforesaid

aggregate

arbitration

archaic term

availability

**c**arriage

clause

compensation

contractor

copyright

**d**efective

defined terms

definition

delivery

distributor

draft

**e**ngaged in

entitled to

expiration

extent

**f**orthwith

from scratch

**g**ive notice

**h**ereby

herein

hereinafter

heretofore

hereunder

hirer

**i**mport duty

in effect

in full

in transit

inadmissible

inasmuch as

inclusive of

incur

invoice

**k**ey obligations

**m**anufacture

**n**on-negotiable

notwithstanding

**o**bligation

on board

option

outlet

**p**atent

parties

precedent

premises

prior to

procure

procurement

property

**r**eal property

recitals

referred to

refund

remedy for breach

retailer

**s**aid

same

subject to

sum

supplier

**t**ake place

template

term

terminated

territory

thereby

therein

thereinafter

thereon

thereto

trademark

trading

**u**ndertake

## TOLES FOUNDATION EXAM PRACTICE

### Exercise 1

Read the following pairs of sentences. For each pair of sentences there are two possibilities, A or B. Decide which sentence uses the correct preposition. Write your answers in the box below. There is an example at the beginning (\*).

#### Example

(\*) (A) The Company shall not be responsible for any of the Agent's costs and expenses.

(B) The Company shall not be responsible to any of the Agent's costs and expenses.

1 (A) All prices stated in the Agreement are inclusive of tax.

(B) All prices stated in the Agreement are inclusive with tax.

2 (A) The Company is engaged at the business of manufacturing electrical goods.

(B) The Company is engaged in the business of manufacturing electrical goods.

3 (A) The Buyer agrees to pay interest of any outstanding payment.

(B) The Buyer agrees to pay interest on any outstanding payment.

4 (A) The Company will pay the Employee's expenses subject to the Employee providing valid receipts.

(B) The Company will pay the Employee's expenses subject on the Employee providing valid receipts.

5 (A) JHS Manufacturing, hereinafter referred to as 'the Company'.

(B) JHS Manufacturing, hereinafter referred in as 'the Company'.

(*) A	(1)	(2)	(3)	(4)	(5)
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### Exercise 2

Look at this list of words. They are all nouns. Put the correct word into the following sentences. Write your answers in the boxes numbered 1–10 below. There is an example at the beginning (\*).

(AA) distributor

(C) invoice

(F) copyright

(I) term

(A) recitals

(D) expiration

(G) precedent

(J) duty

(B) outlet

(E) remedy

(H) premises

#### Example

(\*) A person or company that supplies goods in a particular geographical area is often referred to in a contract as a (\*) \_\_\_\_\_.

1 A (1) \_\_\_\_\_ is an existing contract that a lawyer can use as a model when drawing up a new contract.

2 Many written contracts refer to a (2) \_\_\_\_\_ for a breach. This is a solution that the party in breach can offer to the injured party to compensate him or her for the effect of the breach.

3 An (3) \_\_\_\_\_ is an itemised bill. Many contracts state what the penalty will be if it is not paid on time.

4 The (4) \_\_\_\_\_ section of a contract provides the background to the contract. It states why the parties are entering into the agreement.

5 A contract will often use the formal word (5) \_\_\_\_\_ to describe commercial land and buildings.

6 Contracts that deal with the export or import of goods usually have a clause that states which party will be liable for any import (6) \_\_\_\_\_ when the goods arrive in a foreign country.

- 7 In contracts where creative work such as artwork or writing is sold, it is important to state which of the parties owns (7) \_\_\_\_\_ in the work.
- 8 A place that sells goods to the public is often referred to in a contract as a retail (8) \_\_\_\_\_.
- 9 The (9) \_\_\_\_\_ of a period of time is a very formal way of saying the end of that period of time.
- 10 The duration of a contract is usually referred to as the (10) \_\_\_\_\_ of the contract.

(*) AA	(1)	(2)	(3)	(4)	(5)
	(6)	(7)	(8)	(9)	(10)

### Exercise 3

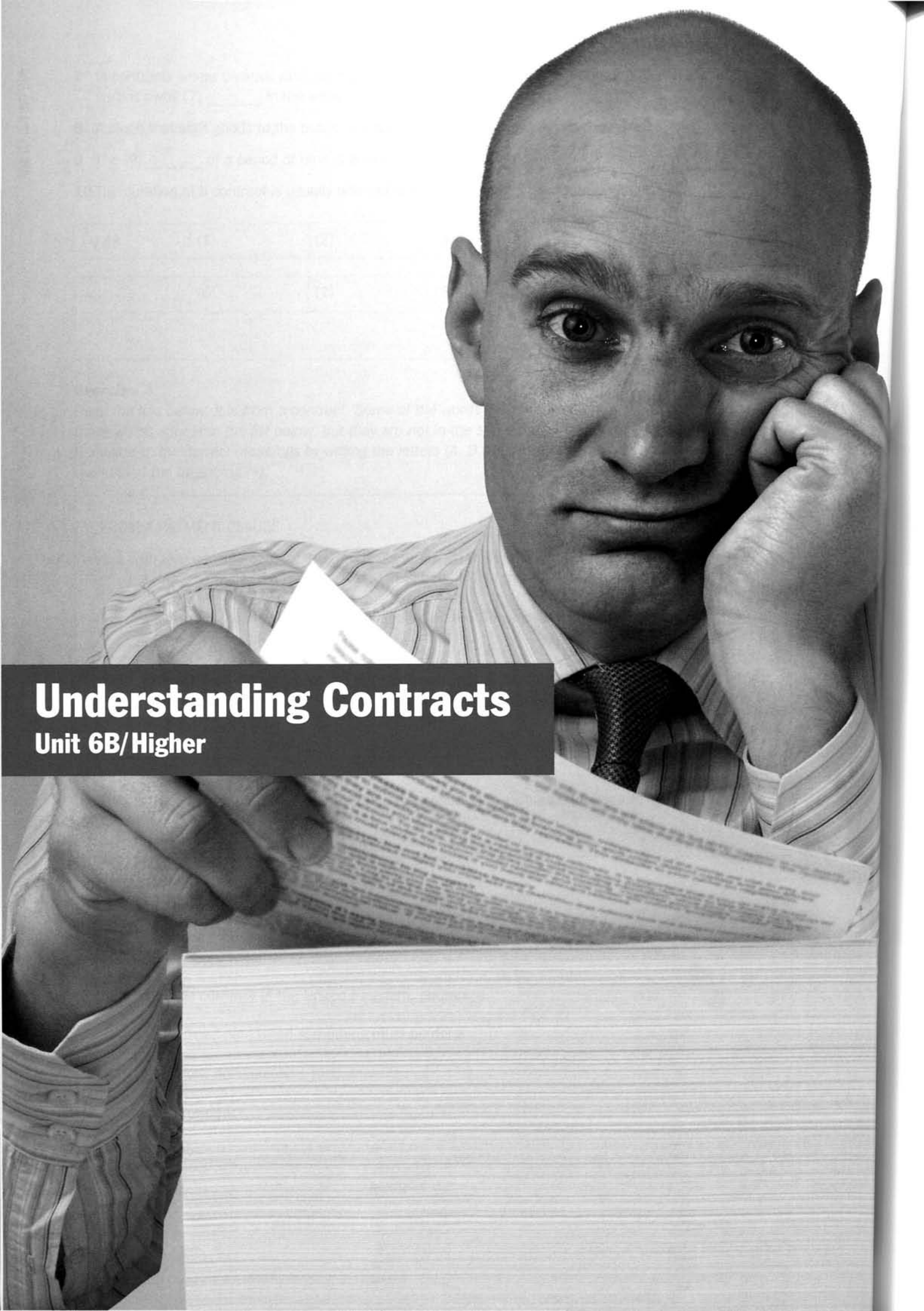
Read the text below. It is from a contract. Some of the words in the text are underlined. The meanings of these words appear in the list below, but they are not in the same order. Match the underlined words in the text with the correct meanings by writing the letters (A, B, C, etc.) in the box below. There is an example at the beginning (\*).

#### FROM A PAYMENT CLAUSE

- 1.1 In (AA) consideration of the Goods (A) furnished under this (B) Agreement the Buyer agrees to pay the Seller the (C) sum stated in Schedule 1 to this Agreement.
- 1.2 Save as may be (D) set out in this Agreement the Buyer shall make payment in (E) sterling within 14 days of (F) receipt of invoice.
- 1.3 Interest shall (G) accrue on (H) overdue payments at the rate of 5.5% per annum above the base rate from time to time of The Royal Bank (I) in the event that payment is not received on the (J) due date.

(*) AA	what the parties exchange under the contract; in exchange for something
	contract
	amount of money
	receiving
	written, specified
	the currency of the United Kingdom; pounds
	agreed date when something must be done
	grow, accumulate
	provided
	late
	if





# Understanding Contracts

Unit 6B/Higher

# UNDERSTANDING CONTRACTS 1

## THE DIFFERENT PARTS OF A WRITTEN CONTRACT

### Exercise 1

Here are six headings that are used by lawyers to describe different parts of a contract. Match the descriptions below with the correct heading.

- the delivery of goods/services
- the key obligations
- the parties
- the recitals
- the defined terms
- a schedule

**a** The part of a contract that sets out the most important things that the parties have agreed to do under the contract.

The heading is \_\_\_\_\_

**b** The part of a contract that gives the background information to the contract. It often states why the parties are entering into an agreement.

The heading is \_\_\_\_\_

**c** The part of the contract that gives a precise explanation of how the parties will interpret certain words used in the contract.

The heading is \_\_\_\_\_

**d** An extra document that is attached to the contract giving information that is too detailed to be included in the body of the contract.

The heading is \_\_\_\_\_

**e** The part of the contract containing the names of the people or companies who are entering into the contract.

The heading is \_\_\_\_\_

**f** The part of the contract that gives a specific time and date for when certain obligations must be carried out. It might also specify where these obligations will be carried out.

The heading is \_\_\_\_\_

UK lawyers often refer to the parts of a contract as *clauses*. For example, 'I would like to suggest some amendments to clause 4 of this contract'. However, there are other words that lawyers often use in the same way:

- section
- paragraph
- article

Internationally, lawyers use the words as synonyms – they all have the same meaning.

- 'Can I draw your attention to *section 5*'
- 'If we can just look at *paragraph 5* for a moment'
- 'If you wouldn't mind looking at *clause 5*'
- 'Let's look at *article 5*'

## PARTIES AND RECITALS

### You need to know about...

#### Parties

A contract will always name the parties to the agreement. It is necessary to identify the parties so that everyone concerned is sure who the agreement is between. The addresses of the parties are usually included. This is important in case you want to serve a notice on the other party. With a company it is usual to give the address of its registered office, which is often not the same as the business address.

#### Recitals

Most contracts include a recitals section, although many lawyers say it is not absolutely necessary. The recitals give the background information to the contract. It is useful because it usually says why the parties are entering into the contract. The recitals often start with the word WHEREAS and in some contracts every sentence in the recitals will begin with the word WHEREAS. It is a very old-fashioned word meaning something like 'Taking the following facts into consideration' or 'The situation is as follows'.

### Exercise 1

Read the following extract from a contract. Complete each gap with the correct word from the blue box below.

This AGREEMENT is made on this third day of April 20XX

between

CLADDAGH FURNITURE & DÉCOR Ltd a company incorporated in Ireland under number 1000576 having its registered office at 30 King Charles Crescent, Galway City, Republic of Ireland hereinafter (a) \_\_\_\_\_ to as 'the Supplier', (b) \_\_\_\_\_

ALL THINGS IRISH Ltd a company incorporated in England under number 2297103 having its registered office at 1 Montgomery Square, Birmingham, England hereinafter referred to as 'the (c) \_\_\_\_\_'

#### RECITALS

WHEREAS the Supplier is (d) \_\_\_\_\_ in the manufacture and distribution of handmade furniture and various other household goods for sale and distribution to retailers

WHEREAS the Buyer is a (e) \_\_\_\_\_ who operates a chain of retail outlets around the UK and wishes to purchase a selection of furniture and other goods from the Supplier for sale to the public via said outlets

WHEREAS the Supplier agrees to supply specified furniture and other goods to the Buyer (f) \_\_\_\_\_ to the terms and conditions set out in this Agreement.

- |            |           |            |
|------------|-----------|------------|
| ● referred | ● subject | ● retailer |
| ● engaged  | ● and     | ● Buyer    |

**Exercise 2**

A client has telephoned you to ask for an explanation of some of the words in the extract in Exercise 1. Match the highlighted word or phrase with the definitions provided.

- |                                  |   |
|----------------------------------|---|
| (*) <b>Incorporated</b> means... | ...people or companies who sell things in their shops directly to the public. (1) |
| <b>a Hereinafter</b> means...    | ...written. (2)   |
| <b>b Manufacture</b> means...    | ...runs or manages a business. (3)  |
| <b>c Retailers</b> are...        | ...a number of shops or offices run by the same business or company. (4)          |
| <b>d Operates</b> means...       | ...to be formed into a registered company.  |
| <b>e A chain</b> is a...         | ...later in this document. (5)  |
| <b>f Outlets</b> are...          | ...to make or produce something. (6)  |
| <b>g Said</b> means...           | ...somewhere where goods or services are sold, such as shops. (7)                 |
| <b>h Set out</b> means...        | ...already mentioned. (8)   |

**Exercise 3**

Here is another introduction to a contract. It is very similar to the example that you saw in Exercise 1. Fill each gap in the text with the correct preposition from the blue box below.

This AGREEMENT is made (a) \_\_\_\_\_ this eleventh day of August 20XX

between

COMPUHIRE Ltd a company incorporated (b) \_\_\_\_\_ England under number 9998113 having its registered office (c) \_\_\_\_\_ 55 Maple Court Lane, Manchester, England hereinafter referred to as 'the Owner' and

ONLINE COUNTRY GIFTS Ltd a company incorporated in England under number 7890123 having its registered office at 60 Vale Arbour, Birmingham, England hereinafter referred to as 'the Hirer'

RECITALS

WHEREAS the Owner is engaged in the hire and maintenance (d) \_\_\_\_\_ office computer systems to online business operations

WHEREAS the Hirer is a business which operates an online gift purchasing facility for use (e) \_\_\_\_\_ the general public

WHEREAS the Owner agrees to supply specified computer hire and maintenance services to the Hirer subject (f) \_\_\_\_\_ the terms and conditions set out in this Agreement.

● on      ● of      ● at      ● to      ● in      ● by



**Exercise 4**

Complete the following introduction to a contract using the information from the blue box.

- **DATE:** 19/07/20XX
- **PARTIES:** BPP Distribution Ltd (known as the Distributor), company number 3456789 and The English Educational Press Ltd (known as the Publisher), company number 6789012

This AGREEMENT is made on this (a) \_\_\_\_\_ day of (b) \_\_\_\_\_ 20XX

between

(c) \_\_\_\_\_ a company incorporated in England under number (d) \_\_\_\_\_ having its registered office at 15 Regent Street, Liverpool, England hereinafter referred to as 'the Distributor' and (e) \_\_\_\_\_ a company incorporated in England under number (f) \_\_\_\_\_ having its registered office at Princess Diana House, York, England hereinafter referred to as 'the (g) \_\_\_\_\_'.

**RECITALS**

WHEREAS the Distributor is engaged in the distribution of academic and educational textbooks for sale and distribution to schools, universities and other educational establishments.

WHEREAS the Publisher produces academic and educational textbooks for use in educational establishments within the United Kingdom.

WHEREAS the Distributor agrees to distribute specified titles to educational establishments subject to the terms and conditions set out in this Agreement.

**Exercise 5**

Complete the following sentences with a word or words that you have seen in Exercises 1–4.

- a The company was incorporated in 2006 and has its \_\_\_\_\_ office at 10 Admiralty Square, London.
- b The Distributor agrees to the terms and conditions \_\_\_\_\_ in this agreement.
- c COMPUHIRE is \_\_\_\_\_ known as 'the Owner'.
- d He runs a \_\_\_\_\_ of 15 retail outlets in the south of England.
- e In the recitals section of a contract you often see at least one sentence beginning with the word \_\_\_\_\_.
- f The Hirer is \_\_\_\_\_ in the business of the distribution of educational textbooks.

**Collocation bank**

- to **serve** notice/a notice on someone
- to **enter into** a contract
- to **run/operate** a business
- the terms and conditions **set out** in an agreement
- to **carry out** an obligation
- to be **engaged in** a particular business/occupation
- to **make** an agreement

m

**Preposition bank**

- the parties **to** an agreement/contract  
'Who are the parties **to** this contract?'
- subject **to** terms and conditions  
'The Company agrees to supply the Buyer with goods subject **to** the terms and conditions set out in this Agreement.'
- to suggest an amendment **to** a document  
'I suggest an amendment **to** clause 6.'
- to enter **into** a contract  
'Did you enter **into** this contract voluntarily?'
- an agreement **between** two parties  
'This agreement is **between** the Publisher and the Distributor.'
- to draw someone's attention **to** something  
'Can I draw your attention **to** what you said in your email?'

**DEFINED TERMS****You need to know about...**

This section of a contract usually comes after the parties and recitals. However, some contracts have this section at the end of the agreement. The purpose of this section of a contract is to give a precise definition of important words as they are used in that particular contract. It is important because the parties need to know for sure what words mean. For example, look at this very precise definition of the word 'Goods'.

'Goods' shall mean any goods or services that are the subject of the contract and shall include components and any part(s) of components supplied and any materials incorporated in them.'

You will see that it is different from the normal dictionary definition. That is because the parties have agreed on the meaning of the word 'Goods' in this particular contract.

A word or expression that has been defined is called a defined term. Often, a defined term is only one word, for example 'Goods'. However, a defined term may be made up of more than one word, for example, 'Final Repayment Date'. In the definitions section, each word of the defined term must be given a capital letter, as in our example. Then, every time a defined term is used in the contract it also starts with a capital letter. This is to remind anyone reading the contract that these words are defined and have a special meaning. The first time a defined word is used it is put in inverted commas like this, 'Goods' means.... After the first time the defined term is used without inverted commas.

The section of the contract that begins after the recitals often begins with the words 'Now it is agreed as follows' or 'It is hereby agreed'. This means that the definitions section is the start of the legally binding part of the agreement.

**Exercise 1**

In the blue box there are four defined terms from a contract. Match each defined term with its definition below.

**'Company'** (1)**'Buyer'** (2)**'Contract'** (3)**'Goods'** (4)

- |  |  |
|--|--|
| <p><b>a</b> the agreement dated 5 March 2007 entered into between the Company and the Buyer to supply goods/services to the Buyer.</p> <p><b>b</b> the person/company or the person's/company's servants or agents purchasing goods/services from the Company.</p> | <p><b>c</b> any goods/services that are the subject of this contract and shall include components and any part(s) of components supplied and any materials incorporated in them.</p> <p><b>d</b> THE ANNE HARTIS COOKIE COMPANY LTD, of 25 Station Lane, Cuthbert Road, Durham DH15 8HK.</p> |
|--|--|

**Exercise 2**

Exercise 1 contained the following definition:

'Buyer' means the person/company or the person's/company's servants or agents purchasing goods/services from the Company

What do the words 'servant' or 'agent' mean when used in this way?

In the case of *Malcolm v University of Oxford (2002)* the Court of Appeal spoke about the meaning of these two words.

From *Malcolm v University of Oxford (2002)*

'The term "servant" means an employee under a contract of service. The term "agent" means a person entrusted with the fulfilment of a role or performance of a task on behalf of his principal, usually involving or affecting the legal relations of the principal with a third party.'

Here is a simplified version of the judge's explanation. Complete the explanation of what 'servant' and 'agent' mean by filling the gaps in the text with a word from the box below.

The word (a) '\_\_\_\_\_' means an employee who has a contract of employment with your company. A good example of the legal meaning of the word 'servant' would be a 'servant' of a university. This would include any (b) \_\_\_\_\_ who has a contract to work for the university but *not*, for example, a visiting (c) \_\_\_\_\_ who was paid a fee to give a talk to the students.

The word (d) \_\_\_\_\_ means a person who the party to the contract, known as the (e) \_\_\_\_\_ or the master, trusts to act on his behalf when dealing with a third party.

- professor    ● principal    ● servant    ● agent    ● employee

**Exercise 3**

Here is the definitions section from another contract. Fill each gap with the correct preposition from the blue box below.

(a) \_\_\_\_\_ these terms and conditions the following words shall have the following meanings:

'the Supplier' means Peterson Electrics Ltd trading under the title appearing on any invoice

(b) \_\_\_\_\_ the Goods

'the Goods' means any product, articles or things supplied by or subject to negotiations for supply

(c) \_\_\_\_\_ the Supplier (d) \_\_\_\_\_ the Buyer

'the Buyer' means any corporate entity, firm or person to whom the Supplier supplies or

(e) \_\_\_\_\_ whom the Supplier enters negotiations for the supply (f) \_\_\_\_\_ Goods.

- In    ● for    ● to    ● of    ● by    ● with

**Exercise 4**

Look at this information from the definitions section of another contract. The information refers to how certain words in the contract will be interpreted. This is common to many commercial contracts. Match each piece of information with the correct explanation given below.

In these conditions, unless a contrary intention appears:

- a** reference to the singular includes a reference to the plural and vice versa
- b** reference to a gender includes a reference to the opposite gender
- c** reference to a party includes a reference to its servants and agents
- d** headings are used for the purpose of reference only and do not form part of these conditions.

- |   |   |
|---|---|
| <p><input type="checkbox"/> If the word he/him/man is used in this contract, that word also means she/her/woman. (1)</p> <p><input type="checkbox"/> If the contract refers to one of something, such as a <i>component</i> of a machine, that word includes <i>components</i> – the contract doesn't need to use both words each time that term is used. (2)</p> | <p><input type="checkbox"/> The title of a contract clause, for example, <i>payment terms</i> or <i>termination</i> is not included as part of the terms and conditions of the contract. (3)</p> <p><input type="checkbox"/> Every time one of the parties to the contract is mentioned, for example, <i>the Company</i>, the name of that party will be understood to include all of that party's employees. (4)</p> |
|---|---|

**Collocation bank**

- to provide a **precise definition** of a word

**Preposition bank**

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>● to be the subject <b>of</b> a contract<br/>'Goods shall mean the goods that are the subject <b>of</b> any contract between the parties.'</li> <li>● to refer <b>to</b> something<br/>'Where the masculine is referred <b>to</b> in this contract it shall include the feminine.'</li> <li>● to supply goods/services <b>to</b> someone<br/>'Our company supplies electricity <b>to</b> the London area.'</li> <li>● to be a person who is <b>under</b> a contract of employment/service<br/>'He is <b>under</b> a contract of employment to a big recording company in Los Angeles for the next six months.'</li> <li>● to work <b>for</b> a company or organisation<br/>'I work <b>for</b> an international law firm in Hong Kong.'</li> </ul> | <ul style="list-style-type: none"> <li>● to act <b>on</b> behalf of someone else<br/>'Any servant or agent who is authorised to act <b>on</b> behalf of the principal.'</li> <li>● to trade <b>under</b> a particular name<br/>'That company went out of business last year but they are now trading <b>under</b> a new name.'</li> <li>● goods/services supplied <b>by</b> a company<br/>'Any goods supplied <b>by</b> your company must meet European Union safety regulations.'</li> <li>● to be subject <b>to</b> something<br/>'The price of the Goods is not subject <b>to</b> negotiation.'</li> <li>● to be entrusted <b>with</b> doing something or dealing with a person<br/>'I am entrusting you <b>with</b> a very important new client.'</li> </ul> |
|--|--|

**Exercise 5**

Look at the text below. It is from the definitions section of a procurement contract. Procurement contracts are usually used by governments or large corporations to buy the things that they need from outside companies. Read the text and explain the meaning of the underlined words or phrases. You can use one word or a short sentence. There is an example at the beginning.

Terms and conditions of purchase

**DEFINITIONS**

- 1.1 'Buyer' shall mean the United Kingdom Department of Health, their servants or (\*) agents.
- 1.2 'Seller' shall mean the person, firm or company (a) issued with an Order and any (b) servants, agents or authorised sub-contractors of any such person, firm or company.
- 1.3 'Order' shall mean a purchase order as may be varied by a Change Order.
- 1.4 'Change Order' shall mean an order varying or cancelling an Order as described in clause 4 (c) hereof.
- 1.5 'Work' shall mean any equipment, goods or services or part thereof to be provided under the Order.
- 1.6 'Price' shall mean all (d) sums payable to the Seller for performance of the Work.
- 1.7 'Intellectual Property Rights' shall mean all copyright, all other rights in relation to registered and unregistered trademarks, inventions and all other rights resulting from intellectual activity in the industrial, scientific and artistic (e) fields.

(\*) Agents are the people who are authorised to act on behalf of a principal. The principal is one of the parties to the contract.

a

---

b

---

c

---

d

---

e

---

**Exercise 6**

Complete the following sentences with a word or words that you have seen in Exercises 1–5.

- a In these conditions, unless a \_\_\_\_\_ intention appears, a reference to the singular includes a reference to the plural.
- b Any reference to the Company shall include all authorised sub-contractors, \_\_\_\_\_ or agents of the Company.
- c Throughout this agreement \_\_\_\_\_ such as 'NOTICE' or 'TERMINATION' are for reference only and do not form part of the contract.

- d An agent usually works on behalf of one of the parties to the contract. This party is known as the agent's \_\_\_\_\_.
- e She is an expert in her chosen \_\_\_\_\_ of law, which is the protection of intellectual property rights.

## THE KEY OBLIGATIONS

### You need to know about...

After the recitals and the defined terms there are clauses giving a detailed description of what each party promises to do. This part of the contract could be a short paragraph or it could be several pages and contain a very exact description. Depending on the type of contract it is, it might contain diagrams, drawings or graphs to explain the nature of the obligations more clearly. Additional information like this may be included here, although it is usually contained in attachments to the contract known as schedules.

### Exercise 1

Here is the first clause from the key obligations section of a contract. It is a contract between a wine importing company and an exclusive hotel. The company wants to hold its New Year party for 1000 employees at the hotel. Match the underlined words from the clause with the meanings below.

In consideration of the sum stated in paragraph 1 of the Schedule hereto to be paid by the Hirer to the Owner, the Hirer is hereby authorised to enter upon and use for the purpose only of holding a private social function between the hours and on the date set out in paragraph 2 of the Schedule hereto, the following rooms of the London Bridge Hotel together with the right of access thereto by the usual routes. The said rooms are hereinafter known as 'the Hired Premises':

- (i) The King Henry VIII Ballroom
- (ii) The Thames Cocktail Lounge
- (iii) The Westminster View Bar.

- a A person who pays money in exchange for permission to use something for a certain period of time.  
The word or phrase is \_\_\_\_\_
- b A document attached to a contract. It forms part of the contract and contains specific information about what the parties are agreeing to do.  
The word or phrase is \_\_\_\_\_
- c Written or stated.  
The word or phrase is \_\_\_\_\_
- d A building or a part of a building that is used for something in particular.  
The word or phrase is \_\_\_\_\_
- e An amount of money.  
The word or phrase is \_\_\_\_\_

*continued*

f What the parties exchange under the contract, such as goods, services or money.

The word or phrase is \_\_\_\_\_

g To this contract.

The word or phrase is \_\_\_\_\_

h By this contract.

The word or phrase is \_\_\_\_\_

i Later in this document.

The word or phrase is \_\_\_\_\_

### Exercise 2

Here is the clause again. Read it carefully using your answers from Exercise 1 to help you to understand it. Answer the questions that follow using a full sentence.

In consideration of the sum stated in paragraph 1 of the Schedule hereto to be paid by the Hirer to the Owner, the Hirer is hereby authorised to enter upon and use for the purpose only of holding a private social function between the hours and on the date set out in paragraph 2 of the Schedule hereto, the following rooms of the London Bridge Hotel together with the right of access thereto by the usual routes. The said rooms are hereinafter known as 'the Hired Premises':

- (i) The King Henry VIII Ballroom
- (ii) The Thames Cocktail Lounge
- (iii) The Westminster View Bar.

a Why do the names of the parties have a capital letter whenever they are used in this contract?

\_\_\_\_\_

b What term has been given to the wine importing company in the definitions section of this contract?

\_\_\_\_\_

c What term has been given to the hotel in the definitions section of this contract?

\_\_\_\_\_

d Where should the Hirer look to find out how much the hire of the rooms in the hotel will cost?

\_\_\_\_\_

e What else does the Hirer have the right to use in addition to the three rooms that it has hired?

\_\_\_\_\_

f What term is used to describe the three rooms in later clauses of this contract?

\_\_\_\_\_



### Collocation bank

- to **hold** a party or an event somewhere

### Preposition bank

- **in** consideration **of** something  
'**In** consideration **of** the sum specified in Schedule A.'
- to get to a place **by** a certain route  
'I get to London **by** the M1 Motorway.'
- **in** exchange **for** something  
'I will give you £1000 **in** exchange **for** your car.'
- to agree to do something/exchange something **under** a contract  
'You agreed to buy my car **under** the terms of our contract.'
- to do something **between** certain hours or days  
'You may use these rooms **between** 8pm and 2am.'

### Exercise 3

Here are four short clauses from the same contract. Two of the clauses are obligations of the Owner and two are obligations of the Hirer. Put the clauses under the correct heading below.

- to ensure that during the aforesaid period of occupation the Hired Premises shall be heated and lighted by means of existing or additional heating and lighting apparatus.
- to deposit with the manager at least seven days prior to the execution of this agreement the sum of £1000 to be applied in case of any damage to the Hired Premises howsoever caused.
- at the expiration of the period of occupation to remove any property including that belonging to any servants or agents and to leave the Hired Premises in a clean and orderly condition.
- to have available on the Hired Premises adequate staff to serve the needs of the occupiers of the Hired Premises.

The Hirer undertakes as follows

The Owner undertakes as follows

---



---



---



---



**Exercise 4**

Here are the clauses again. Match the highlighted words from the clauses with the definitions below.

- to ensure that during the **aforsaid** period of occupation the Hired Premises shall be heated and lighted by means of existing or additional heating and lighting apparatus.
- to **deposit** with the manager at least 7 days prior to the **execution** of this agreement the sum of £1000 to be **applied** in case of any damage to the Hired Premises **howsoever** caused.
- at the **expiration** of the period of occupation to remove any property including that belonging to any servants or agents and to leave the Hired Premises in a clean and orderly condition.
- to have available on the Hired Premises adequate staff to serve the needs of the occupiers of the Hired Premises.

**a** in any way

The word is \_\_\_\_\_

**d** used

The word is \_\_\_\_\_

**b** performance/the parties carrying out their obligations

The word is \_\_\_\_\_

**e** end

The word is \_\_\_\_\_

**c** already mentioned

The word is \_\_\_\_\_

**f** leave, put, give

The word is \_\_\_\_\_

**Exercise 5**

Look at this clause from a contract. It is from a contract between a business that offers a computer consultancy service and its customers. Read the clause and find the words that have the same meaning as the words listed below.

**SERVICES PROVIDED BY TECH1 CONSULTING**

During the Term of this Agreement TECH1 Consulting shall at the request of the Customer provide the following services for the aggregate number of hours specified in Schedule A:

- 1 provide a remote diagnosis service during Office Hours
- 2 visit the Customer's Premises to diagnose the exact nature and cause of malfunctions and advise as to the repair or replacement of defective equipment
- 3 advise as to the choice and procurement of new equipment inclusive of software
- 4 provide additional services at the extra charges specified in Schedule B
- 5 be available 350 days per annum and to notify the Customer in writing of any period of unavailability greater than 3 days.

**a** duration \_\_\_\_\_

**d** obtaining or purchase \_\_\_\_\_

**b** total \_\_\_\_\_

**e** year \_\_\_\_\_

**c** faulty \_\_\_\_\_

**Exercise 6**

The contract clause in Exercise 5 contains eight words/names that are included in the defined terms section of the contract. Look at the clause carefully and list the words that are defined terms.

a _____	e _____
b _____	f _____
c _____	g _____
d _____	h _____

**Exercise 7**

Here is another clause from the same contract. There are some prepositions missing. Read the clause carefully and fill each gap with the correct preposition.

**CUSTOMER'S OBLIGATIONS**

During the Term (a) \_\_\_\_\_ this Agreement the Customer shall:

- 1 make available to TECH1 Consulting free of any charge whatsoever any operating manuals, program information or any other technical information required (b) \_\_\_\_\_ TECH1 Consulting to perform its duties under this Agreement
- 2 provide TECH1 Consulting with adequate working space and facilities to enable it to carry out its duties under this Agreement without charge to TECH1 Consulting
- 3 where possible to provide TECH1 Consulting with staff familiar (c) \_\_\_\_\_ the Customer's programs databases and computer records in order to co-operate in the diagnosis of any malfunction or fault in the system.

**Exercise 8**

Here are the two schedules mentioned in the contract. Some of the words are missing. Fill each gap in the schedules with the correct word from the blue box below.

- payable
- reviewed
- Included
- Overnight
- increase
- Additional

**SCHEDULE A – MONTHLY CHARGES**

The initial monthly charge for this contract is £450 (a) \_\_\_\_\_ monthly in advance. The charge table below will be (b) \_\_\_\_\_ annually. 30 days' notice of any (c) \_\_\_\_\_ in charges will be given.

Monthly Charge	£450	£500	£550	£600	£650	£700	£750	£800	£850
(d) ____ Hours	8	9	10	11	12	13	14	15	16

**SCHEDULE B – (e) \_\_\_\_\_ CHARGES**

On-Site	1st Hour	Office Hours	08:00 to 18:00	£120
On-Site	Additional Hours	Office Hours	08:00 to 18:00	£80
On-Site	1st Hour	Out of Office Hours	Week days	£150
On-Site	Additional Hours	Out of Office Hours	Week days	£75
On-Site	1st Hour	Weekend	Friday 18:01 Monday 07:59	£150
On-Site	Additional Hours	Weekend	Friday 18:01 Monday 07:59	£120
Early Morning	Telephone Support	per 30 minutes	06:00 to 0:800	£40
Office Hours	Telephone Support	1st 30 minutes	08:01 to 18:00	£25
Office Hours	Telephone Support	per additional 30 minutes	08:00 to 18:00	£20
Evening	Telephone Support	per 30 minutes	18:01 to 21:00	£40
(f) ____	Telephone Support	per 30 minutes	21:00 to 05:59	£80
Weekend	Telephone Support	per 30 minutes	18:00 to 20:59	£40

**Collocation bank**

- defective equipment or goods

m

**Preposition bank**

- to do something **by** certain means  
'My house is heated **by** means of solar power.'
- to have/perform duties **under** an agreement/contract  
'**Under** the terms of this agreement you are obliged to give 14 days' notice of termination.'
- **during/throughout** the term of an agreement  
'**During** the Term of this agreement the Hirer will pay £450 per month.'
- to advise/enquire **as** to the reason for something  
'Can I enquire **as** to your reasons for starting litigation?'
- to be **on** the premises  
'How many people work **on** the premises?'
- to be inclusive **of** something  
'Is this price inclusive **of** tax?'
- to do something **in** writing  
'Either party may terminate this contract by giving 14 days' notice **in** writing.'
- to be the hirer **of** something  
'The Hirer **of** the equipment must pay a deposit.'
- pay for something **in** advance  
'I paid for the hotel conference room three months **in** advance.'

**Exercise 9**

Here is another example of some key obligations from a contract. It is a contract between a company and a builder who is going to do some maintenance work on the company's offices. Fill each gap in the clauses with the correct preposition from the blue box below.

**1 COMMENCEMENT AND DURATION**

- (i) The Builder shall commence the Building Work (a) \_\_\_\_\_ 25 April 20XX.
- (ii) The Builder shall complete the Building Work (b) \_\_\_\_\_ 20 December 20XX at the very latest or suffer the late completion penalty stated in Schedule B hereto.

**2 THE BUILDING WORK**

The Builder will carry out the Building Work specified in Schedule A hereto.

**3 PRICE AND PAYMENT ARRANGEMENTS**

- (i) The Company shall pay the Builder the sum agreed in Schedule B hereto.
- (ii) The Builder shall invoice the Company (c) \_\_\_\_\_ the end (d) \_\_\_\_\_ every quarterly period (e) \_\_\_\_\_ the Date of Commencement. (f) \_\_\_\_\_ no event shall any payment be made prior to the Date of Commencement.
- (iii) The Company shall pay the Builder the amounts invoiced (g) \_\_\_\_\_ 30 days of receipt of the Builder's invoice.

● on      ● at      ● by      ● within      ● of      ● after      ● in

**Exercise 10**

Complete the following sentences with a word or words that you have seen in Exercises 1 – 9.

- a During the \_\_\_\_\_ of this agreement the Customer shall pay £500 per month to the Company.
- b The building specifications for the Work are listed in \_\_\_\_\_ A hereto.
- c In \_\_\_\_\_ of the sum stated in clause 8 below the Hirer is hereby authorised to use the Premises between 8pm and 1am.
- d I am returning the goods to you because none of them work properly. Every computer that you provided is \_\_\_\_\_.
- e Please \_\_\_\_\_ the sum of £300 at least seven days prior to the execution of this agreement. The sum is returnable if there is no damage to the premises at the end of the agreement.

**DELIVERY OF GOODS OR SERVICES****You need to know about...**

The agreed date of delivery of the goods or services in the contract is important for several reasons. These reasons include:

- the date sets a deadline for performance of contractual obligations. If one of the parties does not keep to the agreed date he or she will be in breach of contract
- the date sometimes decides when the legal ownership of goods passes from the seller to the buyer
- the date of delivery of the goods or services sometimes decides when the seller/supplier gets paid.

The delivery clause includes:

- **When** the goods or services will be delivered
- **When** they will be supplied (if it is necessary to state it)

and perhaps

- **What** will happen if the delivery clause is breached for any reason.

To make sure that the other party knows that the date/time of delivery is extremely important many business and commercial contracts contain a phrase like this:

*'Time of delivery shall be of the essence in this agreement.'*

If something is '**of the essence**' it is of the greatest importance.

**Exercise 1**

Here is a clause dealing with delivery. There are some words missing from the clause. Fill each gap in the clause with the correct word from the four choices on the opposite page.

The (\*) \_\_\_\_\_ agree that all dates (a) \_\_\_\_\_ in this Agreement regarding delivery, completion and payment are a (b) \_\_\_\_\_ part of the Agreement. Failure by either party to (c) \_\_\_\_\_ with the dates shall amount to a fundamental breach of this Agreement. In the (d) \_\_\_\_\_ that either party agrees to a later date this will not entitle the defaulting party to consider that any subsequent date may also be delayed and such dates will remain of the (e) \_\_\_\_\_ in this Agreement.

*	A parts	B traders	C parties	D people
a	A said	B made	C specified	D written
b	A significant	B principal	C material	D huge
c	A comply	B obey	C fulfil	D meet
d	A case	B situation	C event	D occasion
e	A importance	B key	C essence	D meaning

### Exercise 2

Here is another clause dealing with delivery. It is from a shipping contract to transport goods from Ireland to England. Read the clause carefully and answer the questions that follow using a full sentence. One of the terms used in the clause is explained below to help you.

5. The carriage and transport of the Goods specified in Schedule 1 to this Agreement shall be free on board which shall mean that all costs of any nature whatsoever incurred in placing the Goods upon the Queen Of The Liffey shall be borne by the Seller. The Seller acknowledges that it will be liable for any and all export duty. Until such time as the Goods are loaded on board all property rights, risks and liabilities shall remain with the Seller.

- **free on board** is a term known as an 'Incoterm'. An Incoterm is a term used in international trade contracts and its meaning is internationally agreed. The term 'free on board' is only used in contracts for shipping. It means that the seller of the goods is liable for them until the moment the goods pass over the rail of the ship when they are being loaded. From the moment the goods pass over the rail they become the buyer's liability.

a Where in the contract will I find the list of goods that are being sold under this agreement?

---

b What is the name of the ship that is carrying the goods from Ireland to England?

---

c Who is responsible for the cost of transporting the goods from the factory where they are made to the ship?

---

d Who is liable for any taxes that must be paid when the goods leave Ireland?

---

e If the goods are dropped and some are broken when they are being removed from a lorry to be loaded onto the ship who will suffer the loss?

---

*continued*

- f If goods are dropped and some are broken a few moments after they are loaded onto the ship who will suffer the loss?

---

### Exercise 3

This clause also deals with delivery. However, it does not use the term 'free on board'. Fill each gap in the clause with the correct word from the blue box below.

- (i) The (a) \_\_\_\_\_ shall only accept (b) \_\_\_\_\_ for non-delivery of any item listed in the delivery note and/or damage to the Goods caused in transit provided that written (c) \_\_\_\_\_ is provided to the Seller within 7 days of (d) \_\_\_\_\_ of the Goods by the Customer.
- (ii) The Seller shall at its sole (e) \_\_\_\_\_ repair or replace the Goods lost or damaged prior to (f) \_\_\_\_\_ to the Customer.

- Seller
- receipt
- option
- liability
- delivery
- notice

### Exercise 4

Here is another clause dealing with delivery. Fill each gap in the clause with the correct preposition from the blue box below.

The delivery date provided (a) \_\_\_\_\_ the Seller is (b) \_\_\_\_\_ guidance only and is subject to final confirmation by the Seller. Delivery times and/or dates shall not be (c) \_\_\_\_\_ the essence of the Agreement. The Seller shall not be liable for any loss or damage (d) \_\_\_\_\_ the Buyer arising (e) \_\_\_\_\_ late delivery or failure to deliver. The Buyer shall notify the Seller in writing (f) \_\_\_\_\_ 14 days of delivery of any claim in respect of deficit or damage in respect of the Goods that form the delivery.

- by
- of
- from
- for
- to
- within

**Exercise 5**

Here is another clause dealing with delivery. Fill each gap in the clause with a phrase from the blue box.

1. The Company shall (a) \_\_\_\_\_ of transit including shipping costs, import/export duties, storage, customs duties, security checks and any other cost (b) \_\_\_\_\_ compliance with the laws of any country.
2. (c) \_\_\_\_\_ the Company fails to deliver the Goods in accordance with the terms of this Agreement the Customer shall have the right to terminate this Agreement forthwith in writing and no further obligations shall (d) \_\_\_\_\_ the Customer. In the event that this Agreement is terminated on the grounds of non-delivery the Company shall be liable to the Customer for all direct loss (e) \_\_\_\_\_ as a result.
3. The Company will replace free of charge any Goods proved to the satisfaction of the Company to have been damaged in transit provided that the Customer provides notification in writing of any such damage within (f) \_\_\_\_\_ of the Goods.

- cover the costs
- which arises from
- In the event that
- be binding upon
- 48 hours of receipt
- incurred by the Customer

**Exercise 6**

Complete the following sentences with a word that you have seen in Exercises 1 – 5.

- a Any costs incurred in the transport of the Goods will be \_\_\_\_\_ by the Seller.
- b The Seller acknowledges that it will be \_\_\_\_\_ for any and all export duty.
- c The Seller shall at its sole \_\_\_\_\_ repair or replace Goods lost or damaged prior to delivery to the Customer.
- d The carriage and transport of the Goods by ship shall be free on \_\_\_\_\_.
- e The Seller shall replace free of charge any Goods damaged in \_\_\_\_\_ provided that the Customer provides notification of any such damage in writing within three working days of receipt.



**Collocation bank**

- to **set** a deadline
- to **perform** an obligation
- to **keep to** an agreement
- to be **in breach of** contract
- a **specified** date
- to **bear** a cost
- to **incur** a cost
- to **comply** with laws/regulations/rules
- to **load** goods onto a ship/plane/lorry

**Preposition bank**

- failure **by** either party to do something  
'Failure **by** either party to comply with this clause will result in termination of the contract.'
- to agree **to** something  
'The parties agree **to** the following terms and conditions.'
- transport **of** goods  
'Transport **of** all Goods specified in Schedule A will be by rail.'
- the costs incurred **in** doing something  
'Any costs incurred **in** importing the Goods will be borne by the Customer.'
- to be liable **for** something  
'The Supplier will not be liable **for** any loss caused by late delivery of the Goods.'
- to be **on** board a ship  
'The Goods will be transported **on** board The Pride of Norway.'
- damage caused to goods **in** transit  
'The Company will be liable for any damage caused to Goods **in** transit.'
- to be **for** guidance  
'This information does not form part of the contract but is **for** guidance only.'
- arising **from** an event  
'The Company will be liable for any direct loss arising **from** late delivery.'
- to do something **within** a certain time period  
'The Customer shall notify the Company of any damage to Goods **within** 48 hours of delivery.'

## USING YOUR KNOWLEDGE

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### Collocation review

Complete these sentences with a collocation that you have seen.

- a The Owner agrees to supply Equipment to the Hirer subject to the terms and conditions \_\_\_\_\_ in this Agreement.
- b A commercial contract will usually provide one of the parties with an address at which any notices must be \_\_\_\_\_ upon the other party.
- c Each party should think very carefully before \_\_\_\_\_ into a contract, as it will give rise to binding duties and obligations.
- d Your client failed to \_\_\_\_\_ his obligations under the contract, in that he did not do as he promised.
- e The electrical goods that you provided to my client did not work properly. As the whole batch of goods was \_\_\_\_\_, my client returned them to you without delay.
- f My boss has \_\_\_\_\_ a very strict deadline to finish this work. He wants it on his desk by 5pm.
- g Does this agreement \_\_\_\_\_ with contract law in your country? Or is it contrary to the law in some way?
- h In clause 11 of this contract your client expressly agrees to \_\_\_\_\_ the cost of any duty that is required when the goods arrive in the USA.
- i My client has \_\_\_\_\_ significant costs in transporting the goods to you, which he did not agree to do in the contract. My client requests that you reimburse these costs immediately.
- j We have been informed that when the goods were being \_\_\_\_\_ onto the lorry at our factory, some of them were damaged. Please return these goods to us and we will replace them at once.
- 

### Vocabulary review

Complete these sentences with a word that you have seen.

- a The \_\_\_\_\_ section of a contract provides the general background to the contract. Often each sentence in this section begins with the word 'WHEREAS'.
- b A \_\_\_\_\_ is a person or company that sells goods directly to the public.
- c You may see the word '\_\_\_\_\_' in a very formal contract. It does not have the usual, dictionary definition. When used in a formal contract, this word means 'employee'.
- d An \_\_\_\_\_ is someone that the other party to the contract, known as a 'principal', authorises to act on his or her behalf.
- e The money, goods or services that the parties exchange under a contract is referred to in the contract by the term \_\_\_\_\_.

- f When a written contract refers to the \_\_\_\_\_ of the agreement it means the duration of the agreement.
- g In contracts where one party is providing a service to the other, there is often a reference to the \_\_\_\_\_ number of hours or days for which the service will last. This is a more formal way of referring to the total number.
- h The verb to \_\_\_\_\_ is a more formal word that means 'to obtain' or 'to get'.
- i If goods are described as being in \_\_\_\_\_ it means that the goods are in the process of being moved from one place to another.
- j When a contract uses the phrase 'time is of the \_\_\_\_\_', it means that the time agreed for doing something under the contract is extremely important.

### Preposition review

Complete these sentences with the correct preposition.

- a This Agreement is made \_\_\_\_\_ this twentieth day of September 20XX.
- b The Owner agrees to hire the Equipment to the Hirer subject \_\_\_\_\_ the terms and conditions set out in the Agreement.
- c Who are the parties \_\_\_\_\_ this contract?
- d Where the masculine is referred \_\_\_\_\_ in this contract it shall include the feminine.
- e I work \_\_\_\_\_ a law firm that is based in London.
- f What name does your company trade \_\_\_\_\_?
- g An agent acts \_\_\_\_\_ behalf of his or her principal.
- h Use of the Equipment is limited and may not be used \_\_\_\_\_ 8pm and 9pm each evening for maintenance reasons.
- i \_\_\_\_\_ the terms of this Agreement the Hirer agrees to pay £600 per month to the Owner.
- j The costs for the Work are specified \_\_\_\_\_ Schedule 1 hereto.

## TOLES HIGHER EXAM PRACTICE

### Exercise 1

Read the following contract clause. The missing words are in the list below. For each gap choose the word which best fits into the space from the options provided. Use each option only once. Write your answers in the box below. There is an example at the beginning (\*).

#### FROM A CLAUSE DEALING WITH THE DELIVERY OF GOODS

- 3.1 The Seller shall only accept (\*) \_\_\_\_\_ for non-delivery of any item listed on the delivery note and/or damage caused to Goods in (1) \_\_\_\_\_ if the Customer provides written (2) \_\_\_\_\_ of any such non-delivery and/or damage to the Seller within 7 days of (3) \_\_\_\_\_ of the Goods.
- 3.2 In the event that the Seller accepts liability under clause 3.1 it shall at its sole option, repair or (4) \_\_\_\_\_ the Goods concerned which are proved to the Seller's satisfaction to have been lost or damaged (5) \_\_\_\_\_ to delivery to the Customer.

(AA) liability

(B) transit

(D) receipt

(A) replace

(C) prior

(E) notice

(\*) AA

(1)

(2)

(3)

(4)

(5)

### Exercise 2

Read the following contract clause. The missing prepositions are in the list below. For each gap choose the preposition which best fits into the space from the options provided. Use each option only once. Write your answers in the box below. There is an example at the beginning (\*).

#### FROM A DEFINITIONS SECTION

(\*) \_\_\_\_\_ this Agreement, the following terms and expressions shall have the following meanings:

'the Company' shall mean ARJ Computer Technology Ltd, which may from time to time act

(1) \_\_\_\_\_ an authorised Agent.

'the Buyer' shall mean the person, firm, company or other organisation who or which has agreed

(2) \_\_\_\_\_ purchase Equipment (3) \_\_\_\_\_ the Company.

'a Contract' shall mean a contract (4) \_\_\_\_\_ the sale and purchase of Equipment between the Company and the Buyer.

'Equipment' shall mean all items manufactured or supplied (5) \_\_\_\_\_ the Company including without limitation, instruments, computers, printers, and accessories/spare parts.

(AA) In

(B) through

(D) to

(A) by

(C) from

(E) for

(\*) AA

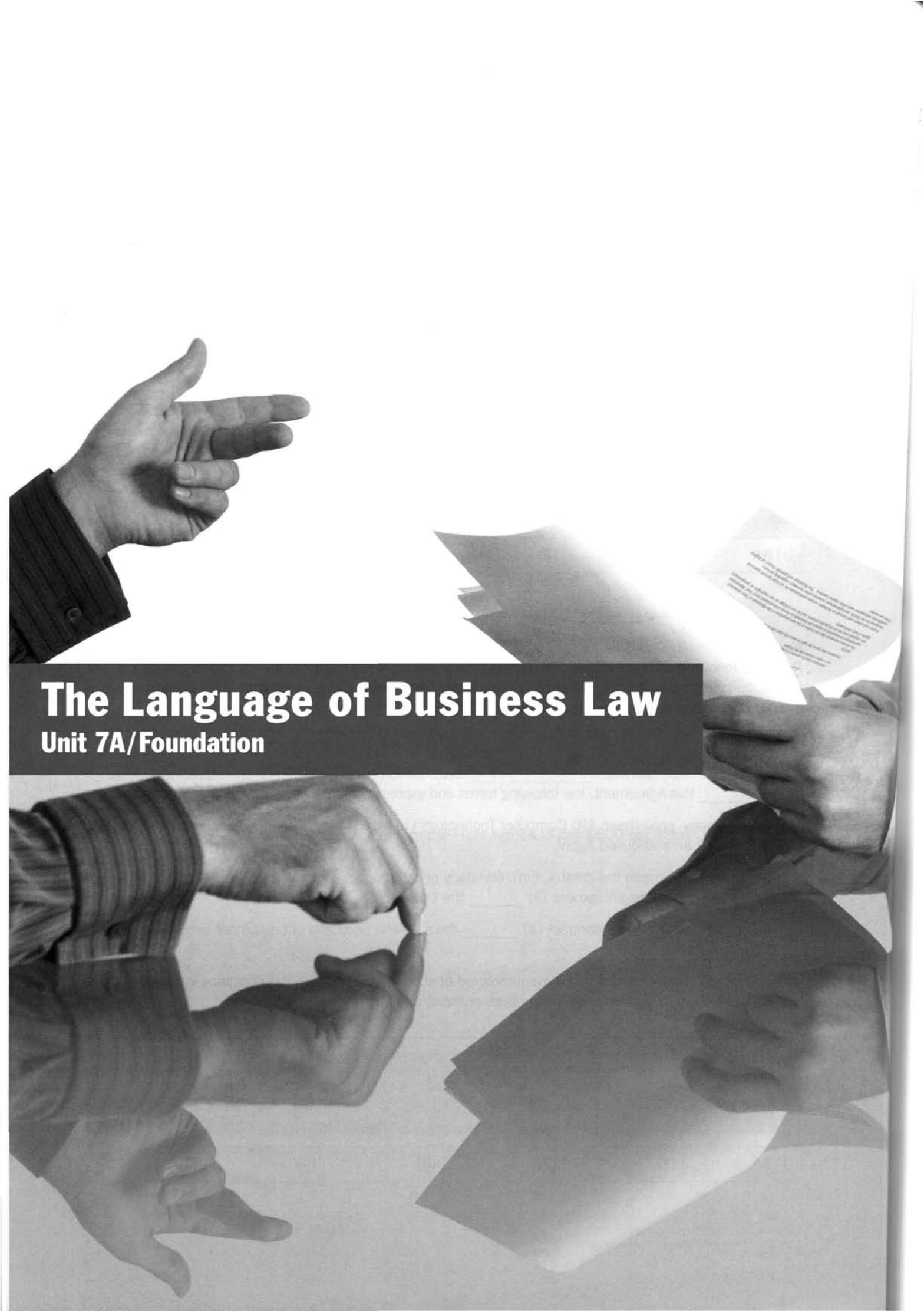
(1)

(2)

(3)

(4)

(5)



# The Language of Business Law

Unit 7A/Foundation