

# Index

[all references are to page number]

## Abatement

set-off, and, 504

## Acceptance

consent, and, 159–160  
consumer contracts, and, 183

## Accrued rights

consequences of termination, and, 167

## Acknowledgements

construction, 11  
drafting points, 10–11  
interpretation, 11  
linkage, 11–12  
location, 11  
purpose of clause, 10  
recitals, and, 10–11  
sample precedents, 12–14  
untrue underlying fact, 11  
use of clause, 11–12  
warranties, and, 10–11

## Addresses

notices, and, 435–436  
parties, and, 457

## Administrative receivers

*and see* INSOLVENCY  
generally, 364

## Administrators

*and see* INSOLVENCY  
generally, 364

## Advance payments

background, 266  
consumer law, 270  
deposits, and, 266–267  
drafting points, 268–269  
linkage, 269–270  
location, 269  
part payments, and, 266–267  
partial performance, and, 269  
purpose of clause, 266–268  
retention, 268  
sample precedents, 270–271  
use, 266  
use of clause, 269–270

## Affiliates

assignment, and, 80  
confidentiality clause, and,  
generally, 146  
introduction, 17  
definitions, 15–16  
drafting points, 15–17

## Affiliates – *contd*

extracts from legislation, 20–27  
indemnities, 18  
linkage, 17–18  
location, 17  
purpose of clause, 15  
sample precedents, 18–20  
third party rights, 18  
use of clause, 17–18  
warranties, 18

## Agency agreements

auditing, inspection and records, and,  
88  
consequences of termination, and,  
167  
territory, and, 557

## Agency and partnership, denials of

drafting points, 29–30  
linkage, 30  
location, 30  
purpose of clause, 28–29  
sample precedents, 30–31  
use of clause, 30

## Agents for service

appointment, 33  
drafting points, 32–33  
failure to perform duties, 33  
law and jurisdiction, and, 416  
legal issues, 32–33  
linkage, 34  
location, 34  
notices, and, 34  
parties, and  
generally, 455  
introduction, 34  
purpose of clause, 32  
sample precedents, 34–36  
use of clause, 34

## Agreeing to enter

date of agreement, 40  
drafting points, 38–39  
execution clause  
commencing, 38  
date, 40  
generally, 37  
linkage, 40–41  
location, 40  
purpose of clause, 37  
sample precedents, 41–42

## Index

**Agreeing to enter – *contd***

- signature
  - generally, 37–38
  - need, 39
  - placement, 38–39
  - witnessing, 39–40
- terminology, 37–38
- testimonium clause, 37
- use of clause, 40–41
- witnesses, 39–40

**Agreement to agree**

- good faith, and, 342–343

**'All moneys' clause**

- retention of title, and, 488

**All reasonable endeavours**

- and see* BEST ENDEAVOURS
- generally, 98

**Alternative dispute resolution**

- and see* ARBITRATION
- generally, 60

**Ambiguity**

- exclusive rights, and, 287

**Amendment**

- agreement to, 43–44
- case analysis, 47–48
- consent, 162
- consideration, 45
- drafting points, 43–45
- effect, 45
- language, and, 408
- linkage, 46
- location, 46
- method, 45
- purpose of clause, 43
- recording, 44–45
- sample precedents, 46–47
- third parties, and 45
- use of clause, 46

**Announcements**

- consent
  - generally, 51
  - introduction, 162
- consultation, and, 173
- drafting points, 50–51
- employees, and, 51
- importance, 50
- linkage, 52
- location, 51
- purpose of clause, 49–50
- restrictions, 51
- sample precedents, 52–53
- timing, 51
- use of clause, 52
- wording, 51

**Appeals**

- arbitration, and, 65–66

**Appointment**

- agents for service, and, 33
- consideration, 54
- drafting points, 55
- exclusive rights, and, 286
- linkage, 55
- location, 55
- purpose of clause, 54

**Appointment – *contd***

- sample precedents, 55–56
- use of clause, 55

**Approval of third party**

- conditions precedent, and, 136

**Arbitration**

- alternative dispute resolution, and, 60
- appeals to court, 65–66
- appointment of arbitrators, 62–63
- arbitral institutions, 59
- background, 57–58
- choice of arbitrators, 62–63
- confidentiality, 59
- consequences of termination, and, 168
- consumer issues, 74
- drafting points, 61–66
- duration of agreement, 61–62
- enforceability, and, 59
- expertise of arbitrators, 63–64
- experts, and
  - choice, 61
  - generally, 58
  - use of clause, 62
- international contracts, 59–60
- language, 65
- laws, 65
- linkage, 66
- location, 66
- mandatory provisions, 59
- multi-arbitrator agreements, 63
- number of arbitrators, 62
- post-termination issues, 66
- procedural rules, 64–65
- purpose of clause, 57–61
- qualifications of arbitrators, 63–64
- sample precedents, 66–74
- use of clause, 66

**Assignment**

- see also* SUCCESSORS AND ASSIGNS
- affiliates, to, 80
- assignable property, 77
- case analysis, 83–87
- charges, and, 121
- consent
  - generally, 78
  - introduction, 162
- covenants, and, 225
- drafting points, 77–80
- effect of clause, 76–77
- extent, 79
- linkage, 80
- location, 80
- partial, 79–80
- permitted assignments, 77
- persons entitled, 77
- prohibited assignments, 77
- purpose of clause, 75–77
- sample precedents, 81–83
- sub-contracting, 79
- third party rights, 208
- types
  - assignment of rights, 75–76
  - introduction, 75
  - novation, 76

- Assignment** – *contd*  
 types – *contd*  
 transfer of obligations, 76  
 use of clause, 80  
 use of expression, 75
- Attestation**  
*see also SIGNATURE*  
 capacity, and, 115
- Auditing**  
 agency agreements, 88  
 case analysis, 92–95  
 confidentiality, 90  
 cost, 90  
 drafting points, 89–90  
 duration of right, 90  
 introduction, 88  
 linkage, 91  
 location, 90  
 patent licensing agreements, 88  
 persons entitled to carry out, 90  
 purpose of clause, 88–89  
 refusal to allow, 89  
 sample precedents, 92–92  
 use of clause, 91
- Authority**  
 attestation, and, 115  
 company secretary, 116  
 directors, 116  
 drafting points, 115–117  
 execution, and, 115  
 internal rules, 116  
 linkage, 118  
 location, 118  
 purpose of clause, 114–115  
 sample precedents, 118–119  
 senior personnel, 116  
 signification of authority, 115  
 use of clause, 118  
 warranties, and  
 generally, 584–585  
 introduction, 115
- Bankruptcy**  
*and see INSOLVENCY*  
 generally, 364–365
- Best endeavours**  
 absolute obligations, 96  
 case analysis, 102–107  
 drafting points, 98–99  
 location, 99  
 obligations, 97  
 other expressions, 98  
 purpose of clause, 96–98  
 qualified obligations, 96–97  
 ‘reasonable endeavours’, and, 97–98  
 sample precedents, 99–102
- Best practice**  
 commencement date, and, 124  
 completion, and, 129
- Binding obligations**  
 recitals, and, 479
- ‘Blue pencil test’**  
 severance, and, 508
- Board resolutions**  
 capacity, and, 117
- Bodies corporate**  
 capacity, and, 114
- Breach**  
 case analysis, 111–113  
 drafting points, 109–110  
 linkage, 111  
 location, 110–111  
 ‘material’ breach, 108–109  
 purpose of clause, 108  
 ‘substantial’ breach, 108–109  
 use of clause, 111
- Breach of contract**  
 waiver, and, 579
- Breach of warranties**  
 entire agreement, and, 278
- Brussels Regulation 44/2001**  
 law and jurisdiction, and, 412
- Business day**  
 periods of time, and, 423
- Business hours**  
 periods of time, and, 423
- Capacity**  
 attestation, and, 115  
 company secretary, 116  
 directors, 116  
 drafting points, 115–117  
 execution, and, 115  
 internal rules, 116  
 linkage, 118  
 location, 118  
 purpose of clause, 114–115  
 sample precedents, 118–119  
 senior personnel, 116  
 signification of authority, 115  
 use of clause, 118  
 warranties, and  
 generally, 584–585  
 introduction, 115
- Certificate of value**  
 stamp duty, and, 514
- Charges**  
 assignment, and, 121  
 costs and expenses, and, 120  
 drafting points, 120–121  
 extent, 120–121  
 foreign parties, 121  
 linkage, 121–122  
 location, 121  
 prohibition of entry, 121  
 purpose of clause, 120  
 retention of title, and  
 creation, 490  
 generally, 120  
 introduction, 489  
 sample precedents, 122–123  
 use of clause, 121–122
- Children**  
 capacity, and, 114
- Collateral warranties**  
 entire agreement, and, 278

## Index

**Comfort letters**

subject to contract, and, 523

**Commencement date**

background, 124  
 best practice, 124  
 case analysis, 127–128  
 confusion, 125  
 date of agreement, and, 124–125  
 default position, 124  
 drafting points, 124–125  
 linkage, 126  
 location, 125  
 purpose of clause, 124  
 sample precedents, 126–127  
 signature date, 124  
 use of clause, 126

**Companies**

capacity, and, 114  
 deeds, and  
   execution, 249  
   generally, 251–252  
 insolvency, and, 364

**Company secretary**

capacity, and, 116

**Competition law**

exclusive rights, and, 287

**Completion**

best practice, 129  
 consequences of termination, and, 130  
 drafting points, 129  
 linkage, 130  
 location, 130  
 meaning, 129  
 purpose of clause, 129  
 reporting, and, 484  
 sample precedents, 131–133  
 sale of business, 129  
 sale of real property, 129  
 termination, and, 130  
 time of the essence, and, 563  
 use of clause, 130

**Concession**

waiver, and, 578

**Conditions**

entire agreement, and, 278

**Conditions precedent**

application, 136  
 approval of third party, and, 136  
 background, 134  
 case analysis, 139–140  
 ‘condition’, 134  
 drafting points, 135–136  
 extent of liability, 136  
 form, 135  
 linkage, 137–138  
 location, 136–137  
 meaning, 134–135  
 purpose of clause, 134–135  
 sample precedents, 138–139  
 time limits, 136  
 uncertainty, 136  
 use of clause, 137–138  
 vagueness, 136  
 void for uncertainty, 136

**Conditions subsequent**

*and see* CONDITIONS PRECEDENT  
 background, 134  
 meaning, 135

**Conduct of proceedings**

indemnities, and, 353

**Confidentiality**

affiliates, and  
   generally, 145–146  
   introduction, 17  
 arbitration, and, 59  
 auditing, inspection and records,  
   and, 90  
 case analysis, 155–158  
 consequences of termination, and  
   generally, 168  
   introduction, 145  
 contents, 141  
 disclosure, 143  
 drafting points, 141–144  
 duration of obligations, 144  
 exceptions to obligations, 143  
 existence of contract, and, 143  
 freedom of information, and  
   generally, 143–144  
   introduction, 325  
 jurisdiction, 145  
 law and jurisdiction, 145  
 linkage, 144–146  
 location, 144  
 parties under an obligation, 142  
 periods of time, and, 425  
 purpose of clause, 141  
 reporting, and, 484  
 sample precedents, 146–154  
 security, and, 143–144  
 sub-contracting, and, 520  
 termination, and, 145  
 use of clause, 144–146  
 use of information, 142–143  
 warranties, and, 145

**Consent**

acceptance, 159–160  
 amendments, and, 162  
 announcements, and  
   generally, 51  
   introduction, 162  
 assignment, and  
   generally, 78  
   introduction, 162  
 case analysis, 162–165  
 consultation, and, 171  
 drafting points, 160–161  
 factors to be taken into account, 161  
 leases, and, 160  
 linkage, 161–161  
 location, 161  
 matching standards, 160  
 meaning, 160  
 purpose of clause, 159  
 real property, and, 160  
 sample precedents, 161–162  
 time limits, 160  
 unreasonably withheld, 160

- Consent – *contd***  
 use of clause, 161–161  
 withholding, 161
- Consequences of termination**  
 accrued rights, 167  
 agency agreements, and, 167  
 arbitration, and, 168  
 breach, and, 111  
 completion, and, 130  
 confidentiality clause, and  
   generally, 168  
   introduction, 145  
 deposits, and, 269  
 drafting points, 166–167  
 indemnities, 168  
 insolvency, and, 166  
 intellectual property, and, 380  
 licensing agreements, and, 167  
 linkage, 168  
 location, 167  
 non-compete clauses, 168  
 payments, 168  
 periods of time, and, 425  
 purpose of clause, 166  
 records, 168  
 reporting, and, 485  
 return of materials and/or goods, 166–167  
 sample precedents, 168–169  
 sub-licences, 168  
 surviving provisions, 166  
 'sweep-up' provisions, 167  
 use of clause, 168  
 warranties, 168  
 'winding down' phase, 166–167
- Consequential leases**  
 exemption clauses, and, 298
- Consideration**  
 amendment, and, 45  
 appointment, and, 54  
 options, and, 448
- Consultation**  
 announcements, and, 173  
 background, 170  
 consent, and, 170  
 dispute resolution, 173  
 drafting points, 172  
 form of advice, 171  
 'genuineness', 171  
 good faith, 173  
 linkage, 172–173  
 location, 172  
 meaning, 170–172  
 purpose of clause, 170–172  
 release of information, 173  
 receptiveness of consultee, 171  
 requirements, 170–172  
 research collaboration agreements, and,  
   171  
 sample precedents, 173–174  
 sufficiency of reasons, 171  
 sufficiency of time, 171  
 use of clause, 172–173
- Consumer contracts**  
 acceptance, 183
- Consumer contracts – *contd***  
 background, 175–176  
 burden, 178  
 'consumer', 176  
 delivery, 183  
 deposits, and, 270  
 distance selling  
   excluded contracts, 184–185  
   generally, 182  
   introduction, 175  
 drafting points, 179–185  
 effect, 179  
 excluded services, 183–184  
 good faith, and, 341  
 goods and services, 177  
 guarantees, 182–183  
 language, 178  
 legislation and guidance, 190–201  
 manner of dealing with consumer, 177  
 OFT Guidance  
   consideration, 181–182  
   text, 193–201  
 plain, intelligible language, 180–181  
 price marking, 175  
 price reduction, 182  
 purpose of clause, 175–179  
 repairs, 182  
 replacement, 182  
 requirements on customer, 180  
 sample precedents, 185–187  
 scope of provisions, 177  
 type of provisions caught, 177–178  
 CICA 1977, 175–179  
 Unfair Terms in Consumer Contracts  
   Regulations 1999  
   case analysis, 187–190  
   generally, 175–179  
   indicative list of unfair terms, 190–192  
   OFT Guidance, 193–201
- Consumer credit**  
 interest, and, 391
- Contra proferentem**  
 application of rule, 202–203  
 purpose of clause, 202  
 sample precedents, 203
- Contract law**  
 notices, and, 434
- Contracts (Rights of Third Parties) Act 1999**  
 affiliates, and, 18  
 assignment of rights, 208  
 background, 204  
 case analysis, 212–216  
 drafting points, 207–209  
 enforcement of rights, 205  
 exceptions, 205–206  
 indemnities, 207  
 international groups of companies, 206  
 linkage, 209–210  
 location, 209  
 new rights, 205  
 privity of contract, and, 205  
 purpose of clause, 204–207  
 remedies, 206  
 research contracts, 206–207

## Index

**Contracts (Rights of Third Parties) Act 1999**

- *contra*
- rights awarded, 204–205
- sample precedents, 210–212
- 'third party'
- generally, 207–208
- introduction, 204
- use of clause, 209–210

**Copies**

- auditing, inspection and records, and, 90
- insurance, and, 371

**Copyright**

- and see* INTELLECTUAL PROPERTY
- generally 375–376

**Corporate bodies**

- and see* COMPANIES
- insolvency, and, 364

**Corresponding date rule**

- periods of time, and, 420–421

**Cost**

- auditing, inspection and records, and, 90
- further assurance, and, 336
- indemnities, and, 351–353

**Costs and expenses**

- charges, and, 120
- consequences of non-payment, 218
- default position, 218
- drafting points, 218
- indemnities, and, 351–353
- leases, and, 217
- linkage, 218
- location, 218
- payment, and, 465
- person responsible, 218
- purpose of clause, 217
- sample precedents, 219
- use of clause, 218

**Counterparts**

- background, 220
- commercial practice, 220–221
- drafting points, 221–222
- facsimile, 222
- location, 222
- 'original', 222
- purpose of clause, 220–221
- sample precedents, 222–223
- use, 221–222

**Court rules**

- set-off, and, 503–504

**Covenants**

- alternative wording, 225
- background, 224
- drafting points, 225
- linkage, 225
- location, 225
- modern practice, 224–225
- purpose of clause, 224–225
- sample precedents, 225–227
- use of clause, 225

**Cumulative remedies**

- background, 228
- 'cumulative', 229
- drafting points, 229
- expressio unius est exclusio alterius*, 228

**Cumulative remedies - *contra***

- extent, 229
- linkage, 229–230
- location, 229
- meaning, 228
- purpose of clause, 228–230
- sample precedents, 230–231
- use, 229
- use of clause, 229–230

**Currency**

- background, 232
- conversion rate and method, 233
- drafting points, 232–233
- effect of lack of provision, 232
- linkage, 233–234
- location, 233
- payment, and
  - drafting points, 465
  - linkage, 466
  - specified currency, in, 233
- 'pounds', 232
- purpose of clause, 232
- risk of exchange rate movements, 233
- sample precedents, 234
- use of clause, 233–234

**Data protection**

- background, 235–236
- data controller, 236
- data processor, 236
- drafting, 237
- key terms, 236–237
- linkage, 238
- location, 237
- personal data, 236
- processing data, 236–237
- purpose of clause, 235–237
- sample precedents, 238–240
- terminology, 236–237
- use of clause, 238
- warranties, and, 237

**Database rights**

- and see* INTELLECTUAL PROPERTY
- generally 375

**Date of agreement**

- commencement date, and, 124–125
- currency, and, 233
- deeds, and, 253
- drafting points, 241–242
- execution, and, 40
- interpretation, and, 397
- length of agreement, and, 422
- linkage, 243
- location, 242
- purpose of clause, 241
- reasons for dating, 242
- sample precedents, 243–244
- signature by parties on different days, 242
- use of clause, 243

**Day**

- and see* PERIODS OF TIME
- generally, 420

**Deadlock agreement**

- termination, and, 542

**Deductions**

payment, and 465

**Deeds**

background, 245

companies, and

execution, 249

generally, 251–252

delivery, 250–251

drafting points, 252

execution

company, by, 249

corporations, 250

different persons, by, 249–250

foreign companies, by, 250

formalities, 247, 248–249

generally, 248

individual, by, 249

linkage, 253

location, 253

purpose of clause, 245–252

requirements to create, 247–249

sample precedents, 253–255

seals, 247–248

situations where deed may be used, 246–247

situations where deed must be used, 245

statement that document is a deed, 248

use of clause, 253

variation, 247

**Deemed time of receipt**

notices, and, 436–437

**Definitions clause**

background, 256

capitalising first letter, 260

case analysis, 262–265

drafting points, 259–261

*expressio unius est exclusio alterius*, 257

highlighting, 260

'including', 259

intention of the parties, 258

layout, 261

location, 259–260

matters to avoid, 256–257

net sales invoice, and, 420

operative provision, and, 257–258

organisation, 260–261

overdefine, 256–257

periods of time, and, 424

purpose of clause, 256–259

reasons for use, 256

recognition of defined words, 260

sample precedents, 261–262

styling, 260

'unless the context requires otherwise', 258

users of agreement, 260

'where the context so admits', 258

**Delegation**

sub-contracting, and, 517

**Delivery**

consumer contracts, and, 183

deeds, and, 250–251

time of the essence, and, 563

**Denials of agency and partnership**

drafting points, 29–30

linkage, 30

**Denials of agency and partnership – cont'd**

location, 30

purpose of clause, 28–29

sample precedents, 30–31

use of clause, 30

**Deposits**

background, 266

consumer law, 269

drafting points, 268–269

linkage, 269–270

location, 269

part payments, and, 266–267

partial performance, and, 269

payment, and 465

purpose of clause, 266–268

retention, 268

sample precedents, 270–271

use, 266

use of clause, 269–270

**Descriptive names**

parties, and, 457

**Design right**

and see INTELLECTUAL PROPERTY

generally 375

**Directors**

capacity, and, 116

**Disclaimers**

alternative wording, 273

drafting points, 272

exemptions, and 272

linkage, 272–273

location, 272

purpose of clause, 272

sample precedents, 273–274

use of clause, 272–273

warranties, and, 272

**Distance selling**

excluded contracts, 184–185

generally, 182

introduction, 175

**Duplicates**

background, 220

commercial practice, 220–221

drafting points, 221–222

facsimile, 222

location, 222

'original', 222

purpose of clause, 220–221

sample precedents, 222–223

use, 221–222

**Effluxion of time**

termination, and

drafting points, 544

generally, 542

**Electronic mail**

deemed time of receipt, 438

generally, 435

**Employees**

announcements, and, 4

capacity, and, 116

**Employment contracts**

covenants, and, 225

## Index

**Employment contracts – *contd***

- severance, and, 510
- territory, and, 557

**Entire agreement**

- background, 275
- case analysis, 280–285
- conditions precedent, and, 138
- consumer issues, 280
- content, 278
- drafting points, 277–278
- fraud, and, 278
- linkage, 279
- location, 278
- parol evidence rule, 275
- pre-contract representations, 278
- purpose of clause, 275–277
- recitals, and, 480
- sample precedents, 279–280
- use of clause, 279

**Estoppel**

- waiver, and, 578

**European Union**

- territory, and, 556

**Exclusive jurisdiction**

- law and jurisdiction, and, 412

**Exclusive rights**

- ambiguity, and, 287
- appointment of agents, and, 286
- background, 286
- competition law, and, 287
- drafting points, 287–288
- intellectual property, and
  - drafting points, 287–288
  - licensing, 286
  - linkage and use, 288–289
- linkage, 288–289
- location, 288
- meaning, 286
- options, and, 447
- purpose of clause, 286–287
- registration of licences, 289
- sample precedents, 291
- statutory definitions, 289–291
- sub-licences, 288
- use of clause, 288–289

**Exclusivity**

- options, and, 447

**Execution**

- capacity, and, 115
- commencing, 38
- date of agreement, 40
- deeds, and
  - company, by, 249
  - corporations, 250
  - different persons, by, 249–250
  - foreign companies, by, 250
  - formalities, 247, 248–249
  - generally, 248
  - individual, by, 249
- drafting points, 38–39
- generally, 37
- linkage, 40–41
- location, 40
- purpose of clause, 37

**Execution – *contd***

- sample precedents, 41–42
- signature, and
  - generally, 37–38
  - linkage, 40–41
  - location, 40
  - placement, 38–39
  - sample precedents, 41–42
  - use, 40–41
  - witnessing, 39–40
- terminology, 37–38
- testimonium clause, 37
- use of clause, 40–41
- witnesses, 39–40

**Exemption clauses**

- background, 292
- case analysis, 304–309
- consequential losses, 298
- deposits, and, 270
- disclaimers, and, 272
- drafting points, 296–303
- excluding liability, 296–301
- fitness for purpose, 292
- implied terms, 292
- indemnities, and, 351
- insurance, and, 309
- interpretation by courts, 292–294
- limiting liability, 296–301
- linkage, 303
- location, 303
- negligence, and, 297
- purpose of clause, 292–296
- reasonableness, 301–303
- remedies, and, 292
- 'safety valve' wording, 299
- sample precedents, 303–304
- 'standard' terms, 299–310
- statutory control
  - introduction, 295
  - Misrepresentation Act 1967, 295
  - UCTA 1977, 295
  - UTCRR 1999, 296
- third party indemnities, 299
- use of clause, 303
- warranties, and, 588

**Expenses**

- charges, and, 120
- consequences of non-payment, 218
- default position, 218
- drafting points, 218
- leases, and, 217
- linkage, 218
- location, 218
- person responsible, 218
- purpose of clause, 217
- sample precedents, 219
- use of clause, 218

**Experts**

- see also* ARBITRATION
- choice, 61
- generally, 58
- use of clause, 62

**Expiry**

- drafting points, 310–311



- Expiry – contd**  
 introduction, 542  
 linkage, 311  
 location, 311  
 purpose of clause, 310  
 reporting, and, 484  
 sample precedents, 311  
 use of clause, 311
- Expressio unius est exclusio alterius**  
 cumulative remedies, and, 228  
 definitions clause, and, 257  
 force majeure, and, 315
- Facsimile**  
 counterparts, and, 222
- Fair dealing**  
 good faith, and, 341
- Fax delivery**  
 notices, and  
   deemed time of receipt, 437  
   generally, 435
- Final agreement**  
*see* ENTIRE AGREEMENT
- Finance**  
 conditions precedent, and, 137
- Fitness for purpose**  
 exemption clauses, and, 292
- Fixed term agreement**  
 drafting points, 310–311  
 introduction, 542  
 linkage, 311  
 location, 311  
 purpose of clause, 310  
 sample precedents, 311  
 use of clause, 311
- Forbearance**  
 waiver, and, 578
- Force majeure**  
 background, 312  
 circumstances beyond person's control, 312  
 consequences of event, 317–318  
 contents of clause, 314  
 curing the event, 318  
 drafting points, 317–318  
 effect of event  
   drafting points, 317  
   purpose of clause, 316  
 frustration, and, 313  
 impossibility, and, 312  
 labour disputes, and, 315–316  
 linkage, 319  
 location, 318  
 payment, and, 319  
 person subject to clause is responsible for occurrence, 316  
 procedure after event, 318  
 purpose of clause, 312–317  
 reasonableness, and, 319  
 sample precedents, 319–322  
 temporary stoppage, 317  
 types of clause, 314–315  
 unfair terms, and, 319  
 use of clause, 319
- Force majeure – contd**  
 using clauses, 314  
 wording, 318
- Foreign parties**  
 insolvency, and, 365
- Fraud**  
 entire agreement, and, 278
- Freedom of information**  
 commercial interests, 326–327  
 confidentiality  
   generally, 143–144  
   introduction, 325  
 drafting issues, 328–330  
 exemptions, 323  
 issues for commercial party, 327–328  
 issues for public authority, 328  
 limitations, 323  
 linkage, 330  
 location, 330  
 points to note, 324  
 post-contract issues, 327–328  
 pre-contract issues, 327  
 'public authority', 328  
 purpose, 323–324  
 sample precedents, 330–333  
 use, 330
- Frustration**  
 force majeure, and, 312–313
- Further assurance**  
 continuing operations post-transfer, 336–337  
 cost, 336  
 drafting points, 336–337  
 effort required, 337  
 linkage, 337  
 location, 337  
 power of attorney, and, 334–335  
 purpose of clause, 334  
 reasonable endeavours, 337  
 routine transactions, 336  
 sample precedents, 337–340  
 use of clause, 337
- Genuineness**  
 consultation, and, 171
- Good faith**  
 agreement to agree, 342–343  
 background, 341  
 best endeavours, and, 98  
 case analysis, 344–350  
 consultation, and, 173  
 consumer contracts, 341  
 drafting issues, 344  
 duty to use, 342  
 fair dealing, 341  
 insurance, 341  
 lock-out agreements, 343  
 meaning, 341  
 negotiations  
   defining minimum standard, 343  
   generally, 342–343  
 purpose, 341–344  
 unfair terms, 341

## Index

- Good standing**  
warranties, and, 584–585
- Goods and services**  
consumer contracts, and, 177
- Great Britain**  
territory, and, 555–556
- Group companies**  
*and see* AFFILIATES  
generally, 15–27  
third party rights, 206
- Group undertaking**  
*and see* AFFILIATES  
drafting points, 16  
extracts from legislation, 20–23
- Guarantees**  
consumer contracts, and, 182–183  
deposits, and, 266
- Headings**  
interpretation clause, and, 396–397
- Heads of agreement**  
subject to contract, and, 523
- Heads of terms**  
subject to contract, and, 523
- 'Hold harmless'**  
indemnities, and, 351
- Holding company**  
*and see* AFFILIATES  
drafting points, 15  
extracts from legislation, 20–21
- Illegality**  
severance, and, 509
- Implied terms**  
entire agreement, and, 278  
exemption clauses, and, 292
- Impossibility**  
force majeure, and, 312
- INCOTERMS**  
title and risk passing, and, 568–569
- Indemnities**  
affiliates, and, 18  
categories, 351–352  
conduct of proceedings, 353  
costs, 351–353  
coverage, 353  
drafting points, 351–354  
exemptions, and, 351  
'hold harmless', 351  
intellectual property rights, and, 353  
linkage, 354  
location, 354  
negligence, and, 353  
purpose of clause, 351–352  
sample precedents, 354–359  
unfair terms, and, 352  
use of clause, 354  
warranties, and, 353
- Indexation**  
appropriateness of clause, 360  
date to take place, 360  
drafting points, 360–361  
index months, 361  
linkage, 361
- Indexation – *contd***  
location, 361  
notice, 361  
purpose of clause, 360  
relevant index, 360  
RPI, 360  
sample precedents, 361–362  
use of clause, 361
- Inflation**  
drafting points, 360–361  
linkage, 361  
location, 361  
purpose of clause, 360  
sample precedents, 361–362  
use of clause, 361
- Infringement**  
intellectual property, and, 378
- Insolvency**  
administrative receivers, 364  
administrators, 364  
background, 363  
bankruptcy, 364–365  
consequences of termination, and, 166  
corporate party, and, 363–364  
drafting points, 365–366  
foreign parties, and, 365  
linkage, 366  
liquidators, 366  
location, 366  
partnership, and, 363  
pre 1987 terminology, 364–365  
purpose of clause, 363–365  
receiving order, 365  
receivership, 364  
sample precedents, 367–368  
termination, and  
generally, 365–366  
introduction, 542  
use of clause, 366
- Inspection**  
agency agreements, 88  
case analysis, 92–95  
confidentiality, 90  
cost, 90  
drafting points, 89–90  
duration of right, 90  
introduction, 88  
linkage, 91  
location, 90  
patent licensing agreements, 88  
persons entitled to carry out, 90  
purpose of clause, 88–89  
refusal to allow, 89  
sample precedents, 92–92  
use of clause, 91
- Insurance**  
amount of cover, 370–371  
background, 369  
copies, 371  
coverage, 370  
drafting points, 370–371  
exemption clauses, and, 369  
good faith, and, 341  
insurers' view, 369–370

**Insurance – *contd***

- law and jurisdiction, and, 416
- linkage, 371
- location, 371
- maintenance of policy, 371
- need, 370
- noting of interest, 371
- provision of copies, 371
- purpose of clause, 369–370
- risk, and, 369
- sample precedents, 372–373
- types of cover, 370–371
- unfair terms, and, 369
- use of clause, 371
- warranties, 370

**Intellectual property**

- consequences of termination, 380
- definition, 375–376
- drafting points, 377–379
- exclusive rights, and
  - drafting points, 287–288
  - licensing, 286
  - linkage and use, 288–289
- indemnities, and, 353
- infringement actions, 378
- know-how, 376
- linkage, 380
- location, 379–380
- maintenance of rights, 378
- meaning, 375
- ownership, 378
- post-termination use, 378–379
- purpose of clause, 374–377
- reporting, and, 484
- sample precedents, 380–388
- stamp duty, 513–514
- sub-contracting, and, 520
- termination, and
  - generally, 380
  - subsequent use, 378–379
- territory, and, 557
- third party claims, 378
- types of rights, 375
- use of clause, 380
- value, 374
- warranties
  - generally, 380
  - validity, 377

**Interest**

- common law, and, 389
- consumer credit, and, 391
- drafting points, 391–392
- equity, and, 389
- late payment of commercial debts, 389–391
- linkage, 392
- location, 392
- payment, and
  - drafting points, 465
  - generally, 392
  - linkage, 466
- purpose of clause, 389–391
- rate, 391
- sample precedents, 392–393

**Interest – *contd***

- statutory provisions, 389–391
- use of clause, 392

**International sales**

- title and risk passing, and, 568–569

**Interpretation**

- amendment of statutes, 394–397
- definitions, and, 397
- drafting points, 394–397
- headings, 396–397
- linkage, 397
- location, 397
- persons, 396
- purpose of clause, 394
- references to clauses, 396
- replacement of statutes, 394–397
- sample precedents, 399–401
- singular/plural, 396
- statutory provisions, 398–399
- subordinate legislation, and, 395
- use of clause, 397

**Invalidity**

- 'blue pencil test', 508
- drafting points, 509–510
- effectiveness, 508
- employment contracts, and, 510
- illegality, and, 509
- linkage, 510
- location, 510
- negotiation, and, 509
- payment, and, 510
- purpose of clause, 508–509
- 'rescuing' defective clauses, 509
- restraint of trade, and, 510
- sample precedents, 510–512
- termination, and, 510
- unenforceability, and, 509
- unilateral action, 509
- use of clause, 510
- warranties, and, 510

**Invoices**

- payment, and, 465

**Joint and several liability**

- background, 402
- case analysis, 406–407
- consumer issues, 406
- drafting points, 402–404
- joint promisees, 402
- linkage, 405
- location, 404
- meaning, 403
- need, 404
- purpose of clause, 402
- sample precedents, 405–406
- several liability, 402
- use of clause, 405

**Jurisdiction**

- agents for service, and, 416
- background, 411
- Brussels Regulations, and, 412
- confidentiality clause, and, 145
- drafting points, 414–415
- exclusive jurisdiction, 412

## Index

**Jurisdiction – contd**

- foreign person as party to an agreement, 411–412
- insurance, and, 416
- language, and, 408
- linkage, 416
- location, 415
- national law, and, 413–414
- non-exclusive jurisdiction, 412–413
- only English parties to an agreement, 411
- purpose of clause, 411–414
- Rome Convention, 413–414
- Rome I Regulation, 413–414
- sample precedents, 416–418
- use of clause, 416

**Know-how**

- intellectual property, and, 376

**Labour disputes**

- force majeure, and, 315–316

**Land transactions**

- subject to contract, and, 522–523

**Landlord and tenant law**

- notices, and, 433

**Language**

- amendments, and, 408
- arbitration, and, 65
- consumer contracts, and, 178
- drafting points, 408–409
- law and jurisdiction, and, 408
- linkage, 409
- local law requirement, 409
- location, 409
- purpose of clause, 408
- sample precedents, 409–410
- translation of documents, 409
- use of clause, 409

**Late payment**

- interest, and, 389–391

**Law and jurisdiction**

- agents for service, and, 119
- background, 411
- Brussels Regulations, and, 412
- confidentiality clause, and, 145
- drafting points, 414–415
- exclusive jurisdiction, 412
- foreign person as party to an agreement, 411–412
- insurance, and, 416
- language, and, 409
- linkage, 416
- location, 415
- national law, and, 413–414
- non-exclusive jurisdiction, 412–413
- only English parties to an agreement, 411
- purpose of clause, 411–414
- Rome Convention, 413–414
- Rome I Regulation, 413–414
- sample precedents, 416–418
- use of clause, 416

**Leases**

- consent, and, 160

**Letters of intent**

- subject to contract, and, 523

**Licences**

- intellectual property, and 375–376

**Licensing agreements**

- consequences of termination, and, 167

**Limited liability partnerships**

- capacity, and, 114
- generally, 462

**Limiting liability**

- exemption clauses, and, 296–301

**Liquidated damages**

- breach, and, 110

**Liquidators**

- and see **INSOLVENCY**
- generally, 366

**Lock-out agreement**

- good faith, and, 343

**Material breach**

- and see **BREACH**
- meaning, 108–109

**Memorandum of agreement**

- subject to contract, and, 523

**Memorandum of understanding**

- subject to contract, and, 523

**Mercantile contracts**

- time of the essence, and, 561–562

**Minors**

- capacity, and, 114

**Misrepresentations**

- and see **AGREEMENT**, and, 278
- unfair contract terms, and, 295

**Months**

- and see **PERIODS OF TIME**
- generally, 419

**Mortgages**

- covenants, and, 225

**Name**

- parties, and, 456–457

**Negligence**

- exemption clauses, and, 297
- indemnities, and, 353

**Negotiate in good faith**

- generally, 342–343

**Negotiation**

- good faith, and
  - defining minimum standard, 343
  - generally, 342–343
- severance, and, 509

**Net invoice price**

- drafting points, 430–431
- linkage, 431–432
- location, 431
- payment, and
  - generally, 431
  - introduction, 466
- purpose of clause, 430
- sample precedents, 432
- use of clause, 431–432

**Net sales value**

- drafting points, 430–431

**Net sales value – *contd***

- linkage, 431–432
- location, 431
- purpose of clause, 430
- sample precedents, 432
- use of clause, 431–432

**No partnership clause**

*see also* AGENCY AND PARTNERSHIP, DENIALS  
OF

- drafting points, 462–463
- linkage, 463
- location, 463
- purpose of clause, 462
- sample precedents, 463
- use of clause, 463

**Non-exclusive jurisdiction**

- law and jurisdiction, and, 414

**Non-exclusive rights**

- ambiguity, and, 287
- appointment of agents, and, 286
- background, 286
- competition law, and, 287
- drafting points, 287–288
- intellectual property, and
  - drafting points, 287–288
  - licensing, 286
  - linkage and use, 288–289
- linkage, 288–289
- location, 288
- meaning, 287
- purpose of clause, 286–287
- registration of licences, 289
- sample precedents, 291
- statutory definitions, 289–291
- sub-licences, 288
- use of clause, 288–289

**Non-partnership clause**

*see also* AGENCY AND PARTNERSHIP, DENIALS  
OF

- drafting points, 462–463
- linkage, 463
- location, 463
- purpose of clause, 462
- sample precedents, 463
- use of clause, 463

**Notices**

- addresses of service, 435–436
- agents for service, and, 34
- case analysis, 443–445
- contract law, and, 434
- deemed time of receipt, 436–437
- drafting points, 434–439
- electronic delivery
  - deemed time of receipt, 438
  - generally, 435
- fax delivery
  - deemed time of receipt, 437
  - generally, 435
- landlord and tenant law, and, 433
- linkage, 439
- location, 439
- options, and, 449
- partnerships, 438–439
- periods of time, and, 425

**Notices – *contd***

- personal delivery
  - deemed time of receipt, 436–437
  - generally, 434
- postal confirmation, 435
- postal delivery
  - deemed time of receipt, 437
  - generally, 434–435
- postal rule, 434
- proof of receipt, 438
- purpose of clause, 433–434
- sample precedents, 439–443
- service, 433
- termination, and 544
- time of the essence, and, 563
- timing, 433
- use of clause, 439
- written form, 434

**Noting of interest**

- insurance, and, 371

**Novation**

- assignment, and, 76

**Numbering**

- parties, and, 455–456

**Options**

- case analysis, 451–454
- change of parties, 448
- consideration, 448
- drafting points, 448–449
- exclusivity, 447
- exercise, 448–449
- frequency of exercise, 448
- linkage, 449
- location, 449
- meaning, 446
- notices, and, 449
- payment, and, 449
- purpose of clause, 446–447
- right of first refusal, and, 446–447
- sample precedents, 449–451
- termination, and, 449
- territory, and, 557
- time limits for compliance, 447
- use of clause, 449

**Ownership**

- payment, and, 465
- reporting, and, 484
- retention of title, and, 487–490

**Paragraphing**

- parties, and, 455–456

**Parent company**

- and see* AFFILIATES
- drafting points, 15–16
- extracts from legislation, 20–23

**Parent undertaking**

- and see* AFFILIATES
- drafting points, 15–16
- extracts from legislation, 20–23

**Parol evidence rule**

- entire agreement, and, 275

**Part payments**

- background, 266

## Index

**Part payments – contd**

- consumer law, 270
- deposits, and, 266–267
- drafting points, 268–269
- linkage, 269–270
- location, 269
- part payments, and, 266–267
- partial performance, and, 269
- payment, and, 465
- purpose of clause, 266–268
- retention, 268
- sample precedents, 270–271
- use, 266
- use of clause, 269–270

**Partial performance**

- deposits, and, 269

**Participating interests**

- see* AFFILIATES

**Parties**

- address, 457
- agents for service, and,
  - generally, 455
  - introduction, 34
- definition, 458
- descriptive names, 457
- drafting points, 455–458
- linkage, 458–459
- location, 458
- meaning, 457
- name, 456–457
- numbering, 455–456
- paragraphing, 455–456
- purpose of clause, 455
- recitals, and, 480
- sample precedents, 459–461
- status, 456–457
- successors and assigns, and, 537
- territory, and, 537
- use of clause, 458–459

**Partnership**

- see also* AGENCY AND PARTNERSHIP, DENIALS  
or  
denial of
  - drafting points, 462–463
  - linkage, 463
  - location, 463
  - purpose of clause, 462
  - sample precedents, 463
  - use of clause, 463
- insolvency, and, 363
- notices, and, 438–439

**Patent licensing agreements**

- auditing, inspection and records, and, 88

**Patents**

- and see* INTELLECTUAL PROPERTY
- generally 375–376

**Patients**

- capacity, and, 114

**Payment**

- auditing, and, 90
- calculation by reference to rate, 464
- conditions precedent, and, 137
- consequences of termination, and, 168
- costs, 465

**Payment – contd**

- currency
  - drafting points, 465
  - linkage, 466
  - specified currency, in, 233
- deductions, 465
- deposits, 465
- drafting points, 464–465
- force majeure, and, 319
- frequency, 464
- guarantees, 465
- inspection, and, 90
- interest, and
  - drafting points, 465
  - generally, 392
  - linkage, 466
- invoices, 465
- linkage, 466
- location, 466
- method, 465
- net sales invoice, and
  - generally, 430
  - introduction, 466
- options, and, 449
- ownership of goods, 465
- part payments, 465
- periods of time, and, 425
- purpose of clause, 464
- receipts, 465
- records, and, 90
- refunds, 465
- retention of title, and
  - generally, 491
  - introduction, 466
- sample precedents, 466–469
- set-offs, 465
- severance, and, 510
- statements, 465
- termination, 466
- time of the essence, and
  - drafting points, 465
  - introduction, 563
  - linkage, 466
- timing, 464
- title and risk passing, and, 569
- use of clause, 466
- VAT, 464

**Periods of time**

- bank holidays, 423–424
- 'between', 422
- 'business day', 423
- 'business hours', 423
- 'by', 422
- calculation of start and end points, 422
- case analysis, 428–429
- confidentiality, and, 425
- consequences of termination, 425
- corresponding date rule, 420–421
- day, 420
- definitions, and, 424
- drafting points, 424
- end points, 422
- ends of months, 421
- 'from', 423

**Periods of time – *could***

- linkage, 424–425
- location, 424
- months
  - ends, 421–422
  - generally, 419
  - principles of calculation, 420–421
- notices, and, 425
- payment, and, 425
- public holidays, 423–424
- purpose of clause, 419–424
- quarters, 420
- reporting, and, 425
- sample precedents, 425–427
- start points, 422
- stated length of an agreement, 422–423
- statutory provisions, 428
- termination, and, 425
- 'until', 423
- use of clause, 424–425
- warranties, and, 425
- year, 419

**Personal delivery**

- deemed time of receipt, 436–437
- generally, 434

**Persons**

- interpretation clause, and, 396

**Plural**

- interpretation clause, and, 396

**Postal delivery**

- deemed time of receipt, 437
- generally, 434–435

**Postal rule**

- notices, and, 434

**Power of attorney**

- further assurance, and, 334–335

**Pre-contract representations**

- entire agreement, and, 278

**Price**

- and see* PAYMENT
- generally, 465

**Price marking**

- consumer contracts, and, 175

**Price reduction**

- consumer contracts, and, 182

**Priority of terms**

- drafting points, 470–471
- linkage, 471–472
- location, 471
- purpose of clause, 470
- sample precedents, 472–473
- use of clause, 471–472

**Privity of contract**

- and see* THIRD PARTY RIGHTS
- generally, 205

**Product clause**

- retention of title, and, 488

**Promises**

- entire agreement, and, 278

**Property and risk**

- INCOTERMS, 568–569
- international sales, 568–569
- legislation, 571–573
- location, 569

**Property and risk – *could***

- payments, and, 569
- purpose of clause, 567–569
- retention of title, and, 569
- sale of goods, 571–573
- sample precedents, 570–571
- statutory rules
  - generally, 567–568
  - modification, 568
- when title and risk pass, 567–568

**Property transactions**

- receipts, and, 475

**Public authority**

- freedom of information, and, 328

**Quarters**

- and see* PERIODS OF TIME
- generally, 420

**Real property**

- consent, and, 160

**Reasonable endeavours**

- absolute obligations, 96
- case analysis, 102–107
- drafting points, 98–99
- further assurance, and, 337
- location, 99
- obligations, 97
- other expressions, 98
- purpose of clause, 96–98
- qualified obligations, 96–97
- 'reasonable endeavours', and, 97
- sample precedents, 99–102

**Reasonableness**

- exemption clauses, and, 301–303
- force majeure, and, 319

**Receipts**

- drafting points, 475
- location, 475
- need, 475
- payment, and, 465
- property transactions, 475
- purpose of clause, 474
- sample precedents, 476

**Receiving order**

- and see* INSOLVENCY
- generally, 365

**Receivership**

- and see* INSOLVENCY
- generally, 364

**Recitals**

- acknowledgments, and, 10–11
- binding obligations, 479
- commencing words, 479–480
- drafting points, 479–480
- entire agreement, and, 480
- layout, 480
- linkage, 480
- location, 480
- need, 479
- parties, and, 480
- purpose of clause, 477–479

## Index

**Recitals – contd**

- sample precedents, 480–481
- use of clause, 480
- wording, 479

**Records**

- accuracy, 90
- agency agreements, 88
- amendment, and, 45
- case analysis, 92–95
- confidentiality, 90
- copies, 90
- cost, 90
- drafting points, 89–90
- duration of right, 90
- examinable records, 89–90
- introduction, 88
- linkage, 91
- location, 90
- maintainable records, 90
- patent licensing agreements, 88
- persons entitled to carry out, 90
- purpose of clause, 88–89
- relevance, 76
- sample precedents, 92–92
- use of clause, 91

**References to clauses**

- interpretation clause, and, 396

**Refunds**

- payment, and, 465

**Registered design**

- and see INTELLECTUAL PROPERTY
- generally 375

**Registration of charge**

- retention of title, and, 489

**Regulatory**

- conditions precedent, and, 137

**Releases**

- waiver, and, 580

**Remedies**

- cumulative
  - background, 228
  - 'cumulative', 229
  - drafting points, 229
  - expressio unius est exclusio alterius*, 228
  - extent, 229
  - linkage, 229–230
  - location, 229
  - meaning, 228
  - purpose of clause, 228–230
  - sample precedents, 230–231
  - use, 229
  - use of clause, 229–230
- exemption clauses, and, 292

**Repairs**

- consumer contracts, and, 182

**Replacement**

- consumer contracts, and, 182
- interpretation clause, and, 394–397

**Reporting**

- completion, and, 484
- confidentiality, 484
- consequences of termination, and, 485
- drafting points, 482–483
- expiry, and, 484

**Reporting – contd**

- format, 483
- frequency, 483
- information to be provided, 482–483
- intellectual property, and, 484
- linkage, 484–485
- location, 483
- ownership, 484
- periods of time, and, 425
- purpose of clause, 482
- recipients rights, 483
- sample precedents, 485–486
- termination, and, 484
- third parties, by, 483
- use of clause, 484–485
- written form, 483

**Representations**

- acknowledgments, and, 10
- entire agreement, and, 278

**Research collaboration agreements**

- announcements, and, 171

**Restraint of trade**

- severance, and, 510

**Restrictive covenants**

- territory, and, 557

**Retail prices index (RPI)**

- and see INDEXATION

- generally, 360

**Retention**

- consumer issue, 507
- court rules, and, 503–504
- deposits, and, 268
- drafting points, 504–505
- entitlement, 504
- express right, 504
- extension of entitlement, 504–505
- linkage, 505
- location, 505
- meaning, 503
- payment, and, 465
- purpose of clause, 503–504
- relevant situations, 504
- sample precedents, 505–507
- unfair terms, and, 503
- use of clause, 505

**Retention of title**

- 'all moneys' clause, 488
- background, 487
- charges, and
  - creation, 490
  - generally, 120
  - introduction, 489
- classification of clauses, 488
- drafting points, 490–491
- extent, 490–491
- general principle, 487–488
- identification of the goods, 491
- legal problems, 489–490
- linkage, 491–492
- location, 491
- ownership of goods, 487–488
- payment, and
  - generally, 491
  - introduction, 466



- Retention of title – *could***  
 principle, 487–488  
 product clause, 488  
 purpose of clause, 487–490  
 registration of charge, 489  
 reprocessing the goods, 491  
*Romalpa* decision, 487–488  
 sample precedents, 492–497  
 simple clauses, 488  
 sub-buyers, and, 491  
 termination, and, 491  
 title and risk passing, and, 569  
 tracing clause, 488  
 tracing of proceeds clause, 488  
 use of clause, 491–492  
 warranties, and, 491–492
- Return of materials and/or goods**  
 consequences of termination, and,  
 166–167
- Right of first refusal**  
 options, and, 446–447
- Rights of third parties**  
 affiliates, and, 18  
 assignment, 208  
 background, 204  
 case analysis, 212–216  
 drafting points, 207–209  
 enforcement, 205  
 exceptions, 205  
 indemnities, 207  
 international groups of companies, 206  
 linkage, 209–210  
 location, 209  
 new rights, 204  
 privity of contract, and, 205  
 purpose of clause, 204–207  
 remedies, 206  
 research contracts, 206–207  
 rights awarded, 204  
 sample precedents, 210–212  
 ‘third party’  
   generally, 207–208  
   introduction, 204  
 use of clause, 209–210
- Risk**  
 INCOTERMS, 568–569  
 insurance, and, 369  
 international sales, 568–569  
 legislation, 571–573  
 location, 569  
 payments, and, 569  
 purpose of clause, 567–569  
 retention of title, and, 569  
 sale of goods, 571–573  
 sample precedents, 570–571  
 statutory rules  
   generally, 567–568  
   modification, 568  
 when title and risk pass, 567–568
- Romalpa clauses**  
*and see* RETENTION OF TITLE  
 generally, 487–488
- Rome Convention**  
 law and jurisdiction, and, 413–414
- Rome I Regulation 593/2008**  
 law and jurisdiction, and, 413–414
- Sale of business**  
 completion, and, 129  
 covenants, and, 225
- Sale of goods**  
 time of the essence, and, 562  
 title and risk passing, and, 571–573  
 warranties, and, 587
- Sale of real property**  
 completion, and, 129
- Schedules**  
 drafting points, 498–500  
 linkage, 501  
 location, 500  
 part of agreement, as, 498  
 purpose of clause, 498  
 sample precedents, 501–502  
 status, 500  
 terminology, 498  
 use of clause, 500–501
- Seals**  
 deeds, and, 247–248
- Security**  
 confidentiality clause, and, 143
- Service**  
 notices, and, 433
- Set-off**  
 consumer issue, 507  
 court rules, and, 503–504  
 drafting points, 504–505  
 entitlement, 504  
 express right, 504  
 extension of entitlement, 504–505  
 linkage, 505  
 location, 505  
 meaning, 503  
 payment, and, 465  
 purpose of clause, 503–504  
 relevant situations, 504  
 sample precedents, 505–507  
 unfair terms, and, 503  
 use of clause, 505
- Settlements**  
 covenants, and, 225
- Several liability**  
 background, 402  
 case analysis, 406–407  
 consumer issues, 406  
 drafting points, 404  
 linkage, 405  
 location, 404  
 meaning, 402  
 need, 404  
 purpose of clause, 402–404  
 sample precedents, 405–406  
 use of clause, 405
- Severance**  
 ‘blue pencil test’, 508  
 drafting points, 509–510  
 effectiveness, 508  
 employment contracts, and, 510  
 illegality, and, 509

## Index

**Severance – *contd***

- linkage, 510
- location, 510
- negotiation, and, 509
- payment, and, 510
- purpose of clause, 508–509
- 'rescuing' defective clauses, 509
- restraint of trade, and, 510
- sample precedents, 510–512
- termination, and, 510
- unenforceability, and, 509
- unilateral action, 509
- use of clause, 510
- warranties, and, 510

**Signature**

- date of agreement, 40
- drafting points, 38–39
- generally, 37–38
- linkage, 40–41
- location, 40
- placement, 38–39
- purpose of clause, 37
- sample precedents, 41–42
- terminology, 37–38
- use, 40–41
- witnessing, 39–40

**Singular/plural**

- interpretation clause, and, 396

**Sole rights**

- ambiguity, and, 287
- appointment of agents, and, 286
- background, 286
- competition law, and, 287
- drafting points, 287–288
- intellectual property, and
  - drafting points, 287–288
  - licensing, 286
  - linkage and use, 288–289
- linkage, 288–289
- location, 288
- meaning, 286–287
- purpose of clause, 286–287
- registration of licences, 289
- sample precedents, 291
- statutory definitions, 289–291
- sub-licences, 288
- use of clause, 288–289

**Stamp duty**

- background, 513
- certificate of value, and, 514
- drafting points, 515
- dutiable transactions, 513
- intellectual property, and, 513–514
- linkage, 515
- location, 515
- purpose of clause, 513–514
- relevant instruments, 513
- sample precedents, 516
- transfers of real property, 513
- use of clause, 515

**Stamp duty land tax**

- and see* STAMP DUTY
- generally, 513–515
- introduction, 513

**Statements**

- payment, and, 465

**Sub-buyers**

- retention of title, and, 491

**Sub-contracting**

- assignment, and, 79
- background, 517
- confidentiality, and, 520
- delegation, and, 517
- drafting points, 517–519
- intellectual property, and, 520
- linkage, 520
- location, 520
- permission, 517
- personal obligations, 518–519
- purpose of clause, 517
- requirement, 517–519
- sample precedents, 520–521
- use of clause, 520

**Subject to contract**

- case analysis, 527–536
- commercial parties, 523
- drafting points, 523–525
- heads of agreement, 523
- land transactions, 522–523
- linkage, 526
- location, 526
- meaning, 522
- non-binding documentation, 523
- purpose of clause, 522–523
- sample precedents, 526–527
- starting work before conclusion of contract, 525–526
- use of clause, 526

**Sub-licences**

- consequences of termination, and, 168
- exclusive rights, and, 288

**Subordinate legislation**

- interpretation clause, and, 395

**Subsidiary**

- and see* AFFILIATES
- drafting points, 15
- extracts from legislation, 20–24

**Subsidiary undertaking**

- and see* AFFILIATES
- drafting points, 15–16
- extracts from legislation, 22–27

**Substantial breach**

- and see* BREACH
- meaning, 108–109

**Successors and assigns**

- assignment, and, 538
- drafting points, 538
- linkage, 538
- location, 538
- parties, and, 537
- purpose of clause, 537
- sample precedents, 538–540
- use of clause, 537–538

**Supply of services**

- time of the essence, and, 562

**Survival of terms**

- accrued rights, 167
- agency agreements, and, 166–167

- Survival of terms – *contd***  
 arbitration, and, 168  
 breach, and, 111  
 completion, and, 130  
 confidentiality clause, and  
   generally, 168  
   introduction, 145  
 deposits, and, 269  
 drafting points, 166–167  
 indemnities, 168  
 insolvency, and, 166  
 intellectual property, and, 380  
 licensing agreements, and, 166–167  
 linkage, 168  
 location, 167  
 non-compete clauses, 168  
 payments, 168  
 periods of time, and, 425  
 purpose of clause, 166  
 records, 168  
 reporting, and, 485  
 return of materials and/or goods, 166–167  
 sample precedents, 168–169  
 sub-licences, 168  
 surviving provisions, 166  
 ‘sweep-up’ provisions, 167  
 use of clause, 168  
 warranties, 168  
 ‘winding down’ phase, 166–167
- ‘Sweep-up’ provisions**  
 consequences of termination, and, 167
- Temporary stoppage**  
 force majeure, and, 317
- Term sheet**  
 subject to contract, and, 523
- Termination**  
*see also* CONSEQUENCES OF TERMINATION  
 background, 541  
 breach, for  
   drafting points, 542–543  
   generally, 542  
   introduction, 111  
 case analysis, 549–554  
 cause, for, 542  
 completion, and, 130  
 confidentiality clause, and, 145  
 deadlock agreement, and, 542  
 deposits, and, 269  
 drafting points, 542–544  
 effluxion of time, by  
   drafting points, 544  
   generally, 542  
 fixed term  
   drafting points, 310–311, 544  
   introduction, 542  
   linkage, 311  
   location, 311  
   purpose of clause, 310  
   sample precedents, 311  
   use of clause, 311  
 insolvency, and  
   generally, 365–366  
   introduction, 542
- Termination – *contd***  
 intellectual property, and  
   generally, 380  
   subsequent use, 378–379  
 linkage, 544–545  
 location, 544  
 notice, by  
   drafting points, 543–544  
   generally, 542  
 notices, and, 545  
 options, and, 449  
 payment, and, 466  
 periods of time, and, 425  
 purpose of clause, 541–542  
 reporting, and, 484  
 retention of title, and, 491  
 sample precedents, 545–549  
 severance, and, 510  
 third party rights, and, 545  
 types of clause, 541–542  
 use of clause, 544  
 without cause  
   drafting points, 543–544  
   generally, 542
- Termination at will**  
 drafting points, 310–311  
 linkage, 311  
 location, 311  
 purpose of clause, 310  
 sample precedents, 311  
 use of clause, 311
- Territory**  
 agency agreements, and, 557  
 assignment, and, 538  
 background, 555  
 clarity of definition, 556  
 drafting points, 556–557  
 employment contracts, and, 557  
 European Union, 556  
 Great Britain, 555–556  
 intellectual property, and, 557  
 linkage, 557–558  
 location, 557  
 options, and, 557  
 parties, and, 537  
 purpose of clause, 555–556  
 restrictive covenants, and, 557  
 sample precedents, 558–559  
 United Kingdom, 555–556  
 use of clause, 557–558
- Testimonium**  
*see also* EXECUTION  
 generally, 37
- Third parties**  
 reporting, and, 483
- Third party claims**  
 intellectual property, and, 378
- Third party rights**  
 affiliates, and, 18  
 assignment, 208  
 background, 204  
 case analysis, 212–216  
 drafting points, 207–209  
 enforcement, 205

## Index

**Third party rights – *contd***

- exceptions, 205
- indemnities, 207
- international groups of companies, 206
- linkage, 209–210
- location, 209
- new rights, 204
- privity of contract, and, 205
- purpose of clause, 204–207
- remedies, 206
- research contracts, 206–207
- rights awarded, 204
- sample precedents, 210–212
- termination, and, 544
- 'third party'
  - generally, 207–208
  - introduction, 204
- use of clause, 209–210

**Time limits**

- conditions precedent, and, 136
- consent, and, 160

**Time of the essence**

- background, 560–561
- case analysis, 565–566
- completion, and, 563
- delivery, and, 563
- drafting points, 562–563
- land transactions, 562
- location, 563
- meaning, 560
- mercantile contracts, 561–562
- non-mercantile contracts, 561
- notices, and, 563
- payment, and
  - drafting points, 465
  - introduction, 563
  - linkage, 466
- purpose of clause, 560–562
- sale of goods, 562
- sample precedents, 563–565
- statutory provision, 562
- supply of services, 562

**Title and risk**

- INCOTERMS, 568–569
- international sales, 568–569
- legislation, 571–573
- location, 569
- payments, and, 569
- purpose of clause, 567–569
- retention of title, and, 569
- sale of goods, 571–573
- sample precedents, 570–571
- statutory rules
  - generally, 567–568
  - modification, 568
- when title and risk pass, 567–568

**Tracing clause**

- retention of title, and, 488

**Trade marks**

- and see* INTELLECTUAL PROPERTY
- generally 375

**Transfer of obligations**

- assignment, and, 76

**Transfer of real property**

- stamp duty land tax, 513

**Translation of documents**

- language, and, 409

**Trusts**

- covenants, and, 225

**Uncertainty**

- conditions precedent, and, 136

**Undertaking**

- and see* AFFILIATES
- drafting points, 15–16
- extracts from legislation, 21–22

**Unenforceability**

- severance, and, 509

**Unfair terms**

- background, 292
- case analysis, 304–309
- consequential losses, 298
- consumer contracts, and
  - case analysis, 187–190
  - generally, 175–178
  - indicative list of unfair terms, 190–192
  - OFT Guidance, 193–201
- drafting points, 296–303
- entire agreement and, 278
- excluding liability, 296–301
- fitness for purpose, 292
- force majeure, and, 319
- good faith, and, 341
- implied terms, 292
- indefiniteness, and, 352
- insurance, and, 369
- interpretation by courts, 292–294
- limiting liability, 296–301
- linkage, 303
- location, 303
- negligence, and, 297
- purpose of clause, 292–296
- reasonableness, 301–303
- remedies, and, 292
- 'safety valve' wording, 299
- sample precedents, 303–304
- set-off, and, 503
- 'standard' terms, 299–300
- statutory control
  - introduction, 295
  - Misrepresentation Act 1967, 295
  - UCTA 1977, 295
  - UTCRR 1999, 296
- third party indemnities, 299
- use of clause, 303

**United Kingdom**

- territory, and, 555–556

**'Until'**

- periods of time, and, 422

**Validity**

- 'blue pencil test', 508
- drafting points, 509–510
- effectiveness, 508
- employment contracts, and, 510
- illegality, and, 509
- linkage, 510

**Validity – contd**

- location, 510
- negotiation, and, 509
- payment, and, 510
- purpose of clause, 508–509
- 'rescuing' defective clauses, 509
- restraint of trade, and, 510
- sample precedents, 510–512
- termination, and, 510
- unenforceability, and, 509
- unilateral action, 509
- use of clause, 510
- warranties, and, 510

**Value added tax**

- background, 574
- business sale exemption, 574
- drafting points, 574
- land or buildings, 574
- linkage, 575
- location, 575
- payment, and, 464
- purpose of clause, 574
- sample precedents, 575–577
- use of clause, 575

**Variation**

- agreement to, 43–44
- case analysis, 47–48
- consent, 162
- consideration, 45
- drafting points, 43–45
- effect, 45
- language, and, 408
- linkage, 46
- location, 46
- method, 45
- purpose of clause, 43
- recording, 44–45
- sample precedents, 46–47
- third parties, and 45
- use of clause, 46

**VAT**

- background, 574
- business sale exemption, 574
- drafting points, 574
- land or buildings, 574
- linkage, 575
- location, 575
- payment, and, 464
- purpose of clause, 574
- sample precedents, 575–577
- use of clause, 575

**Waiver**

- background, 578–579
- breach of contract, and, 579
- concession, 578
- distinction from releases, 580
- drafting, 580

**Waiver – contd**

- estoppel, and, 578
- forbearance, 578
- function of clauses, 579–580
- linkage, 581
- location, 581
- method, 578
- purpose of clause, 578–580
- sample precedents, 581–583
- terms and conditions of warranties, and, 585
- use of clause, 581

**Warranties**

- acknowledgments, and, 10–11
- affiliates, and, 18
- background, 584
- breach, and, 111
- capacity
  - generally, 584–585
  - introduction, 115
- confidentiality clause, and, 145
- deposits, and, 270
- disclaimers, and, 272
- drafting points, 587
- exemption clauses, and, 588
- good standing, 584–585
- indemnities, and, 351
- insurance, and, 570
- intellectual property, and
  - generally, 380
  - validity, 377
- 'knowledge', 586
- linkage, 588
- location, 587
- periods of time, and, 425
- retention of title, and, 491–492
- purpose of clause, 584–586
- sale of goods, 587
- sample precedents, 588–600
- severance, and, 510
- terms and conditions, 585–586
- types, 588
- use of clause, 588

**Whole agreement**

*see* ENTIRE AGREEMENT

**Wholly owned subsidiary**

*and see* AFFILIATES

- drafting points, 15
- extracts from legislation, 20–21

**'Winding down' phase**

- consequences of termination, and, 166–167

**Work to be carried out**

- conditions precedent, and, 137

**Year**

*and see* PERIODS OF TIME

- generally, 419