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“ПЕРЕВОД В СФЕРЕ ДОГОВОРНОГО ПРАВА”

**ДЛЯ СТУДЕНТОВ ОТДЕЛЕНИЯ
МЕЖДУНАРОДНОГО ЧАСТНОГО ПРАВА**

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§ 1. Purpose and Status of Translated Private Legal Documents

Private legal documents, either original or translated, serve many purposes. Some of the major functions include creating, conferring, varying or negating legal rights and obligations and recording such rights and obligations. They are also used before a court or legal authorities to protect rights or enforce obligations. Private legal documents are important. It is said that drafting legal documents is like drafting statutes between private parties, setting out the relationships and ground rules in a formal or written form.

There are different purposes and uses for translated private legal documents. They may be requested by organisations or individuals. For instance, legal documents may be translated for business purpose, such as contracts that are used as part of business transaction. There are documents that are translated for use by individuals for various purposes, for instance, a will, a statutory declaration, or a marriage certificate. There are documents that are translated for litigation purpose, for instance, statements of claims or pleadings and witness statements. Legal advice of lawyers to their clients may also require translation if they speak different languages, as do instructions from clients to their legal representatives.

The legal status of these translated documents may vary. They may be for informative purpose or for normative purpose. For instance, contracts sometimes stipulate that two language versions are equally authentic, that is, both texts have equal legal force in the court of law. In other times, contracts may stipulate that only one language version, not both, is legally binding. They may nevertheless require translation, and such translations are mainly for informative purpose. Court documents and other litigation documents sometimes may require translations so that all the parties and the court can have linguistic access to documents written in different languages. Today, due to the increased movement of people across national borders for educational, employment, immigration and other purposes, legal certificates such as marriage,

divorce, birth and death certificates are often in need of translation.

A relevant point is that the translation of private legal documents is often used by a specific entity or individual for a specific purpose. It is different from the translation of statutory and international instruments that are used for the public at large.



§ 2. Contract: Its Stylistic Characteristics

From the linguistic point of view, a contract is a type of a document, because any agreement is a completed document fixing some information. As a type of text, contract has its own specific characteristics. Stylistic peculiarities of all document texts are:

1. concreteness, conciseness, clearness of the stated idea;
2. high capacity of information;
3. strict logic;
4. clear rhythm of sentences;
5. accenting on the main idea with the help of word repetitions;
6. absence of connotational information;
7. a special system of cliches and stamps;
8. usage of abbreviations, conventional symbols and marks;
9. usage of terms in their direct semantic meaning; preferential usage of monosemantic words;
10. division of a text into chapters, paragraphs, points, often numbered (clear compositional structure of a document);
11. usage of definite syntactic models;
12. graphic decoration of a document: quality of paper, quantity and quality of illustrations, size and kind of print.

The main features of the style of contract are:

1. steady system of linguistic means in the text of contract;
2. lack of emotional colouring;
3. decoding character of language;
4. usage of a special symbolic system;
5. definite syntactic structure (the 12 above-enumerated items).

The style of contract defines some peculiarities and techniques of its writing. Making contracts is different in some points from writing business letters, such as an offer, an inquiry, a complaint, etc. Some considerations important for business letters are not important for contracts, and vice versa. The main difference is that any contract is made up by two contracting parties and contains

information about many subjects. So all points are to be approved by both parties. There are certain clearly definable requirements for how to write contracts.

Generally, contracts should be formal, complete, clear, concrete, correct and concise. In contracts all possible informational details are not suitable. So, while writing contracts we must observe all peculiarities of standard English grammar, vocabulary use and stylistic appropriation. A formal contract or agreement requires considerations of neatness and attractive arrangement. Completeness of any contract suggests the scope of all significant facts that have reference to the issue of the agreement. Actually, you are expected to explain what, how, and when you are going to deal with your partner.

The next element, - clearness, - is one of the most important, because much depends on it. Clearness could be reached by the use of simple short words, phrases and paragraphs where the both parties of a contract explain their intentions and issues. Clearness of any arguments actually defines your striking a deal or not.

The component which is closely connected with the previous one is concreteness. Concreteness of a contract or an agreement is a part and a parcel of any legal document. Besides that, the longer the document is, the more attractive and vivid its contents should be.

The next two components are also significant. They are correctness and conciseness. Correctness involves proper grammar use (tense-aspect forms of the verb, verbals, articles, etc.), vocabulary use, punctuation and formal style. Grammar should be checked with a special care, otherwise it may produce a poor impression of the document and non-seriousness of your interests. Conciseness is usually achieved by the use of minimum words to express maximum of information.

As it has been noted above, any contract should be simple and clear, concise and brief. Commercial correspondence often suffers from an old-fashioned, pompous style of English which complicates the message and gives the reader the feeling that he is reading a language he does not understand. Though the language of contract is perhaps the most formal among all kinds of business correspondence, and the vocabulary of such correspondence is very specific, which is connected with its character and a great number of legal terms, it should not be archaic. It should be clear enough in its meaning.

The style, however, should not be too simple as it may become discourteous and sound rude. Linguists recommend the following

stylistic devices that might make agreements and contracts more polite: complex sentences joined with conjunctions are preferable, rather than short sentences; passive constructions rather than active; full forms rather than abbreviated forms, where necessary.

The right tone should be neutral, devoid of a pompous language on one hand, and an informal or colloquial language on the other hand. Therefore, inappropriate vocabulary, idioms, phrasal verbs are not allowed at all.

The both contracting parties should not experience any difficulties in obtaining information, they should be able to understand what is written. Misunderstandings are caused by a lack of thought and care. It may happen if we use a lot of abbreviations, figures and prepositions.

Abbreviations are very useful, because they are very quick to write and easy to read. But the both parties are expected to know what the abbreviations stand for. If one of the partners is not absolutely certain that the abbreviations are easily recognised he/she should not use it.

Very often in contracts Latin abbreviations are used, for example e.g. (for example), et al. (and others), etc. (and so on), v.v. (quite the opposite), i.e. (that means). Also they use English abbreviations ltd. (limited), Bros. (brothers), encl. (enclosed), dols. (dollars), etc.



§ 3. Textual features

Due to the commonalities in private legal drafting in English, certain textual features can be identified. Agreements and contracts, which are among the most commonly translated private legal documents from and into English, are often written in similar styles. Such documents vary in their actual content, which can be wide ranging from intellectual property rights transfer to the sale of equipment, depending upon the needs of the clients. They also vary in terms of length and complexity. Some are short and general but most are lengthy and detailed.

In terms of textual components, with respect to general agreements drafted in English, for instance, agreements on business or research collaboration, joint business ventures, or collaborative projects, some common parts and clauses can be identified. They often include the following:

- heading;
- date of the agreement;
- exordium, i.e. names and addresses of the parties;

- recitals or premises;
- transition, which contains the words of agreement;
- definition clause;
- operative provisions, e.g.:
 - rights, obligations and liabilities of the parties;
 - *force majeure*;
 - termination;
 - breach and remedies;
 - dispute resolution;
 - notice;
 - assignment;
 - waiver;
 - warranty and exclusion;
 - entire agreement clause;
 - governing law;
 - language clause if two or more languages are involved;
- testimonium;
- signature, date and execution.

Not all agreements have these elements, but many have, covering these and similar grounds. When an agreement has a recital or '*whereas*' section, it often starts with the word '*whereas*'. It has long been pointed out that the use of '*whereas*' is anachronistic and should be avoided (Dick 1985). Nevertheless, it is still found in legal documents. '*Whereas*' in this context has the meaning of '*given the fact that*', or '*as*', not the sense of indicating contrast. Recitals cover the matters leading up to the signing of the document. They are usually formal statements that come before the operative part of the agreement, setting out background and introductory materials. Nowadays, some agreements use the word 'recital' stating the background facts without using the word '*whereas*'.

In many agreements in English, the operative section starts with the definition clause. It is not dissimilar to definitions found in statutes. It defines and restricts the meanings of words used in an agreement. Sometimes, after the definition, there may also be an interpretation clause, for instance,

- (i) The expression 'person' includes an individual, a body corporate, a joint venture, a trust, an agency or other body.
- (ii) Words importing the singular shall include the plural (and vice versa) and words denoting a given gender will include all other genders.
- (iii) A reference to any document or agreement shall be deemed to include a reference to such document or agreement as

amended, annotated, supplemented, varied or replaced from time to time.

- (iv) References to any legislation or to any provision of any legislation will include any modification or re-enactment of such legislation or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation.
- (v) Where a word or phrase is given a particular meaning in this Agreement, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning.

Another common clause in English agreements is the *force majeure* clause. It usually includes natural disasters such as an earthquake, flood, fire, etc. It can also include such contingencies as war, embargo, sanctions. Along with this there are some other circumstances beyond the Parties' control. The Party may find himself in a situation when he can't fulfil his obligation under the contract. When negotiating a contract a list of contingencies must be agreed on and put into the contract.

A force majeure must be a proven fact. The duration of a force majeure is, as a rule, 4 or 6 months.

Force majeure clause often reads like this:

... Force Majeure under this Agreement shall include:

- (1) governmental, semi-governmental or judicial law, regulation, order, decree, directive, restriction, restraint, prohibition, intervention or expropriation, or the failure of any government or semigovernment or judicial entity to act;
- (2) strike, lockout or other labour dispute;
- (3) act of God, fire, flood, cyclone, tornado, hurricane or any other form of weather or conditions resulting from such weather;
- (4) explosion, concussion, collision, radiation, act of the public enemy, act of war (declared or undeclared), blockade, riot, civil commotion or disturbance, martial law, sabotage, insurrection or national emergency (whether in fact or law); or
- (5) any other cause, whether similar or dissimilar to the cause herein specifically enumerated and which is beyond the reasonable control of such party and which such party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost.

Sometimes, *force majeure* is also called 'unexpected event'. For instance,

... Unexpected Event affecting a party means anything outside that party's reasonable control, including but not limited to, acts or omissions of the other party, fire, storm, flood, earthquake, war, transportation

embargo or failure or delay in transportation, act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including but not limited to, subcontractors, customers, governments or government agencies) ...

‘Complete agreement’ or ‘entire agreement’ is another common feature in English agreements. For instance:

This Agreement constitutes the entire agreement between the parties. Any prior arrangements, agreements, representations or undertakings are superseded. No modification or alteration of any clause in this Agreement will be valid except in writing signed by both parties.

Nowadays, most agreements involving parties that speak different languages have a ‘language clause’. Such provisions are quite common, for instance:

The contract shall be written in both . . . and English and both language versions shall have equal force. In case of inconsistency of the two language versions, the . . . version shall prevail.

Another example:

This Agreement and any attachments hereto are rendered in both . . . and English. In the event of any conflict between the provisions of the English version and the . . . version which the parties cannot resolve by mutual agreement, then . . . provisions shall apply.



§ 4. The Structure of Contracts for the Sale of Goods and their Essential Clauses

Contract for the Sale of Goods is a business document presenting an agreement for the delivery of goods, services, etc., approved and signed by both the Buyer (exporter) and the Seller (importer). By law contracts are made in writing. When striking a deal, standard contracts are widely used. Standard contracts are not a must. Some articles can be altered and supplemented.

Each contract must be tailored to suit the particular transaction, but the following check list sets forth items which may be necessary or useful:

- a. Description of the parties.
- b. Description of the goods.
 - (1) Quantity.
 - (2) Quality.
 - (3) Manner of selection.

- c. Warranties.
 - (1) Title.
 - (2) Quality.
 - (3) Disclaimer of warranties.
 - (4) Limitation of liability for breach of warranty.
- d. Title to the goods.
- e. Risk of loss and insurance.
- f. Seller's obligation to tender delivery of the goods.
 - (1) Time of delivery.
 - (2) Place of delivery.
 - (3) Manner of delivery.
 - (a) Delivery in single or several lots.
 - (b) Shipment under reservation.
 - (c) Delivery on condition.
 - (4) Seller's right to cure improper tender.
- g. Buyer's obligation to accept goods.
 - (1) Buyer's right to inspect the goods before acceptance.
 - (2) Buyer's right to reject goods.
 - (a) Manner of rejection.
 - (b) Obligation to state reasons for rejection.
 - (c) Obligation to care for rejected goods.
 - (3) Buyer's obligation to notify seller of breach discovered after acceptance.
 - (4) Buyer's right to revoke his acceptance.
- h. Buyer's obligation to pay for goods.
 - (1) Price.
 - (2) Medium of payment.
 - (3) Time of payment.
 - (4) Obligation to pay before inspection of the goods.
- i. Remedies of seller.
- j. Remedies of buyer.
- k. Signature of parties.
- 1. Miscellaneous provisions.
 - (1) Duration and termination of contract term.
 - (2) Provision forbidding parol modification.
 - (3) Severability
 - (4) Provision relating to waiver of rights by course of performance.
 - (5) Delegation of performance.
 - (6) Assignment of rights.
 - (7) Output and requirements clauses.
 - (8) Sale on approval terms. |
 - (9) Sale or return.

- (10) Consignment sale terms.
- (11) Seller's rights on buyer's insolvency.
- (12) Buyer's rights on seller's insolvency.
- (13) Preservation of goods in dispute.
- (14) Right to adequate assurance of performance.
- (15) Installment contract provisions.
- (16) Force majeure.
- (17) Liquidated damages.
- (18) Proof of market price.
- (19) Clause shortening the statute of limitations period.
- (20) Acceleration clauses.
- (21) Choice of law clause.
- (22) Exhibits and Schedules.
- (23) Certain Definitions.

Now the most significant clauses of contract should be regarded.

The **subject-section** names the product for sale or purchase. It also indicates the unit of measure employed in foreign trade for specific commodities.

The **quality** of machines and equipment is to be conformed with the technical specification of the contract. The quality of raw materials and foodstuffs is determined by standards, samples, and description.

The **price** stated in a contract may be firm, fixed or sliding. Firm prices are not subject to change in the course of the fulfilment of the contract. Fixed price governs in the market on the day of delivery or for a given period. Sliding prices are quoted for machinery and equipment which require a long period of delivery.

There are some kinds of **payment**. A cheque is a written order to a Bank given and signed by someone who has money deposited there to pay a certain amount mentioned in the cheque to a person named on it. In the place of the cheque system Banks provide an international system of bank transfers. A draft is another order to pay. It is made out by an exporter and presented to the importer. It is also called a bill of exchange. A sight draft is a bill which is paid immediately on presentation. A bill if be paid at a later date is called a term draft. There are 30-day, 60-, 90- and 120-day drafts. The payment is guaranteed with a letter of credit or a revolving letter of credit.

Transport and delivery terms. The so-called door-to-door (multimodal) transport is wide-spread in shipping now. It involves a transfer of the goods from one kind of transport to another. The main carrier often prefers to assume through responsibility for the

cargo he carries. In a through movement of the goods a combined transport document is issued instead of a traditional Bill of Lading.

Packing goods for export is a highly specialised job. If the goods are improperly packed and marked, the carrier will refuse to accept them, or will make qualifications about the unsatisfactory condition of packing in the bill of lading. Packing can be external (crate, bag) or internal (box, packet, flask, etc.), in which the goods are sold.

In case of consumer goods packing has a double function. On one hand, it is for protection. On the other hand – it serves to advertise a product and attract a customer.

Marking should be in indelible paint with recognised kind of marks. The cases in which the equipment is packed are to be marked on three sides: on the top of the case and two non-opposite sides. The marking shall be clearly made with indelible paint in the languages of the dealing sides.

Insurance of goods. The export trade is subject to many risks. Ships may sink or collide; consignment may be lost or damaged. All sensible business people now insure goods for the full value. The idea of insurance is to obtain indemnity in case of damage or loss.

Insurance is against risk. While goods are in a warehouse, the insurance covers the risk of fire, burglary, etc. as soon as the goods are in transit they are insured against pilferage, damage by water, breakage or leakage. The insured is better protected if his goods are insured against all risks. The goods may be also covered against general and particular loss or damage.

Claims and sanctions. A contract defines rights and obligations of the parties involved. Most often the Buyer makes quality and quantity claims on the Seller. The cause for complaint may be poor quality, breakage, damage, short weight, leakage, etc. The Buyer must write a statement of claim and mail it to the Seller together with the supporting documents: Bill of Lading, Airway and Railway Bill, Survey Report, Quality Certificate are documentary evidence. Drawings, photos, samples are enclosed as proofs of claims. The date of a complaint is the date on which it is mailed.

Claims can be lodged during a certain period of time, which is usually fixed in a contract. During the claim period the Seller is to enquire into the case and communicate his reply. He either meets the claim or declines it. If a claim has a legitimate ground behind it the parties try to settle it amicably. The Seller in turn is entitled

to make a claim on his counterpart if the Buyer fails to meet his contractual obligations. The Seller may inflict penalties on the Buyer if there is a default in payment. Financially, legitimate claims are in large part settled by debit or credit notes.



§ 5. Lexical feature: All inclusive description

Lawyers are often criticised for their old or archaic drafting style. In English legal documents, one often finds words such as ‘aforementioned’, ‘hereinafter’, ‘hereinabove’, ‘hereunder’, ‘said’, ‘such’, etc. These words do not often present enormous problems in translation once the translator gets accustomed to such usage. However, a major linguistic feature of private legal documents written in English that does present a translation challenge is the use of word strings. For example:

‘... judicial law, regulation, order, decree, directive, restriction, restraint, prohibition, intervention or expropriation’;

‘... document or agreement as amended, annotated, supplemented, varied or replaced’, ‘arrangements, agreements, representations or undertakings’.

Some describe this as wordiness or verbosity.

Word strings are often synonyms. The following examples are from typical English contracts:

Each party acknowledges that except to the extent caused directly by the other party’s negligence or breach of this Agreement Party A assumes all risks for any liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis and whether incurred by or awarded against a party) incurred by Party A and resulting directly or indirectly from Party A’s use or disclosure of Party B’s information and/or the results under this Agreement ...

Word strings can consist of a series of nouns, verbs, adjectives, adverbs and other phrases. For instance:

Each party to this Agreement hereby acknowledges that it is aware that it or its advisers, agents or solicitors may discover facts different from and in addition to facts that they now know or believe to be true with respect to the subject matter of this Agreement, but it is their intention to hereby fully, finally, absolutely and forever settle according to the provisions of this Agreement any and all liabilities, claims, disputes and differences which exist, may exist or have ever existed between them relating in any way to the matters the subject of this Agreement.

It is believed that this tradition goes back to early history. An early Anglo-Saxon linguistic tradition was the conjoining of two similar words with closely related meanings, and they were often alliterative as well. Like other Germanic tribes, Anglo-Saxons made extensive use of alliteration in the legal language, and this style is found in today's ordinary English: 'aid and abet', 'fame and fortune', 'might and main', 'new and novel', 'part and parcel' and 'safe and sound'. Mellinkoff (1963) points out that this doubling continued in Law French in the medieval English law with some variation. It often involved the pairing of a native English word first with the equivalent French word second, for instance, 'devise and bequeath', 'break and enter', 'acknowledge and confess', 'goods and chattels', 'had and received', 'will and testament' and 'fit and proper'. This tradition of doublets and triplets were later expanded into word strings or more than two or three words of synonyms. An example is the word string used when transferring title to land from one person to another: grant, bargain, sell, alien, release, assign, transfer, set over and confirm 'as if proliferation of words would give safety in numbers'.

The main reason for the continuation of this linguistic tradition in English legal documents is that such word strings are used to convey the meaning of all-inclusiveness, that is, to cover all possible situations and eventualities. Lawyers tend to be overly cautious and they want to guard against all possible situations that may or may not arise in the future. Because of this reason, lawyers tend towards redundancy. This has been helped by the fact that the English legal language is richly endowed with repetitive phrases that once had different legal consequences.

Commonly used legal word strings that essentially have one meaning include:

advice, opinion and direction;
assign, transfer and set over;
assignees and licensees;
authorise and direct;
bear, sustain or suffer;
bind and obligate;
build, erect or construct;
business, enterprise or undertaking;
cease, desist and be at an end;
changes, variations and modifications;
costs, charges and expenses;
deemed and considered;
documents, instruments and writings;
final and conclusive;
finish and complete;

full and complete;
full force and effect;
furnish and supply;
give, devise and bequeath;
have and hold;
null and void;
obey, observe and comply with;
over and above;
place, install or affix;
power and authority;
release and discharge;
rest, residue and remainder;
save and except;
understood and agreed.

Word strings in English legal documents can present problems in translation as other languages may not have a string of corresponding words with similar meanings. For example, ‘null and void’ is translated as *wuxiao* (no effect) into Chinese as one word. This is because there are no two synonyms in Chinese to correspond the English doublet. In this case, ‘null and void’ in English has the essential meaning of ‘void’ in any event.

However, we also note that ‘null and void’ is more emphatic in English than simply ‘void’. Another example is the English word string ‘costs, expenses, outlays, expenditures, fees, charges and levies’. There may be a lack of the exact corresponding synonyms in the Target Language (TL).

A legal consideration is that in law, sometimes each and every word may carry different legal meanings and legal consequences. When disputes arise, courts may be asked to interpret each such individual word, and give them different meanings. Thus, for the translator, it is not always possible or advisable to combine the synonyms into one word.

One example of synonym with different legal meaning is the words ‘mean’ and ‘include’. They are often found in the definition clause of agreements. They have different meanings and should not be translated as the same. Generally, ‘mean’ restricts the definition to the notion set out in the clause, that is, exhaustive, whereas ‘include’ enlarges the definition so that its ordinary meaning incorporates an additional notion.

Another example of synonym is found in the following clause:

No termination of this Contract shall release or discharge Party A or Party B from any debt, liability or obligation which shall have accrued and remains to be performed by either Party A or Party B as at the date of such termination or which is intended by this Contract to survive the termination of this Contract.

Again, here ‘release’ and ‘discharge’, and ‘debt’, ‘liability’ and ‘obligation’ may be construed to carry substantial different meanings even though they are similar, and even if it may be difficult to distinguish them in translation. Still another example from a lease in English:

The Lessee covenants with the Lessor to observe and perform the terms, covenants and conditions contained in the Land Use Right and on the Lessor’s part to be observed and performed in the same manner in all respects as if those terms, covenants and conditions, with such modifications only as may be necessary to make them applicable to this Lease, had been repeated in full in the Lease as terms, covenants and conditions binding on the Lessee in favour of the Lessor.

Words used in leases in English go back in history. For instance, the words ‘terms, covenants and conditions’ may have different meanings in English property law. Thus, it would be advisable to translate these synonyms into separate words in the TL, although in some cases, it may prove to be difficult.

Another example is the phrase ‘devise and bequeath’ used in wills. Often in a will, a testator will state: ‘I devise and bequeath all my real and personal property to B’. If used strictly, the term ‘devise’ is appropriate only to real property while the term ‘bequeath’ is appropriate only to personal property. Accordingly, the testamentary disposition is read as if it were worded: ‘I devise all my real property, and bequeath all my personal property, to B’.

In short, the linguistic feature of word strings in the English legal language was developed in the long history of the Common Law. It is related to the notion of the so-called ‘preventative law’, that is, to prevent the parties from having to litigate later on. The main reasons for having a contract or agreement are, firstly, to specify in all-inclusive terms the exact rights and obligations of each party, and importantly, to prevent possible future disputes, and secondly, if any dispute does arise, the contract also provides for possible remedies and dispute resolution methods. Lawyers in Common Law countries are trained to go to great and sometimes extreme length to draw up contracts that attempt to cover every possible situation, every conceivable event, every foreseeable matter and contingency that may or may not arise. The English legal language has developed to meet such exact and all-encompassing demands of the lawyers and the law, to be all-inclusive and self-contained. This, apart from wordiness and sometimes redundancy,

also results in long-winded sentences and complex syntactical structures to be discussed next.



§ 6. Provisos and other limiting clauses

Provisos are a traditional feature of English legal drafting in both private legal documents and statutes. They operate as conditions or qualifications.

They are usually introduced by the linguistic formula:

PROVIDED THAT . . .

AND PROVIDED THAT . . .

AND PROVIDED FURTHER THAT . . .

Other variations include ‘provided always that’, and ‘provided nevertheless that’. Such wordings are used to vary or modify a more general provision, qualifying its operation in one or more particular circumstances. A ‘proviso’ is to be distinguished from a provision, which is a general term used to denote a clause or section in a document or statute. The proviso evolved from the enacting words of early English statutes – ‘*Provisum est*’ (it is provided) – used to introduce an independent section of a statute. In modern legal drafting, some have advised against using the proviso in that it is seen as an ancient archaic device that should be avoided. The decline in the use of the proviso has been reflected in contemporary legal drafting practice in most English speaking jurisdictions. Notwithstanding, provisos are still commonly found, in particular in wills. For example:

I GIVE DEVISE AND BEQUEATH my house property situated at . . . to my daughter for her own use and benefit absolutely PROVIDED that my said son may reside in the said house so long as he so desires . . .

One may think that these expressions are from old English documents of a bygone era, but not so. Here is a section from the will drafted in 2004 in Australia:

I DEVISE AND BEQUEATH the whole of my estate both real and personal of whatsoever nature or kind and wheresoever situated UNTO MY TRUSTEE UPON TRUST to pay transfer and assign as follows: ... PROVIDED ALWAYS that should in these above mentioned clauses, any share fails to take effect and there is no further direction given to that share redistribution then that such share or trust is to pass to the part of the clause or clauses which do not fail and if there are more than one part which do not fail then the failed part is to pass proportionately between those parts that did not fail.

Other limiting clauses common in private legal documents include the phrase 'subject to'. It is used to express the intent that one provision (the master provision) prevails over another (the subject provision). For instance, if clause 7 in an agreement begins with 'subject to clause 6', then any inconsistency between the two clauses is resolved in favour of the master clause, clause 6. Similarly, if subclause (1) begins with 'Subject to subclause (4)', then subclause (4) prevails. 'Subject to' is often used in ordinary agreements, and also in wills, settlements and other instruments creating interest in succession. When used in wills, there are two principal uses of 'subject to': (1) where a gift has been made of part of a fund and it is desired to dispose of what remains; and (2) where it is intended that any prior gift that lapses is to pass with the gift to the balance.

Generally speaking, provisos, 'subject to' and other limiting clauses are common in English legal documents. Some believe that they give a document a legalistic feel, but this has the unfortunate side effect of increasing sentence length in the process. For example:

If the performance of the contract by the seller be delayed by reason of any of the causes above mentioned, the buyer may, subject to previously obtaining the written consent of the seller, cancel the purchase of such portion of the material for which details and instructions have been duly furnished in accordance with the contract as may have been subjected to such delay, provided such portion of the material has not been manufactured nor is in process of manufacture at the time the buyer's request for such cancellation arrives at the manufacturer.



§ 7. Lexical Peculiarities of Contracts

From the lexicological point of view contracts are of great interest. The lexicon of contract has its own specific features. First of all, it is rather stable. As a rule, words have their only exact meaning. There are no words which are emotionally coloured. As a result of it, we can point out the words, which are present practically in every contract. Below are given the examples of these common words according to the part of a contract they are used in:

A. Heading.

(i) Different Types of Sale Contracts:

contract for a single shipment - контракт на разовую поставку

contract for deed = bond for title = bond for deed - контракт (обязательство) за титул, земельный контракт (договор о купле-

продаже недвижимости, по которому покупатель выплачивает стоимость покупки в виде ряда периодических платежей, а право собственности остается за продавцом до тех пор, пока покупатель не выплатит полную сумму)

contract for sale = contract of purchase = contract of purchase and sale = sales contract = contract of sale of goods - договор о продаже

contract of barter = barter contract - договор мены, бартерное соглашение, бартерный (товарообменный) договор

contract of hire-purchase - договор о продаже в рассрочку

contract to buy - контракт на покупку (биржевой контракт, дающий право купить какой-либо товар или финансовый инструмент)

contract to sell - контракт на продажу (срочный биржевой контракт, дающий право продать какой-либо товар или финансовый инструмент в будущем)

contract to transfer goods in return to services - договор о передаче товаров в обмен на услуги

delivery contract = contract of delivery = contract for delivery - договор поставки, контракт на поставку, договор о поставке (договор между покупателем и поставщиком, в котором устанавливается количество и качество поставляемого товара, цены, сроки поставки, вид используемого транспорта и т. п.)

instalment contract - договор с оплатой в рассрочку (по частям), договор с исполнением в рассрочку (по частям)

(ii) Service Contracts:

apprenticeship contract - контракт на обучение

brokerage contract - агентский договор, договор представительства

commercial agency contract - договор о торговом посредничестве

commission contract = contract of factorage - договор о комиссии (соглашение между принципалом и агентом (представителем), по которому агент обязуется выполнять по поручению принципала определенные действия, а принципал - выплачивать агенту комиссионное вознаграждение)

consultancy contract - договор о консультировании

contract for construction = construction contract = building contract - контракт о строительстве, договор подряда

contract for technical service - контракт на техническое обслуживание

contract for the supply of service - договор о предложении услуг

contract of agency = contract of representation - договор о представительстве, договор о посредничестве, договор поручения; агентский договор

contract of air transportation - договор воздушной перевозки

contract of carriage - контракт на перевозку, транспортировку; договор о перевозке груза

contract of consignment - консигнационный договор (вид договора, по которому комитент передает комиссионеру товар для продажи со склада комиссионера)

contract of services - соглашение между работодателем и нанимающимся на работу (нанимающийся не теряет своей независимости)

design contract - контракт на проектные работы

extended service contract - контракт на продление сервиса, договор на послегарантийное (продленное гарантийное) обслуживание

factoring agreement - договор факторинга, соглашение о факторинговых операциях (финансовая комиссионная операция, при которой клиент (компания-продавец) продает дебиторскую задолженность факторинговой компании, что позволяет ему немедленно получить большую часть причитающегося с покупателя платежа; факторинговая компания при этом удерживает из общей суммы дебиторской задолженности комиссионные; последующий платеж покупателя может направляться как непосредственно факторинговой компании, так и компании-продавцу, которая затем переводит средства факторинговой компании)

forfeiting agreement - договор форфейтинга, соглашение на операцию "а форфэ" (операция, при которой финансовый агент (форфейтер) выкупает без права регресса коммерческое обязательство заемщика (покупателя, импортера) перед кредитором (продавцом, экспортером); основное условие форфейтинга состоит в том, что все риски по долговому обязательству переходят к форфейтеру без права регресса на продавца обязательства; используется как средство финансирования международных торговых операций)

franchising - договор коммерческой концессии, франчайзинг (лицензионное соглашение, подразумевающее использование товарного знака и технологий со взаимными обязательствами и льготами между передающей и получающей сторонами, предоставляемое за плату и оформленное в соответствии с законом о товарных знаках)

freight forwarding agreement - договор транспортной экспедиции

research and development contract - контракт на проведение научных исследований и разработок

storage contract - договор о хранении

(iii) Other Subject Matters:

charter contract - договор чартера (договор между владельцем транспортного средства и нанимателем (фрахтователем) об аренде всего транспортного средства или его части на определенный рейс или срок)

contract of debt = credit contract = loan agreement - договор займа

contract of employment = employment contract = contract of engagement = contract of work and labour - трудовой контракт [договор], договор (личного) найма, соглашение о найме, контракт найма [на работу]

contract of guarantee - договор о поручительстве

contract of hire - договор о найме, контракт о прокате

contract of insurance - договор страхования

contract of location - договор об аренде или найме

contract of pledge = pledge agreement - договор залога, договор [соглашение] о залоге

contract of tenancy - договор аренды; договор имущественного найма

contract of trade = trade contract - торговый договор (контракт) (соглашение между продавцом и покупателем, в котором устанавливаются цены, количество и вид товара, форма платежа, условия доставки и страхования и т. п.)

distribution agreement - соглашение об оптовом размещении, соглашение о дистрибуции

investment contract - инвестиционный контракт; договор об инвестировании, по которому инвестор обязуется вложить определенные средства на определенный срок под определенные проценты в какое-л. предприятие или фонд

joint-venture agreement - договор о создании совместного предприятия, соглашение о совместной деятельности

know-how contract - договор о передаче «ноу-хау» (т.е. секретов производства), лицензионный договор на «ноу-хау»

labour contract - договор личного найма; подряд; коллективный трудовой договор

lease and licence contract - арендно-лицензионный договор на оборудование, лизинговый контракт

mining contract - контракт на разработку месторождений полезных ископаемых

owner-contractor agreement - договор заказчика с подрядчиком, подрядный договор

production contract - контракт на серийное производство

turnkey contract - договор на строительство «под ключ»

(iv) Supplementary Conditions

accessory contract = collateral contract - акцессорный договор (дополнительный договор, существующий лишь в связи с другим, главным договором)

beneficiary contract - договор в пользу третьего лица

completion-type contract - контракт, по которому оплата производится по завершении всего объема работ

confidentiality agreement - соглашение о конфиденциальности

contract for a term - договор/контракт на срок

joint operation agreement - договор о совместной деятельности
master contract - генеральный контракт, главный договор
mixed contract - неполновозмездный договор, договор с неравновесными предоставлениями

NCND Agreement - договоренность, предполагающая соблюдение конфиденциальности и необход положений соглашения; соглашение о неразглашении и соблюдении предварительной договоренности

risk contract - контракт на условиях риска; контракт с распределением риска

shared cost contract - контракт с распределенными затратами

sole distribution agreement - договор на исключительное распространение товаров

B. Exordium

NEC Corporation ("NEC"), Newport Fab, LLC ("JAZZ") and Shanghai Hua Hong NEC Electronics Company, Limited ("HHNEC") hereby have agreed as follows: ...

This contract is made this _____ (date) between _____ (the first party) and _____ (the second party), designated below by their signatures and seals.

This Framework Agreement is entered into on this day 27 of the month of March, 2003, by and between

1. _____, an Italian company, with registered office in Ponzano Veneto (TV), Villa Minelli, 1, represented by its legal representative Mr. Luigi de Puppi (hereinafter referred to as "Benetton");
2. _____, a Delaware company (USA), with registered office in Wilmington, Delaware, represented by its legal representative Mr. Michael Lyons (hereinafter referred to as the "PRINCE SPORTS").

The Artist (name, address, and telephone number) and the Gallery (name, address, telephone number) hereby enter into the following Agreement: ...

This Agreement ("AGREEMENT") is made as of May 28, 2002, by and among PRIVATE BUSINESS, INC. ("BUYER") and COMMERCE, INC. ("SELLER").

AGREEMENT made as of the _____ (date), by and between MOSBY, INC., a Missouri corporation, having its principal place of business at 11830 Westline Industrial Drive, St. Louis, MO 63146 (hereinafter referred to as "Seller"), and SOFTWARE, INC., a Georgia corporation, having its principal place of business at 1600 Riveredge Parkway, Atlanta, Georgia 30328 (hereinafter referred to as "Buyer").

C. Recitals

The parties to this Agreement, intending to be legally bound, agree as follows: ...

NOW, THEREFORE, in consideration of the mutual agreements and mutual covenants contained herein, and intending to be legally bound, the parties hereto hereby agree as follows: ...

KNOW ALL BY THESE PRESENTS that MOSBY, INC., a Missouri corporation (hereinafter "Assignor"), in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby sells, assigns and transfers to SOFTWARE, INC., a Georgia corporation (hereinafter "Assignee") all of Assignor's right, title and interest in and to all copyrights, copyright registrations and copyright interests of every kind and nature.....

WHEREAS the Agency desires to engage the services and skills of the Contractor, and, WHEREAS the Contractor desires to provide services set out herein to the Agency, NOW THEREFOR, in consideration of the mutual promises and covenants hereinafter set forth, the parties agree as follows: ...

In consideration of mutual agreements of seller and buyer to be set forth, seller agrees to sell and buyer agrees to buy ...

D. Definitions

Acceleration clause - условие о сокращении срока исполнения обязательства

Accord and satisfaction - мировое соглашение, соглашение о замене исполнения, замена исполнения

Allonge - аллонж, дополнительный протокол, приложение (к документу, векселю)

Assignment - правопреемство, передача права; уступка требования; цессия; перевод долга; отчуждение

Choice of law - выбор правовой нормы

Closing date - дата заключения сделки, последний день (для подачи документов и т.п.)

Collection - взыскание, взимание (сбор любых причитающихся к получению средств; часто о налогах, пошлинах), инкассирование

Confidentiality - конфиденциальность (невозможность раскрытия информации без согласия заинтересованных сторон), сохранение в тайне (информации)

Consecutive installments - следующие друг за другом взносы по оплате товара

Consideration - 1) встречное удовлетворение, компенсация, вознаграждение, возмещение, оплата (нечто ценное, предлагаемое

одной стороной в обмен на определенное обещание или действие другой стороны) 2) принятие во внимание, рассмотрение, обсуждение, анализ; учёт, соображение

Co-obligor - содолжник

Cosigner - лицо, подписывающее соглашение вместе с другими лицами

Counterparts - экземпляры, копии; подписание договора в одностороннем порядке с последующим направлением подписанного экземпляра на подпись другой стороне

Defeasance - условие о ликвидации долгового соглашения при определенных обстоятельствах

Delinquent payment - просроченный платёж

Disclaimer of warranties - заявление об ограничении ответственности

Disclosure - сообщение данных, не подлежащих разглашению

Due diligence - аудит; тщательная проверка; юридическая и финансовая экспертиза (комплекс мер, принимаемых для проверки и адекватной оценки законности и финансового состояния чего-л.)

Entire agreement - полнота соглашения

Event of default - факт невыполнения обязательств; событие, влекущее неисполнение обязательств

Fiduciary responsibilities - фидуциарная обязанность, траст-обязательства

Full Disclosure - максимальная подробность; полное раскрытие информации о сделке

Goodwill - нематериальные активы (разница между рыночной оценкой фирмы и суммой ее чистых активов) б) "неосязаемый капитал" (фирмы) (репутация, престиж, клиенты, связи и пр.)

Guarantor - гарант (лицо, которое выдает гарантию по платежу или выполнению обязательств другого лица

Indemnification - возмещение (убытков), компенсация

Inventory - опись, список, реестр (список всех активов с указанием стоимости каждого

Liquidated damages - ликвидные убытки, оценочная неустойка, ликвидные убытки (определяемые посредством арифметического подсчёта)

Maturity - наступивший срок исполнения обязательства

Net price - цена нетто, нетто-цена, чистая (реальная) цена; цена после вычета всех скидок и учета всех наценок

Notice of consignment - извещение об отгрузке

Notice of final agreement - заявление о том, что соглашение окончательно

Obligor - лицо (сторона), взявшее на себя какое-л. обязательство; должник, заемщик; дебитор

Old balance - старое сальдо, сальдо за предыдущий период

Open-ended agreement - бессрочное соглашение

Pricing - определение цены, калькуляция цен
Receivables - дебиторская задолженность, счета к получению, счета дебиторов
Recitals - перечисление фактов (в вводной части документа, в констатирующей части искового заявления; декларативная часть документа)
Responsibility for loss or damage, insurance coverage - ответственность по страховым случаям и страховое обеспечение
Retention of security interest - сохранение права кредитора вступить во владение собственностью, предложенной в качестве обеспечения
Security interest - обеспечительный интерес, залог; право кредитора вступить во владение собственностью, предложенной в качестве обеспечения
Service of process - вручение судебного документа, процессуальное извещение
Setoff - встречное требование, зачёт требований
Severability - делимость, автономность положений договора
Specific performance - исполнение (обязательств) в натуре, реальное исполнение
Standstill agreement - соглашение о моратории (о невмешательстве), соглашение между корпорацией и рейдером, пытающимся скупить акции данной корпорации, по которому последний обязуется не покупать акции в течение оговоренного срока
Subordination agreement - оглашение о подчинении (о субординации); документ, подтверждающий вторичность права конкретного кредитора на взыскание долга с заемщика (по сравнению с правами других кредиторов)
Termination of agreement - истечение срока действия соглашения
Time of the essence - время является существенно важным
Transportation responsibilities - ответственность за транспортировку
Undisclosed Liabilities - необъявленные обязанности и задолженности
Unpaid balance - невыплаченный остаток
Waiver - изъятие (из общих правил); отступление; исключение; освобождение (от обязательств)

For example:

"Closing Date" shall mean the time and date as of which the Closing actually takes place.

"Consent" shall mean any approval, consent, ratification, permission, waiver or authorization (including any Governmental Authorization).

"Damages" shall include any loss, damage, injury, decline in value, Liability, claim, demand, settlement, judgment, award, fine, penalty, Tax, fee

(including any legal fee, expert fee, accounting fee or advisory fee), charge, cost (including any cost of investigation) or expense of any nature.

"Person" shall mean any individual, Entity or Governmental Body.

E. Operative provisions

aforesaid - вышеупомянутый, как указано выше

as between us - в отношениях между нами

condition Precedent - предварительное условие, отлагательное условие

condition subsequent - последующее условие, отменительное условие, резолютивное условие

dispose of goods - продать товары, сбыть товары

extra - дополнительно, сверх того

furnish seller with a disclaimer - предоставлять продавцу письменный отказ от права

in lieu of - вместо

including without limitation - в том числе включая

inferior - некондиционный (о качестве товара), меньший по количеству

initial - подписывать инициалами, ставить инициалы

inure - иметь юридическое действие; вступать в силу

notwithstanding any other provision of this Agreement - независимо от любых других положений данного соглашения

on conditions that - при условии что

pari passu - в равной доле, на паритетных началах

perfect security interest - реализовывать участие кредитора в обеспечении

pro rata - пропорционально, соразмерно

provided - 1. предусмотренный, обусловленный; установленный; 2. при условии, если только; в том случае, если

pursuant to the terms of this agreement - в соответствии с условиями данного соглашения

retaking - изъятие вещи из чужого владения в порядке самопомощи

set forth below - нижеизложенный

solely on condition that - исключительно при условии, что ...

subject to - при условии, с соблюдением, имеющий силу лишь в случае

superior - лучшего качества; больше чем предусмотрено

ultima - окончательный

For example:

On the _____ [date], before me personally appeared James Imbriaco to me known, who being duly sworn, did depose and say that he resides at New Jersey, that he is the Vice President of Mosby, Inc., the corporation described

herein and which executed the above Assignment of Copyrights; and that he signed his name thereto with full and unrestricted authority to do so.

This Agreement shall become effective upon the last-to-occur of the following: (1) signature to this Agreement by the parties hereto, and (2)

This Agreement shall be signed in Russian and English in two (2) originals, each party keeping one (1) original for their records.

This writing contains the full, final and exclusive statement of the contract between the parties and no agreement or warranty shall be binding on the seller unless expressly contained in it.

Subject to the provisions of this Asset Purchase Agreement (the "Agreement"), Seller agrees to sell, and Buyer or its designee agrees to purchase

Title to the [goods] [property] shall pass to buyer _____ [e.g., on execution of this contract].

Risk of loss, destruction or damages of or to [goods] [property] shall be on seller until _____ [e.g., until delivery of goods to carrier at _____].

Demurrage is to be paid per day and pro rata for any part of the running day.

Fractions to be considered pari passu.

I will buy 1000 barrels solely on condition that Baker delivers them.

If the excess is discovered only on arrival of the goods at their ultima destination in the U.K....

Should the natural weight be superior or the contents of foreign admixture inferior...

Subject to General Conditions on Sale endorsed hereon...

The examination of the goods and objection thereto...

The wood goods hereinafter specified subject to a variation in Sellers' option of 20 per cent.

Without prejudice to any of my existing or future rights or remedies.

The agent may, at its option, do any one or more of the following: ...

We confirm the exchange of telexes as between us follows...

F. Testimonium

In witness whereof - в подтверждение чего, в удостоверение чего
"Witnessed" - "Заверено", "удостоверено"

KNOW ALL MEN BY THESE PRESENTS - Данным (соглашением) объявляется; к сведению всех присутствующих здесь лиц

Signatory = signer - подписавший (какой-л. документ, особ. договор),
нижеподписавшийся, участник соглашения, лицо уполномочен-
ное на подписание

For instance:

Executed in triplicate by Buyer on the date written above, until the Seller executes this contract it shall be considered an offer binding on buyer but not on seller. Upon execution of this contract by the Seller by signature of the Seller or Seller's authorized representative this contract will be considered accepted by the Seller. Buyer acknowledges receipt of a copy of this contract.

IN WITNESS WHEREOF, the Assignor has caused this Assignment of Copyrights to be signed in its corporate name by its duly authorized officers and its corporate seal to be hereunto affixed this 16th day of October, 1997.

All signed copies of this Agreement shall be deemed to be originals.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day and year first above written

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

The use of figures instead of words for sums can create many problems for people. To avoid any possibility of confusion, it is necessary to write sums in both figures and words, e.g. \$ 9.897.44 (nine thousand, eight hundred and ninety-seven dollars, forty-four cents). It is also a norm to put only dollars (pounds, etc.) in words and cents (pence, etc.) in figures only, e.g. \$ 100.50 (one hundred dollars and 50 cents). From the above-written it is clear that the symbols J (pounds) and \$ (dollars), in documents in particular, are put before the sum and their usage is not of any mistake.

The symbol &, which means in English and, is used in some terms like C&F (Cost and Freight), C&I (Cost and Insurance). But is marked as # in contract texts. The symbol № is used instead of the word number. In American English the symbol # means number as well, but it is used in different tables and graphics, and not in the text. It is never used, however, to denote numbers of houses.

So, in contracts a person can come across a definite number of words and word combinations which make up lexical peculiarities of their texts. They all are rather bookish and belong to formal style of written English, not being used in informal English and rarely used in spoken formal English.



§ 8. Syntactical feature: Long and complex sentence structures

In legal documents, a common linguistic feature is that sentences are typically long and complex. This is true in many languages, not just in English.

Syntax refers to the structure of sentences and sequences of words. While words are the basic building blocks of language that carry meanings, translation never remains at the lexical level, but goes beyond. Words in translation never exist in isolation and their true meanings cannot be fully appreciated unless they are construed with reference to the ways they are structured.

Generally speaking, sentences in legal texts are longer than in other text types, and they may serve various purposes. Nevertheless, complicated syntactical structure can cause comprehension difficulty for the reader including the translator. It sometimes also makes the rendering into the TL difficult.

It is common to find long and complex sentences in legal documents. For instance:

In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a proposal in respect of his company for a voluntary arrangement for a composition of debts in respect of his company to the court for the appointment of an administrator, or having a winding up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed or having a provisional liquidator, receiver or manager of his business or undertaking duly appointed, or being placed under judicial management, or having possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge, the employment of the Contractor under this Contract shall be forthwith automatically terminated, but the said employment may be reinstated and continued if the Proprietor and the Contractor, his trustee in bankruptcy, liquidator, provisional liquidator, receiver or manager as the case may be shall so agree.

In this example, the main clause is 'In the event of ..., the employment ... shall be terminated.' All the other clauses and qualifications are to cover the conditions and situations in which such an event may occur. This can be better written in two or more sentences with improved clarity. Another example:

Where the value of any materials or goods has, in accordance with clause . . . , been included in the payment, such materials and goods shall become the property of the Proprietor, and thereafter the Contractor shall not, except for use upon the Project, remove or cause or permit the same to be moved or removed from the premises where they are, but the Contractor shall nevertheless be responsible for any loss thereof or damage thereto and for the cost of storage, handling and insurance of the same until such time as they are delivered to and placed on or adjacent to the Project whereupon the provisions of clause . . . of the conditions shall apply thereto.

These examples may be unusual as compared with ordinary everyday written language, but they are not isolated or exceptional cases in English legal documents. Still another example of long and complex sentence:

The Seller shall indemnify the Buyer against any judgment for damages and costs which may be rendered against the Buyer in any suit brought on account of the alleged infringement of any . . . patent by any product supplied by the Seller hereunder, unless made in accordance with materials, designs or specifications furnished or designated by the Buyer, in which case the Buyer shall indemnify the Seller against any judgment for damages and costs which may be rendered against the Seller in any suit brought on account of the alleged infringement of any . . . patent by such product or such materials, designs or specifications; provided that prompt written notice be given to the party from whom indemnity is sought of the bringing of the suit and that an opportunity be given to such party to settle or defend it as that party may see fit and that every reasonable assistance in settling or defending it shall be rendered.

The basic sentence is ‘The Seller shall indemnify the Buyer against any judgement for damages and costs.’ However, the contexts, conditions and circumstances for such damages and costs are elaborately described, resulting in the long-winded sentence: one ‘which’ attributive clause followed by one conditional clause starting with ‘unless’, to be further modified by a ‘which’ clause, which itself contains another ‘which’ clause.

There is a further conditional clause ‘provided that’, to introduce two conditions. Within these clauses, there are more modifying phrases. The sentence can be easily written in two or more separate sentences.

When translating long and complex sentences, there are two basic steps: firstly, to conduct a careful analysis of the original sentence structure and essential meaning so as to correctly comprehend the message, and secondly, to express and convey the

meaning in the TL. So, good knowledge of syntactical rules of both the SL and TL is imperative. Sometimes, it may be necessary to break long sentences up and compose two or more sentences in the TL. It is not necessary to follow and reproduce the SL structures in the TL.



§ 9. Syntactical feature: Passive structures

Lawyers like to use passive structures. The passive voice is a linguistic construction that permits the writer to avoid naming or referring to the person or thing that performs the action. For instance, the sentence ‘The contract was breached’, simply states the fact. It does not indicate who was the wrongdoer who breached the contract. There are many instances of the use of passive structures in the examples cited above in the previous sections, e.g. ‘shall be forthwith automatically terminated’, ‘may be reinstated and continued’, ‘to be observed and performed’, ‘may be rendered’, ‘prompt written notice be given’ and ‘indemnity is sought of’.

Lawyers like to use passive structures to avoid directly referring to or identifying the person involved or assigning responsibilities. Because of this reason, lawyers tend to prefer the passive voice to the active voice where the doer needs to be identified and spelt out. Sometimes, lawyers overuse the passive voice for this reason. Even when the subject or doer of an action is known and identified, passive structures are still used, for instance, in the examples cited earlier, ‘to be performed by Party A or Party B,’ and ‘which is intended by the Contract’.

In translation, passive structures are often translated following the original pattern. However, in some languages and in some instances where passive structures are not as commonly used as they are in English, adjustments may be necessary. It is not imperative that the passive structure is carried over in the TL.



§ 10. Grammatical Peculiarities of Contracts

On the whole, grammar of any contract may be characterised as rather simple and formal. Simple here means lack of diversity of variants which occurs in every document which is not legal. As for the grammar tenses which are used in agreements, the most widespread are the Indefinite and the Perfect tenses, both in the Active and Passive Voices. In many points their usage is already part and parcel. e.g.

Sellers have sold and Buyers have bought... (Present Perfect)

The Agents shall bear all transport expenses from... (Future Indefinite)

Our firm informed the Suppliers that the general conditions were not contained in the order. (Past Indefinite Active/Passive)

Complex analytical forms of the verb, such as the Continuous and Perfect Continuous Tenses, are absolutely not used in no way. The specific character of any contract provides rare usage of the past tenses.

One of specific features of contract is usage of the verb *shall*. Though it is not used in Modern English, in business correspondence and documents it keeps being used. e.g.

Each party shall have the right to refuse any further fulfilment of the obligations.

The Buyers shall obtain the import licence.

The combination of the verb *should* and the infinitive also shows a future action, but with a less degree of probability. This construction usually occurs in subordinate clauses. e.g.

...if a delay in the delivery should exceed 3 months.

In many cases *shall* and *should* are equal in meaning. e.g.

...if the actual cost to us shall / should increase.

The peculiarity of contract is also omitting *if* in subordinate clauses with *should*, and in this case *should* becomes the first element in the sentence. e.g.

We hope that you will send as enquires should you need.

Should the above circumstances continue to be in force...

Should Buyers fail to open the letter of credit in time...

Another feature of Business English is a wide use of *-ing*-forms; e.g.

The letter of credit is to be valid for 90 days, all bank charges being at the expense of the Buyers.

Here is a construction with Participle I where it refers to the noun in the General Case, which goes before the Participle. It is not common in speech, but it occurs in contracts.

Constructions with the Perfect Participle, however, are rare in contracts and show an action prior to another one expressed by the predicate. e.g.

We have included in our claim only the cost of material and labour, all other expenses connected with the repair not having been taken into consideration.

Some Participles which have no explanatory words in contracts can either precede or follow a noun. Mostly they are constructions with Participle II: e.g. *the required specification vs. specification required; the enclosed letter vs. the letter enclosed.*

The Past Participle Passive always follows a noun if it has explanatory words. e.g. *a telegram received from London; the cheque attached to the letter.*

If a Participle shows only an action which is made upon the subject, it follows a noun. e.g.

The Sellers are to inform us of the quantity of the goods loaded.
Buyers are to accept or pay for the quantity shipped.

The Participle showing the quality, if there is one, precedes the noun: e.g. *illustrated catalogue; damaged goods; within six weeks of the stipulated time of shipment.*

The definite article *the* in contract has its own peculiarities. In every contract there are two or more parties and their names can be used either with the definite article or without it. Nevertheless, they are usually capitalised, e.g.:

This contract is made between Rossexport, hereinafter called Sellers and India Electric Company, hereinafter referred to as the Buyers.

The definite article is also used with ships. e.g.

The S.S. Svir is to arrive on July, the 5th.

Also the definite article is rarely used after prepositions of the Latin origin *per* and *ex*. e.g.

The goods were shipped per S.S. Svir.

The definite article is never used with nouns which are followed by a number in sizes, codes, etc.: e.g. *under Contract № 25; Order № 1015; our account №100/1066; under paragraph 9 of your General Conditions of the order; in accordance with clause 6 of the agreement.*

Although in Russian it is usually singular, in English it can be either singular or plural. That is why all variants are possible: the Buyers – the Sellers; the Buyer – the Seller; Buyer – Seller. e.g.

Should the Seller fail to notify the Buyer of a contingency...

If, however, they are to be shipped to Buyer who lives a considerable distance away... (absence of article)

The goods sold under the present contract are to be delivered by Sellers and accepted by Buyers. (absence of article)

From the above-written we can conclude that contract has its own grammatical and stylistic peculiarities which have much in common with the ones of business correspondence. However, they are unique enough to consider contract a specific type of business correspondence.



§ 11. Differences between Common Law and Civil Law

Private legal documents from different countries are not written in the same way. In particular, major differences exist in the drafting of legal documents in the Common Law and Civil Law jurisdictions. For instance, Zweigert and Kötz (1992) point out that contracts and wills in Common Law in English may be drafted in a style of language that strikes the Continental jurist as positively medieval. For example, in Germany, a contract of lease will simply say: ‘The lessor leases to the lessee the following dwelling . . .’, but in the UK or the US, a lease might well read something like this: ‘The Landlord has let and by these presents does grant, devise and let unto the Tenant and the said Tenant has agreed to hire and take, and does hereby hire and take as tenant the following space in the apartment building ...’.

A recent study by Hill and King (2004), ‘How Do German Contracts Do as Much with Fewer Words?’, comparing German and American business contracts, can provide us with some insight into the different drafting styles. Of the US complex business contracts, Hill and King (2004) have found that:

- The US contracts are very long.
- There is a great deal of explanation, qualification and limitation in the language.
- There is a great deal of legalese.
- The legalese is similar from agreement to agreement, but not exactly the same.

- Contracts of a particular type of transaction are similar in general coverage, but the specific language varies considerably from contract to contract.

In contrast, the German contracts are characterised as follows:

- The German agreements are much lighter, about one-half or two thirds the size of otherwise comparable US agreements.
- There is much less explanation, qualification and limitation in the language.
- There is much less legalese.
- The legalese is almost identical from contract to contract.
- Many provisions are quite similar from contract to contract.

Some of the clauses quoted in Hill and King (2004) are also interesting. For instance, contrast the standard forms of a forum selection clause:

The exclusive forum for the resolution of any dispute under or arising out of this agreement shall be the courts of general jurisdiction of . . . and both parties submit to the jurisdiction of such courts. The parties waive all objections to such forum based on forum non conveniens.

. . . does hereby grant, bargain, sell, assign, transfer, convey, pledge and confirm, unto Indenture Trustee, its successors and assigns, for the security and benefit of the Indenture Trustee, for itself, and for the Holders from time to time a security interest in and lien on, all estate, right, title and interest of . . . in, to and under the following described property, agreements, rights, interests and privileges, whether now owned or hereafter acquired, arising or existing (which collectively . . ., are herein called the ' . . . Trustee Indenture Estate').

Georges A. van Hecke (1962) once recounted an incident that occurred in 1962. An American company and a Belgian company wanted to engage in a share exchange transaction. The American party drafted a contract of 10,000 words. The Belgians refused to continue with the transaction because they were shocked by the length of the draft. In contrast, the Belgian draft had 1400 words, and was 'found by the American party to include all the substance that was really needed'. Due to the widespread influence of the Anglo-American, especially US business legal practice the world over, the English drafting style has started to influence the business contract drafting in other jurisdictions.

The above comparison does not imply or is not used to illustrate that one legal system or one legal style is superior to another. It is intended to demonstrate that differences exist in different

legal cultures and legal languages. The legal systems and legal cultures of the Common Law and Civil Law have hundreds of years of history behind them. Laws or legal texts are not formulated or construed in a vacuum. Legal documents drafted in each jurisdiction are conditioned by and cater to the demands and requirements of that particular jurisdiction, unique to the law, tradition and policy of each culture. For instance, contracts and agreements in Common Law jurisdictions, especially the US, tend to be long, and this is partly because such documents often include provisions covering possible contingency issues litigated in the courts. Furthermore, words used in law are loaded semiotic signs with multiple layers of meanings from a particular legal culture of which they are a part. For instance, many words in the Common Law, including simple, everyday words, and words that lawyers seem to be fond of using, such as 'subject to', 'provided' and others, have histories of legal use. They have been interpreted and defined by courts in legal precedents over the centuries.

They are the archaeological bricks from the past that have constructed and supported and are still supporting the four walls of the law. Whatever stories and histories these building blocks may carry does not just get erased, even though many people are not familiar with or aware of their histories.

In this connection, the English legal language and legal drafting have been undergoing reform and change in the last few decades to make them more accessible and comprehensible to the layperson. In the past twenty or thirty years, in major English speaking countries, there have been efforts by the legal profession to simplify legal drafting and writing style in the so-called Plain English Movement. The movement advocates the use of plain and straightforward language to convey meaning as clearly as possible without unnecessary pretension or embellishment, that is, emphasizing clarity and simplicity. For instance, in some US and Australian jurisdictions, legislation requires some consumer documents to be written in plain English and achieve a required standard of intelligibility. Such efforts are directed both at legislative language and private legal documents, and extend beyond English. The adoption of plain language appears to have worked particularly well in situations where there is a high degree of interface between consumers and documents such as standard form contracts and insurance policies etc. However, this does not mean to abandon legal concepts, technical terms or legal usage. Simplicity does not equal being simplistic. Sometimes, complex notions and long sentences may be necessary and details may need to be spelt

out due to the nature of law. Using plain language and making a legal text easier to understand does not mean that the meanings and legal effects should be changed from those if written in a more traditional drafting style. We need to be aware that different words very often carry different meanings. It is not the task of this chapter or the book to evaluate the merit or result of the Plain English Movement. Suffice it to say that legal English and legal drafting are and will remain different from ordinary English. Legal language carries distinctive markers. Law and legal texts are complex because human affairs and human relations are complex. Legal texts, both statutes and private legal documents, can certainly be improved in terms of comprehensibility and accessibility. However, legal language is not everyday language but a technical language. As stated earlier, it is a special register peculiar to its situational use in the legal setting. It is naïve to think that law can be written in a language that everyone can fully understand and appreciate without reference to the legal institutional parameters and cultural histories. In terms of translation, unnecessarily long and convoluted sentences and unclear meanings will make translation more difficult. They will reduce the chance of the correct meanings being conveyed in translation and increase the probability of ambiguity and other linguistic uncertainty. It is a point that drafters, especially those drafting bilingual or multilingual legal texts, both private legal documents and legislation, should bear in mind.



§ 12. Основные трудности перевода в сфере договорного права

Перевод договоров - одного из видов юридической документации - является сложной и комплексной задачей, решение которой сопряжено со многими трудностями как языкового, так и экстралингвистического характера и требует от переводчика-юриста солидной языковой подготовки, соответствующих переводческих умений и обширных знаний в области как отечественного, так и зарубежного договорного права. Поставленная задача ориентирует, с одной стороны, на обоснование некоей типологии общезыковых и переводческих проблем при переводе договоров, а с другой стороны, на выявление специфики этих проблем в зависимости от характера перевода: с русского на английский язык или же с английского на русский.

Описание типичных трудностей, с которыми приходится сталкиваться юристу-переводчику в сфере договорного права,

начнѐм с перевода текстов соглашений, составленных на английском языке; к таковым относятся: использование клише, сокращений и аббревиатур; многозначность слов английского языка; контекстуальная обусловленность используемых языковых единиц; использование терминов, отражающих реалии правовой системы другой страны.



Проблема 1. Использование речевых штампов.

Формулировки, используемые в английских текстах договоров, традиционно относятся к наиболее консервативному способу создания юридических документов. Наиболее ярким подтверждением тому является использование устаревших фраз и клишированных выражений, которые встречаются лишь в договорах. Например:

IN WITNESS WHEREOF - в подтверждение чего, в удостоверение чего

KNOW ALL MEN BY THESE PRESENTS - данным (соглашением) объявляется; к сведению всех присутствующих здесь лиц

TO HAVE AND TO HOLD - передаѐтся в собственность и владение (в документах о передаче имущества)

WHEREAS - принимая во внимание, поскольку (в преамбулах официальных документов)

WITNESSETH - свидетельствуют, доводят до сведения

В текстах договоров зачастую используются устаревшие формы наречий, характерные лишь для юридических текстов:

as annexed hereto - приложенный к данному документу

henceforth = henceforward - в дальнейшем

hereafter - впредь, в дальнейшем; ниже, затем, дальше (в документе)

hereby - сим, этим, настоящим; при сем; таким образом

herein - здесь, в этом (документе)

hereinabove = hereinbefore - выше (в документах), вышеупомянутый, вышеназванный

hereinafter - ниже, в дальнейшем в этом документе

hereinafter referred (to) as - в дальнейшем именуемый

hereof - сего; этого; об этом; отсюда, из этого (в документах)

hereon - на этом (документе), на этой основе

hereto - к этому (документу), к документу

heretofore - ранее, до сего времени

hereunder - ниже (по тексту); под этим заголовком; в силу настоящего закона, договора, в соответствии с настоящим договором

hereunto - к этому документу; к этому

hereupon - немедленно вслед (за этим), тут же после (этого); что касается; вследствие этого; вследствие чего

herewith - настоящим; посредством этого, настоящим (сообщается и т. п.); при сем (прилагается)
 in witness whereof - в удостоверение чего
 said = abovesaid = aforesaid = aforementioned - (выше)упомянутый, (выше)указанный
 thereafter - с этого времени, после этого, затем, в дальнейшем
 thereby - таким образом, в связи с этим, следовательно, в силу этого
 therefor - за это; в обмен на это, по причине, из-за этого, вследствие этого
 therefore - потому, поэтому, следовательно, зато
 therein - там, в нем, в этом, в том месте, в этом отношении
 therein after = thereafter = therein under - ниже (в документе)
 thereinbefore - выше, ранее (в документе)
 thereof - из этого, из того, вследствие того
 thereon - на том, на этом, после того, вслед за тем
 thereto - к этому, к тому, на это, на то
 theretofore - до того времени
 thereunder - в силу этого закона, договора; в соответствии с этим
 thereupon - вслед за тем, за этим, на этой основе, вследствие того, на том, в этой связи
 therewith - вместе с тем, кроме того, к тому же, вследствие того, посредством, с помощью этого
 under the contract - по договору, на основании договора
 whereby - в силу чего, на основании чего, при помощи которого

Вот некоторые примеры перевода английских речевых штампов и клише в тексте договора:

<p><u>IN WITNESS WHEREOF</u> the parties have signed and sealed this Agreement.</p>	<p><u>В подтверждение чего</u> стороны скрепили данное Соглашение своими подписями и печатью.</p>
<p><u>NOW, THEREFORE</u>, in consideration of the mutual agreements and mutual covenants contained <u>herein</u>, and intending to be legally bound, the parties <u>hereto</u> <u>hereby</u> agree as follows:</p>	<p><u>ТАКИМ ОБРАЗОМ</u>, на основе обоюдной договоренности и взаимного согласия <u>по поводу данного соглашения</u>, которое является юридически обязательным, стороны договорились о нижеследующем: ...</p>
<p>Subject to General Conditions on Sale endorsed <u>hereon</u>...</p>	<p>С учётом <u>Общих Положений Торговой Сделки</u>, подтверждаемых <u>данным документом</u>...</p>
<p>The goods to be shipped as soon <u>thereafter</u> as suitable tonnage obtainable.</p>	<p><u>После этой даты</u> товары должны быть погружены на первое прибывшее судно подходящей грузоподъёмности.</p>

TO HAVE AND TO HOLD the premises from the 1 day of April, 2007, for the term of 4 (four) weeks thereafter ...	Передаётся в собственность и владение начиная с 1 апреля 2007 года и на последующие 4 (четыре) недели...
WITNESSETH: That the said Lessor hereby leases and demises unto the said Lessee the following described premises: ...	СВИДЕТЕЛЬСТВУЕМ: сим вышеупомянутый Арендодатель сдаёт внаём вышеуказанному Нанимателю следующие помещения: ...

К данному виду проблем перевода следует отнести и своеобразие английского текста договора, связанное с особенностями терминологии англо-американской системы права, оттенки значения которой утрачивают свой первоначальный смысл в терминах континентальной правовой системы. Так многочисленные словосочетания, типа *final and conclusive; full and complete; full force and effect; power and authority; costs, charges and expenses; obey, observe and comply with; documents, instruments and writings; changes, variations and modifications* переводятся на русский язык зачастую лишь одним словом, например: *constitute, designate and appoint* – назначить; *over and above* – кроме того, в дополнение; *null and void* – ничтожный (не имеющий юридической силы, утративший юридическую силу); *save and except* – за исключением, исключая.

При переводе текста договора это выглядит следующим образом:

KNOW ALL MEN BY THESE PRESENTS, we do hereby <u>constitute, designate and appoint</u> Mr. Lawless as our lawful attorney and attorney-in-fact, to do the following acts and things: ...	К СВЕДЕНИЮ ВСЕХ ПРИСУТСТВУЮЩИХ ЗДЕСЬ ЛИЦ, настоящим соглашением мы <u>назначаем</u> мистера Лоулесс нашим законным представителем и поверенным, наделяя его полномочиями для осуществления следующих юридических действий: ...
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Проблема 2. Использование сокращений и аббревиатур.

Одним из требований, предъявляемых к текстам договоров, является однозначность используемых слов и выражений, что, в свою очередь, предполагает нежелательность использования каких-либо сокращений или аббревиатур. Однако подобное требование не распространяется на целый ряд общепринятых сокращений, зафиксированных в словарях. Например:

B/L- *Bill of Loading = Bill of lading* - коносамент (отгрузочный документ), транспортная накладная
 C/O - *certificate of origin* - свидетельство о происхождении товара
 CIF - *cost, insurance and freight* - стоимость, страхование и фрахт
 CM - *current month* - текущий месяц
 DDU - *delivered duty unpaid* - поставлено без уплаты таможенной пошлины
 e. & o.e. - *errors and omissions excepted* - исключая возможные ошибки (и пропуски)
 encl. - *enclosure* - приложение к документу; enclosed - прилагаемый
 EXW - *ex-works* - франко-завод, с предприятия
 FCA - *free carrier* - франко-перевозчик
 Inc - *incorporated* - зарегистрированный как корпорация; имеющий права юридического лица
 L/C - *Letter of Credit* - аккредитив
 LLC - *limited liability company* – ООО, общество с ограниченной ответственностью
 LLP - *Limited Liability Partnership* - товарищество на вере, коммандитное товарищество с ограниченной ответственностью, компания с ограниченной имущественной ответственностью
 Ltd - *limited* - с ограниченной ответственностью
 n/n - *non-negotiable* - без права передачи (о документе)
 p.p. - *per procuracionem* - по доверенности
 plc - *public limited company* - открытое акционерное общество, общество с ограниченной ответственностью
 s. and h.e. - *Sundays and Holidays excepted* - исключая воскресенья и праздничные дни
 SS - *steam ship* - пароход
 u.t. - *usual terms* - обычные условия

Примеры перевода общепринятых сокращений, используемых в тексте договора:

DELIVERY TERMS: <u>CIF</u> Philadelphia.	УСЛОВИЯ ПОСТАВКИ: <u>стоимость, страхование и фрахт</u> до Филадельфии.
The GOODS are to be sold on terms <u>FCA</u> German-French border (according to INCOTERMS 2000).	ТОВАРЫ продаются на международных коммерческих условиях INCOTERMS 2000 " <u>франко-перевозчик</u> " до немецко-французской границы.
The goods hereunder shall be delivered <u>DDU</u> Saint-Petersburg.	В силу настоящего соглашения товар должен быть доставлен в г. Санкт-Петербург на условиях " <u>поставлено без уплаты таможенной пошлины</u> ".
The <u>SS</u> Neptune is to arrive on July, the 5th.	Дата прибытия <u>парохода</u> "Нептун" - 5 июля.



Проблема 3. Многозначность термина в рамках правовой тематики.

Как известно, для термина, относящегося к группе однозначных лексических соответствий, характерна однозначность и независимость от контекста. Однако на деле переводчик постоянно сталкивается с многозначностью терминов, значение которых выявляется только на основе контекста. Например:

- defence - 1. оправдание; 2. обстоятельство, освобождающее от ответственности; 3. возражение ответчика; 4. аргументация защиты; 5. оговорка; 6. обвиняемый
- due diligence – 1. должная заботливость, осмотрительность (например, в страховом полисе); 2. аудит; юридическая и финансовая экспертиза (комплекс мер, принимаемых для проверки и адекватной оценки законности и финансового состояния компании)
- encumbrance - 1. обязательства по невыполненным контрактам; 2. обременение; 3. закладная на имущество; 4. право залога; 5. находящееся на иждивении лицо
- equity - субъективное право, основанное на нормах права справедливости; 2. справедливое требование; 3. чистая стоимость капитала за вычетом обязательств; 4. часть заложенного имущества; 5. доля акционера в капитале предприятия
- execution of the contract - 1. исполнение контракта (исполнение условий контракта); 2. составление контракта (оформление/подписание контракта)
- principal - 1. глава, начальник, руководитель; 2. главный преступник (обвиняемый); 3. основная сумма, капитальная сумма; 4. главный должник, основной должник; 5. комитент; 6. участник договора; 7. принципал, доверитель
- provided - 1. предусмотренный, обусловленный; установленный; 2. при условии, если только; в том случае, если
- relief - 1. средство судебной защиты по праву справедливости; 2. освобождение от уплаты, ответственности; 3. скидка с цены, налога
- security agreement - 1. договор о безопасности (дипломатический термин); 2. договор об обеспечении долга (например, в договоре займа)
- terms - 1. способ выражения; 2. условия оплаты; 3. терминология; 4. условия и положения договора; 5. срок исполнения договора

Примеры перевода многозначного термина:

Any remedy available at law or in <u>equity</u> ...	Любое средство защиты, предусмотренное законодательством или <u>правом справедливости</u> ...
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JXM has good and valid title to its assets, free and clear of all Encumbrances.

По отношению к своим активам JXM обладает неоспоримым правовым титулом, необременённым какими-либо долгами или обязательствами.



Проблема 4. Многозначность общелитературной лексики, используемой в качестве термина или в его составе.

Для юридического языка характерно использование слов и словосочетаний, встречающихся в обыденной речи, и казалось бы прозрачных по значению. На самом деле в юридических текстах они приобретают иные значения, логическую связь которых с обычными значениями установить непросто. Слова литературного языка также могут входить в состав терминов и, будучи многозначными, осложнять их понимание. Таким образом, данная трудность касается выбора правильного значения слова, которое либо находится на периферии значений данного слова, либо является омонимом. Например:

average - 1. нечто среднее, среднее число, средняя величина; 2. авария (ущерб и убытки, причиненные транспортному средству и грузу в процессе перевозки); 3. распределение ущерба, понесенного от аварии между владельцами (груза, судна)

customs - 1. обычаи, привычки; 2. нрав; 3. таможенная служба; 4. таможенный досмотр; 5. пошлины

goodwill - 1. доброжелательность; благосклонность, расположение; 2. добрая воля (по отношению к кому-л.); 3. "гудвилл", нематериальные активы (разница между рыночной оценкой фирмы и суммой ее чистых активов); 4. "неосязаемый капитал" (фирмы) (репутация, престиж, клиенты, связи и пр.)

instrument - 1. прибор; 2. музыкальный инструмент; 3. документ, представляющий собой правовой акт; 4. юридически оформленный документ; 5. кредитно-финансовый инструмент; 6. ценная бумага

maturity - 1. зрелость; 2. совершеннолетие; 3. срок платежа по векселю; 4. срок погашения кредита

outstanding - 1. знаменитый; 2. из ряда вон выходящий; 3. неиспользованный; 4. неуплаченный, просроченный; 5. остающийся спорным

performance - 1. деятельность; 2. показатели работы; 3. режим работы; 4. линия поведения; 5. исполнение, совершение (договора)

person - 1. личность; 2. внешность; 3. действующее лицо, персонаж; 4. военнослужащий; 5. юридическое лицо

presents - 1. данный документ, настоящий документ; 2. заявления; 3. подарки, дары

remedy - 1. лекарство; 2. средство (против чего-либо); 3. возмещение; 4. средство судебной защиты

title - 1. заглавие, название, наименование; 2. звание; 3. право собственности; 4. право на имущество; 5. право на иск; 6. основание права на имущество

Примеры перевода многозначной общелитературной лексики, используемой по контексту в качестве юридического термина:

<p><u>General Average</u> is designed to provide an equitable distribution of these losses or sacrifices between the Parties that have benefited.</p>	<p><u>Условие "Общеварийные Убытки"</u> имеет целью обеспечение справедливого распределения ущерба и убытков между Сторонами, которые были спасены от общей для них опасности.</p>
<p>Lessor may pursue one or more of the following <u>remedies</u> as Lessor in its sole discretion may elect ...</p>	<p>Наймодатель может по собственному усмотрению прибегнуть к одному или нескольким из перечисленных далее <u>средств юридической защиты</u> ...</p>



Проблема 5. Поиск русского соответствия для терминов лексикона.

К терминованной лексике относятся слова общелитературного языка, которые часто встречаются в текстах договоров. Такие слова, строго говоря, не являются юридическими терминами, так как они сохраняют свое общее значение, однако в силу частого употребления в какой-либо сфере права в обоих языках за ними закрепляются устойчивые узловые соответствия. Использование переводчиком других соответствий сразу бросается в глаза специалистам как нарушение принятой нормы юридической речи. Таким образом, проблема их перевода заключается преимущественно в поиске подходящего эквивалента на русском языке. Например:

<p>The owner shall <u>carry insurance</u> on the building but not on the contents thereof, and shall maintain the roof, walls and structural parts of the building in proper condition for use by lessee.</p>	<p>Собственник обязан <u>застраховать</u> само помещение без учета находящихся в нём вещей; он должен содержать крышу, стены и несущие части здания в состоянии, пригодном для пользования помещением арендатором. <i>ошибочно:</i> Собственник должен <u>нести страховку</u> в отношении здания...</p>
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<p>The Arbitrators will however know the English language so that they may <u>hear and hold a case</u> also in the English language.</p>	<p>При этом арбитрами будут люди со знанием английского языка, способные <u>рассмотреть и вынести решение по возникшему спору</u> на английском языке. <i>ошибочно:</i> ..., так, чтобы они могли <u>выслушивать и проводить дело</u> на английском языке.</p>
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Проблема 6. Ложные друзья переводчика.

Как известно, ложные друзья переводчика могут стать источником разного рода неточностей и ошибок. Существуют такие слова и среди юридических терминов, например:

contract - 1. международный контракт; 2. сделка; 3. соглашение; 4. договор подряда; 5. контракт - предмет торгов при фьючерсных сделках; 6. брачный договор

interest - 1. интерес, любопытство; 2. выгода, преимущество; 3. участие в прибылях; 4. капиталовложения; 5. пакет акций; 6. проценты (на капитал); 7. банковский процент; 8. вещное право

В первом случае типичной ошибкой является перевод *contract* через слово *контракт* вне зависимости от контекста, хотя по Российскому законодательству контрактом является иностранный (международный) и государственный контракт; а соглашение между Российскими юридическими лицами именуется *договором*.

Примером неточного перевода слова *interest* может служить следующее предложение:

<p>The Joint Venturers form this joint venture to acquire and hold the business <u>interest</u> in common.</p>	<p>Учредители совместного предприятия создают его с целью совместного <u>участия в прибылях</u>. <i>ошибочно:</i> ... ради совместного <u>делового интереса</u>.</p>
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Проблема 7. Слова и словосочетания с неявным, формально не выраженным, но подразумеваемым правовым значением.

Некоторые английские юридические термины содержат имплицитные, то есть предполагаемые, скрытые компоненты значения. Перевод имплицитных терминов без выведения скрытых сем или их неправильное установление может привести к неточностям или искажению смысла термина. При

переводе таких терминов необходимо восстановить скрытые семы и выразить их при помощи добавления нужных слов. Следует отметить, что добавление новых слов может потребовать и изменения структуры словосочетания. Например:

confusion or deception (о товарных знаках)	сходство до степени смешения или введение в заблуждение <i>ошибочно</i> : путаница или дезориентация
defective delivery	поставка дефектного товара <i>ошибочно</i> : недействующая или недействительная лицензия
independent contractor	независимый агент (стороны договора не связаны отношениями соподчиненности) <i>ошибочно</i> : независимый подрядчик
negative covenant	договорное обязательство о воздержании от действия <i>ошибочно</i> : безрезультатная сделка
orders and instruments	предписания и другие правовые акты <i>ошибочно</i> : приказы и инструменты
specific performance	исполнение (обязательств) в натуре, реальное исполнение <i>ошибочно</i> : специализированные характеристики
unique property	исключительное право собственности <i>ошибочно</i> : уникальное имущество



Проблема 8. Наличие в российском правоведении термина или понятия, частично совпадающего с переводимым английским термином.

Наличие в отечественном праве термина, схожего по некоторым параметрам с переводимым английским термином, может формально облегчать, но при этом существенно осложнять работу переводчика, так как может послужить причиной возникновения фактической ошибки при передаче того смысла, который был заложен в оригинальном тексте договора. Преимущество использования русского аналога английскому термину состоит в том, что он понятен русскому юристу, работающему с переводом. Однако стремление найти буквальное соответствие иностранному термину в русских материалах может привести к стиранию специфики иноязычной реалии.

Например, английский термин *liquidated damages* и русский *неустойка* схожи в том, что они обозначают компенсацию за ущерб, нанесенный вследствие несвоевременного исполнения договорных обязательств. Однако есть и принципиальная разница: размер *liquidated damages* представляет собой убыт-

ки, предварительно и добросовестно оцененные с участием обеих сторон, что придает им обязательную юридическую силу по английскому праву. Российская *неустойка* может быть скорее приравнена к другому английскому термину *penalty*. Цель неустойки скорее не восстановление справедливости, а наказание виновной стороны. Присуждение таких убытков согласно английскому праву маловероятно. Таким образом, *liquidated damages* представляет собой специфический термин английского права, не имеющий точного соответствия в российском законодательстве и переводить его следует как *заранее оцененные убытки*.

Наконец, следует упомянуть о том, что английскому термину с широким значением, может соответствовать в русском языке сразу несколько терминов, которые также различаются между собой по объему значений, например:

jurisdiction - 1. юрисдикция; 2. власть, полномочия, сила; 3. орган власти; 4. территория в подведомственности органа власти; 5. отправление правосудия; 6. подследственность; 7. подсудность; подведомственность; 8. судебная практика; 9. судебный округ
invoice - 1. инвойс; 2. задание на изготовление (изделия); 3. учёт; 4. смета; 5. счет-фактура; 6. дорожная ведомость; накладная; 7. инвойсировать; 8. выставлять счёт-фактуру; 9. выписывать накладную

Выбор правильного варианта перевода осуществляется на основе анализа содержания текста, при этом выбирается тот русский термин, который оптимально подходит для данного случая. Если это сделать затруднительно, то выбирается самый широкий по значению русский термин (соответственно: *юрисдикция* и *инвойс/инвойсировать*), так как это помогает обезопасить переводчика от возможной ошибки.



Проблема 9. Привнесение в слова дополнительного значения контекстом деловых отношений.

Иногда лексические единицы, используемые в соглашении сторон, имеют значение, вытекающее не только из формулировок юридического текста, но и из самого делового контекста, так как он придаёт дополнительное значение тем или иным формулировкам. Сложившийся ход деловых отношений между сторонами и любое обыкновение в профессиональной сфере или торговле, в которой они заняты, о которой они подробно осведомлены (или предполагается, что должны

быть осведомлены), способны привнести особый оттенок терминам соглашения, дополняя или ограничивая их значение.

Под "профессиональным обыкновением" здесь понимается любая практика или порядок ведения дел, которые осуществляются в профессиональной деятельности с такой регулярностью, что позволяют предположить, что требование их соблюдения будет учтено даже в оспоримой сделке. А термин "ход деловых отношений" акцентирует внимание на существование определенной последовательности осуществленных в прошлом актов поведения сторон отдельной сделки, когда подобная последовательность является достаточной, чтобы рассматривать ее в качестве основы интерпретации однозначного понимания условий договора и поступков сторон.

Вышесказанное ориентирует переводчика на изучение и максимальный учёт делового контекста тех отношений, по поводу которых стороны заключают соглашение. Исходя из данного требования, языковые конструкции текста договора переводятся на русский язык исходя из разумной взаимосвязи между (1) прямо выраженными условиями, (2) ходом деловых отношений, (3) профессиональными обыкновениями.

Таким образом, исходя из обозначенных выше проблем, которые приходится решать при переводе английских текстов договора на русский язык, студентов-юристов в их переводческой практике следует ориентировать на выполнение следующих действий:

- При переводе договора рекомендуется, прежде всего, изучить широкий контекст: 1) принадлежность к определенной правовой системе (англо-американская или континентальная); 2) сфера деятельности, к которой относится предмет договора, 3) тип текста (договор купли-продажи, доверенность и т.п.); 4) ход деловых отношений участников договора и профессиональные обыкновения.

- После выбора нужного значения слова важно проверить его на соответствие узкому контексту, то есть, подходит ли выбранное значение по смыслу переводимого предложения, абзаца. При этом следует учесть, что одно английское слово может соответствовать целому словосочетанию в русском языке и наоборот. При этом, если дословный перевод не устраивает, то найти соответствие можно при помощи приема логического развития. Для облегчения понимания имплицитных терминов следует перефразировать их на русском или английском языках, восстанавливая все пропущенные и подразумеваемые слова.

- В случае если привычное, основное значение слова общелитературного языка не подходит по контексту, то рекомендуется изучить другие значения слова по словарю, а так же посмотреть определение слова в толковом юридическом словаре и других справочных источниках, при этом следует обращать внимание на словарные пометы, относящие данную лексическую единицу к различным сферам употребления.

- Если различия в понятиях, выражаемых английским и русским терминами, существенны и должны быть переданы полно и точно, то при переводе английского термина должно быть использовано развернутое словосочетание, раскрывающее оттенки смыслов термина-оригинала.

Теперь перейдем к анализу типичных проблем, которые приходится решать при переводе текста договора с русского на английский язык; к таковым относятся: лексико-грамматические ошибки, многозначность слов русского языка, непоследовательность в употреблении переводной лексики в тексте одного и того же документа.



Проблема 10. Наиболее типичные грамматические ошибки, встречающиеся при переводе договора с русского на английский язык.

К подобным ошибкам относятся, прежде всего, случаи нарушения следующих норм:

- отрицание в английском языке выражается за счет только одного отрицательного слова в предложении;

- в английском языке артикль не употребляется перед существительными, значение которых уточнено числительным, например: *under Contract № 25; Order № 1015; to account № 100/1066; under Paragraph 9 of General Conditions of the Order; in accordance with Clause 6 of the Agreement;*

- в отличие от правил русского языка английское предложение имеет фиксированную структуру главных и второстепенных членов предложения: (обстоятельство времени - обстоятельство места) – подлежащее – сказуемое – дополнение – обстоятельство образа действия – обстоятельство места – обстоятельство времени; особый случай представлен оборотом *there is*, например:

<p>Помимо Спецификации и Проформы Инвойса к каждой поставке должны</p>	<p><i>ошибочный вариант:</i> Besides Specification and Proforma Invoice to each delivery <u>must be given packing documents</u> with the following indication: ...</p>
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прилагаться доку- менты с указанием на: ...	<i>нужно:</i> In addition to Specification and Proforma Invoice for any delivery <u>there must be an attached document</u> indicating the following: ...
Дополнить пункт 5.1. Договора <u>подпунк-</u> <u>том 5.1.1.</u> следую- щего содержания: ...	<i>ошибочный вариант:</i> To add to <u>the Article 5.1. hereof the Paragraph 5.1.1.</u> having the following wording: ... <i>нужно:</i> <u>Article 5.1.</u> thereof is supplemented by <u>Paragraph 5.1.1</u> ...



Проблема 11. Ошибки, связанные с дословным переводом русских словосочетаний при наличии соответствующих терминов в английском языке.

Подобные ошибки возникают в силу того, что смысл переводимого сочетания не может быть передан последовательным дословным переводом входящих в словосочетание отдельных языковых единиц. Например, при обозначении должности лица, подписавшего договор, важно учитывать тот факт, что в английском языке существуют устоявшиеся фразы, соответствующие российскому оригиналу. Так словосочетание *генеральный директор* может переводиться либо в инверсионном варианте *director general*, либо как *chief executive officer* или *executive general manager*; русскому словосочетанию *исполнительный директор* в английском варианте будет соответствовать *managing director* или *executive director*; словосочетанию *исполняющий обязанности директора* соответствует *acting director*; а словосочетанию *заместитель директора* – *alternate director*, *deputy manager* или *associate director*.



Проблема 12. Ошибки, вызванные нарушением правил сочетаемости лексических единиц английского языка.

Буквальный перенос из одного языка в другой правил сочетаемости и управления слов приводит к серьёзным смысловым несоответствиям в тексте перевода. Рассмотрим три вида подобных ошибок: i) переходные и непереходные глаголы с зависимыми словами; ii) словосочетания из существительных; iii) числительные.

Примеры сочетаний глагола с зависимыми словами:

заключать договор	make an agreement; conclude an agreement; celebrate an agreement <i>но:</i> enter into an agreement;
давать кому-либо что-то; предоставлять что-л. кому-то	give smth. to smb. <i>но:</i> give smb. smth.

доставлять, поставлять что-либо кому-то	deliver smth. to smb.
поставлять кому-либо что-то; снабжать кого-то чем-либо	supply smb. with smth. <i>но:</i> supply smth. to smb.
предоставлять услуги кому-либо	furnish services for smb.; supply services to smb. <i>но:</i> furnish smb. with services, supply smb. with services

Ниже представлены примеры ошибок при переводе с русского языка, вызванных незнанием норм сочетаемости английских глаголов:

КАРРА <u>дает</u> <u>КЛИЕНТУ</u> <u>право</u> купить лицензии на Программное Обеспечение у КАРРА.	<i>ошибочный вариант:</i> KAPPA <u>gives to the CLIENT</u> the right to purchase SOFTWARE licenses from KAPPA. <i>нужно:</i> KAPPA <u>gives/grants the CLIENT</u> the right ...
Настоящее <u>Соглашение</u> <u>составлено</u> в двух экземплярах (на русском и английском языках) имеющих одинаковую юридическую силу, по одному экземпляру у каждой из сторон.	<i>ошибочный вариант:</i> The <u>Agreement is done</u> in two equally valid original copies in Russian and English, one copy for each of the parties. <i>нужно:</i> The <u>Agreement is made</u> ...
В течение срока действия данного Контракта <u>Продавец</u> <u>поставляет</u> <u>Покупателю</u> электронную продукцию торговой марки Jamo (в дальнейшем Продукция) на условиях Ex Works со склада Продавца (Инкотермс-2000).	<i>ошибочный вариант:</i> Within duration of the Contract the Seller shall <u>supply to the Buyer</u> <u>electronic products</u> of Jamo's trade mark (hereinafter the "Goods") on terms Ex Works the Seller's warehouse (INCOTERMS-2000). <i>нужно:</i> ... the Seller shall <u>supply the Buyer with</u> <u>electronic products</u> ...

Примером ошибок, связанных с правилами сочетаемости английских существительных, является перевод следующего предложения:

Все исключительные <u>права на</u> Программное Обеспечение принадлежат и остаются у КАРРА.	<i>ошибочный вариант:</i> All exclusive <u>rights for the software</u> <u>belong to and stay with</u> KAPPA. <i>нужно:</i> All exclusive <u>rights to the Software</u> <u>reside in</u> KAPPA.
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К типовым следует отнести и ошибки при переводе дат и чисел, например:

<p>ПРОТОКОЛ РАЗНО- ГЛАСИЙ к Рамоч- ному договору по- ставки № 151 от <u>02 октября 2006</u></p>	<p><i>ошибочный вариант:</i> DISCREPANCY REPORT to Framework Agreement № 151 <u>from 02 of October 2006.</u></p> <p><i>нужно:</i> ... <u>made on the second of the month of October 2006.</u></p> <p><i>или:</i> ... <u>dated as of October 2, 2006.</u></p> <p><i>или:</i> ... <u>made as of the 2nd day of October, 2006.</u></p>
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Проблема 13. Многозначность слов русского языка.

Возможные проблемы перевода связаны с полисемией большинства лексических единиц русского языка, то есть наличием различных смыслов и значений у одного и того же слова, словосочетания, фразы. Так слово "необходимый" в зависимости от задействованного контекстом оттенка значения может быть переведено на английский язык как: 1) *necessary* – неотъемлемый, вынужденный; 2) *needed* – требуемый, нужный; 3) *required, requisite* – обязательный; 4) *obligatory* – обязывающий, облигаторный; 5) *prerequisite* – заранее необходимый (как предпосылка); *proper* – надлежащий, должный. Сложности перевода данного слова можно продемонстрировать на следующем примере:

<p>Заверенные копии Сертификата Соответствия в <u>необходимом количестве</u> должны предоставляться Продавцом Дилеру.</p>	<p><i>ошибочный вариант:</i> The Seller shall submit to the Dealer certified copy of Certificate of Conformity in <u>necessary quantity.</u></p> <p><i>нужно:</i> The Seller shall furnish the Dealer with the verified copies of Certificate of Conformity in <u>the required quantity.</u></p>
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Проблема 14. Редакционные несоответствия различных частей единого текста.

Несоблюдение переводчиком требования адекватной передачи смысловой законченности и стилистической однородности переводимого юридического текста, логичности, однозначности и непротиворечивость заявляемых в нём положений приводит к совершению следующих типичных ошибок:

(i) Неоправданное использование переводчиком многочисленных синонимов одного и того же термина в тексте соглашения:

российский термин	варианты перевода
закрытое акционерное общество/компания	private company; private limited liability company; closed joint-stock company; close company
клиент/заказчик	client, customer, buyer, consumer, orderer
открытое акционерное общество/компания	public company; public limited company (plc); open joint stock company
поставщик/снабженец	supplier, supply agent, provider, deliverer, contractor, shipper
посредник	intermediary agent, dealer, broker, facilitator, middleman
представитель/доверенное лицо/ поверенный	agent, representative, attorney, proxy, assignee
приложение	exhibit, allonge, schedule, supplement, annex, addendum
принципал/поручитель (дающий поручение другому)	principal, assignor, contracting party
продукция/товары	product, goods, articles, commodities, items
соглашение	agreement, contract, covenant, stipulation, concord, bargain
товарищество/партнёрство с неограниченной ответственностью	general partnership; unlimited partnership; unlimited liability partnership; no-limited company
товарищество/партнёрство с ограниченной ответственностью	limited partnership; limited liability partnership; partnership limited by shares
участник договора/контрагент	contractor, contracting party, party to contract, principal, partner, cosignatory, counterparty

Например, в преамбуле договора на русском языке определяется, что в дальнейшем по тексту соглашения одна из сторон именуется "*Поверенный*". В английском варианте переводчик отразил это следующим образом: ... *hereinafter referred to as the "Attorney"*. Далее в первом же пункте договора содержится следующее утверждение:

Стороны договорились о следующем вознаграждении <u>Поверенного</u> : ...	<i>ошибочный вариант</i> : The Parties agreed that the <u>Agent's fee</u> shall be as follows... <i>нужно</i> : The Parties agreed that the <u>At-</u>
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(ii) Наличие или отсутствие артикля перед введенными в тексте договора терминами.

При переводе основных терминов соглашения возможны варианты; например, термин "*Покупатель*" можно перевести в форме как единственного так и множественного числа с артиклем или без него: *Buyer, Buyers, the Buyer, the Buyers*.

Если в преамбуле договаривающиеся стороны определены как "*Sellers*" и "*Buyers*", то и в тексте соглашения эти термины следует употреблять без артикля и во множественном числе: *The goods sold under the present contract are to be delivered by Sellers and accepted by Buyers*.

Если же термины вводятся с артиклем: *the "Sellers"* и *the "Buyers"*, то и в дальнейшем они должны использоваться с артиклем.

(iii) Написание вводимых в тексте договора терминов с заглавной или прописной буквы.

Если по тексту договора понятие вводится с заглавной буквы, то и в дальнейшем его следует использовать с заглавной буквы, иначе нарушается принцип однозначности и непротиворечивости понятий, вводимых в тексте соглашения. Например, в преамбуле договора под понятием "*Товар*" переводчик вводит английское слово "*Goods*". Далее по тексту говорится:

<p>Право собственности на <u>поставляемый Товар</u> переходит от Продавца к Покупателю в момент передачи <u>Товара</u> перевозчиком Покупателю.</p>	<p><i>ошибочный вариант:</i> The property right to the <u>delivered goods</u> passes from the Seller to the Buyer at the moment of transfer of the <u>goods</u> by a carrier to the Buyer. <i>нужно:</i> The property right to <u>Goods</u> passes from the Seller to the Buyer upon transfer of <u>Goods</u> by a carrier to the Buyer.</p>
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Отмеченные выше проблемы перевода договоров с русского на английский язык позволяют заключить, что специалисту необходимо учитывать целый ряд требований и обстоятельств, среди которых:

- Перевод следует выстраивать исходя из следующих установок: соблюдение грамматических правил английского языка, тщательный подбор фраз с учётом особенностей сочетаемости используемых слов, контекстуальное соответствие и единообразие задействованных языковых единиц.
- При переводе многозначного слова рекомендуется, прежде всего, обращать внимание на контекст переводимого докумен-

та и, исходя из особенностей той сферы деятельности, к которой относится соглашение, использовать тематические русско-английские словари (юридический словарь, словарь банковских терминов, терминов в сфере недвижимости, терминов лёгкой промышленности, машиностроения и т.д.).

• Для достижения поставленных целей студентам-юристам рекомендуется составлять собственные глоссарии английских слов и выражений, применяемых в различных юридических текстах. Основными источниками могут служить аналоговые тексты на английском языке и тексты с параллельными переводами.



Sample Agreements

This subsection presents a good few of the examples of contracts and agreements giving an idea on peculiarities of the contract as a private legal document.



1. SCANNING

Sales Contract

This agreement is made *as of* _____ [date] between _____ (hereinafter referred as Seller), and _____ (hereinafter referred as Buyer).

1. *In consideration of* mutual agreements of Seller and Buyer to *be set forth*, Seller agrees to sell and Buyer agrees to buy _____ [describe goods or property sold].

2. Buyer agrees to pay Seller for the [goods] [property] \$_____.
Terms of payment: _____.

3. Seller agrees to deliver the [goods] [property] to [Buyer] [Carrier] [on] [before] _____ [date] [f.o.b. cars], at _____.

4. *Title to* the [goods] [property] shall pass to Buyer _____ [e.g., *on execution* of this contract].

5. Risk of *loss, destruction or damages of or to* [goods] [property] shall be on Seller until _____ [e.g., until delivery of goods to carrier at _____].

[Date]

[Signatures]

[Acknowledgment]



LEXIS

as of – начиная с, по состоянию на

in consideration of – учитывая, принимая во внимание

be set forth – быть установленным, оговоренным, закрепленным
title to - правовой титул, основание права на имущество
on execution – по исполнению, на момент выполнения (обязательств)
loss, destruction or damages - пропажа, уничтожение, либо повреждение/порча
acknowledgment – засвидетельствование, подтверждение, удостоверение



2. SCANNING

Deed

This Deed, made as of the 1st day of August, 200__, between _____, party of the first part, and _____, party of the second part. Witnesseth, that the said party of the first part for and in consideration of the sum of \$____ (____ & ____/100 dollars), the receipt whereof is hereby acknowledged, hereby grants and conveys unto the said party of the second part, all those certain lands: _____

In witness whereof, the said party of the first part has hereunto set his hand and seal.

Sealed and Delivered in the presence of:

This instrument was acknowledged before me by ____ on this ____.

Notary _____

My Commission Expires on: _____



LEXIS

said – вышеупомянутый, вышеуказанный
whereof - о котором, о чём

convey unto - передавать



3. SCANNING

Ratification of Agreement

This is to ratify the Agreement attached as Exhibit 1 (“Exhibit1”). The parties signed Exhibit 1 ____ days ago and hereby ratify it in its entirety, having had sufficient time after the fact to wish to make this declaration in support of Exhibit 1 in its totality.

1. Notices. Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appro-

private party by personal delivery or a recognized over night delivery service such as FedEx.

If to the First Party: _____ [address].

If to the Second Party: _____ [address].

2. No Waiver. The waiver or failure of either party to exercise in any respect any right provided in this agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.

3. Entirety of Agreement. The terms and conditions set forth herein constitute the entire agreement between the parties and supersede any communications or previous agreements with respect to the subject matter of this Agreement. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein. No change can be made to this Agreement other than in writing and signed by both parties.

4. Governing Law. This Agreement shall be construed and enforced according to the laws of the State of _____ and any dispute under this Agreement must be brought in this venue and no other.

5. Headings in this Agreement. The headings in this Agreement are for convenience only, confirm no rights or obligations in either party, and do not alter any terms of this Agreement.

6. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

In Witness whereof, the parties have executed this Agreement as of the date first written above.

[Date]

[Signatures]

[Acknowledgment]



LEXIS

in its entirety - в целом, во всей полноте, полностью
personal delivery – вручение лично, доставка лично в руки
recognized over night delivery service – общепризнанная (общеизвестная) курьерская служба с доставкой на следующий день после отправки

FedEx = federal express - служба экспресс-доставки "Федерал-Экспресс"

if to – относительно, применительно к, в отношении к
 waiver - добровольный отказ от законного права, отказ от претензии
 be entitled to - иметь право на, получать право
 with respect to - по отношению к, относительно
 understanding – договорённость, соглашение, подразумеваемое со-
 глашение
 heading – заголовок, рубрика, раздел
 for convenience only – лишь для удобства
 confirm – закреплять, подтверждать, удостоверить
 severability - делимость, автономность положений договора; частич-
 ная недействительность
 in full force and effect – имеющий юридическую силу с соответст-
 вующими правовыми последствиями
 in witness whereof - в удостоверение чего, в подтверждение чего



4. SCANNING

Property Settlement Agreement

This Property Settlement ("Agreement") is made and effective
 _____ [Date], by and between _____ ("Wife") of _____,
 and _____ ("Husband") of _____.

The parties were married on _____ Date] in _____, and have
 since that time been and are now by law Husband and Wife.

The parties have minor children. The children's names and ages
 are: _____.

It is the desire of the parties by execution of this Agreement, to ful-
 ly and for all time settle and determine the property rights of the
 parties, all rights of support and maintenance, all rights and claims
 arising out of the marriage relationship including dower, curtesy,
 maintenance, inheritance and homestead, together with any and
 all other rights existing between the parties or claims one against
 the other, arising out of the marriage relationship of the termina-
tion of said relationship, or otherwise, independent and regardless
 of the circumstances.

THEREFORE, each of the parties hereto, in consideration of the
 mutual promises, covenants and promises to enter into and abide
by this agreement.

The parties shall have join care, custody and control of their minor
 children with primary residence beginning with the wife but it be-
 ing understood that the husband shall be given primary residency

rights for the children for some reasonable time prior to the children reaching their majority.

It shall be the mutual responsibility of Husband and Wife to arrange for the transportation of a child for visitation rights to the nonprimary residence parent. Each party shall give the other at least 48 hours notice if he or she does not intend to exercise his or her rights to visitation on a particular occasion.

Each of the parties shall supply the other with his or her current address and telephone number and shall advise the other of any changes which may occur and shall keep the other advised as to the hereabouts of the minor children.

Under the above-described residential custodial arrangement, the Custodial Parent shall have the primary daily responsibility for the guidance and upbringing of the minor children while the minor children are in the Custodial Parent's residence. Both parties have the right to participate with the other in affecting a child including, but not exclusively limited to, authorization for major medical, mental, institutional, psychiatric, or other cares, schooling and educational placement, to inspect and receive records, and to inspect and receive medical records. Such decisions shall be made only after prior consultation with the other party.

1. Child Support. During the period in which a minor child resides with one party, the other party ("Support Payer") shall pay the monthly sum of \$_____ not later than the 10th day of each month for which support is due. Such obligations with respect to a minor child shall cease as to that child upon such child experiencing any of the following events: Death; Marriage; Becoming self-supporting; Ceasing any residence with the primary custodial parent; Dropping out of school; on their 18th birthday.

If the Support Payer has his or her financial situation impacted such as a loss of employment, reduction in pay, disability, or other such thing, the Support Payer may either negotiate a reduced sum with the other parent or use Court guidelines as to what sums are appropriate to pay based on their last year's federal tax return.

Each party shall maintain life insurance of at least \$_____ in favor of the other as long as one child is less than 16 years old. Upon their 16th birthday, with only two years of child support to go, both parties may cease to pay for this life insurance. If the life insurance is not available upon the time of death, prior to the 16th birthday, then the other party shall have a claim against the estate

of the Support Payer for any deficiency.

2. Tax Exemptions.

A. The Support Payer shall have the right to claim all children as dependent exemptions.

B. Each party agrees to provide a release to his or her claim to any such exemption pursuant to Section 152(e)(2) of the Internal Revenue Code of 1954, as amended, as reasonably requested by the party entitled to such exemption, to be provided by January 31 of each year.

3. Change of Residence. The residence of a minor child subject to this Agreement shall not be changed without the written agreement of the other parent or by Court order.

4. Consultation. Each of the parties shall keep the other informed on all matters relating to the health, education and welfare and other matters which shall be the subject of consultation between the parties: school work, activities, schedules, and such things.

5. Alimony.

A. Periodic Payments.

a) _____ ("Maintenance Payer") shall pay to the other party, and the other party agrees to accept, in complete satisfaction of any claim which may now or hereafter be made for alimony, support or maintenance, the sum of \$_____ per month for ___ months when it shall cease forever. The foregoing maintenance payments shall cease upon the first happening of one of the following events:

- (i) Death of either party;
- (ii) Remarriage or cohabitation (defined broadly) of the party entitled to receive the maintenance payments.

b) For purposes of this Agreement, cohabitation means living in a residential, conjugal relationship with another person for a substantially consecutive period of 30 days.

B. Division of Property.

a) Household Goods and Personal Effects.

Wife shall have as her sole and separate personal property, free and clear of all right, title, claim or interest of Husband, all of the following household goods, personal property, furnishings and household appliances: _____.

Husband shall have as his sole and separate property, free and clear of all right, title, claim or interest of Wife, all of the following household goods, personal property, furnishings and household appliances: _____.

All of the personal property and effects transferred to a party hereunder and presently in the possession of the other party shall be removed within ten (10) days of the execution of this Agreement.

b) Automobiles.

Wife shall have as her sole and separate property the following vehicle(s): _____ free and clear of all right, title, claim or interest of Husband, subject to any encumbrance thereon.

Husband shall have as his sole and separate property the following vehicle(s): _____, free and clear of all right, title, claim or interest of Wife, subject to any encumbrance thereon.

c) Real Estate.

The following described real estate shall be transferred to Wife free and clear of all right, title, claim of Husband: _____.

The following described real estate shall be transferred to Husband free and clear of all right, title, claim of Wife: _____.

d) Money Accounts, Profit-Sharing Plans and Retirement Benefits.

Wife shall be entitled to the whole amount in the following checking, savings, money market and other accounts: _____.

Husband shall be entitled to the whole amount in the following checking, savings, money market and other accounts: _____.

The pension and profit sharing transfers referenced above are directed by the parties to be accomplished through instructions to plan administrators to be completed by the party in whose interest the benefit, plan, pension, or account is now listed.

e) Securities Ownership.

Wife shall be entitled to the whole amount in the following securities, bonds, mutual funds and other accounts: _____.

Husband shall be entitled to the whole amount in the following securities, bonds, mutual funds and other accounts: _____.

6. Encumbrances Against Property. Except as specifically provided herein, any property set aside to a party hereunder, whether real

or personal, is accepted subject to existing encumbrances which that party assumes and agrees to pay.

Both Husband and Wife herein state and contract their agreement, each to the other, whereby the party receiving property subject to encumbrance hereby indemnifies the transferring party from any and all liability which such transferring party may suffer as a result of any default upon the encumbrance obligation.

7. Miscellaneous Provisions.

7.1. Debts. Husband and Wife shall be individually responsible for any debts or bills incurred by either of them individually after the date of this Agreement. Each party specifically agrees to indemnify and hold harmless the other party from any loss, claim, suit of law and/or judgment which the other party might suffer by reason of the responsible party failing to meet his or her obligations as stated herein.

7.2. Credit Cards. The parties specifically agree that upon the execution of this Agreement, all credit cards and charge cards in the possession or control of one party for which the other party is primarily liable shall be returned to the party with primary liability. In the event the parties have any credit cards or charge cards for which they are jointly liable, such cards will be promptly canceled. Nothing in this Agreement shall prevent either party from keeping or using credit cards or charge cards for which he or she is solely liable.

7.3. Federal and State Income Tax Returns. Unless otherwise agreed, the parties shall file joint federal and state income tax returns until the year a divorce decree is entered by a competent court.

The parties agree that each shall be individually responsible for the intangible, personal and real property taxes due subsequent to the execution of this Agreement with reference to the items of property satisfied to each of them under the provisions of this Agreement.

7.4. Submission to Court. In the event a petition for divorce, separate maintenance or annulment comes before a court of appropriate jurisdiction for trial or other disposition, this Agreement may be submitted to the Court for such action as the Court may determine proper.

7.5. Maintenance. In the event that this Agreement is submitted to

a court as aforesaid and is by such court accepted and incorporated into a decree of divorce, separate maintenance or annulment, all sums to be paid as support maintenance hereunder shall be made in cash or by check or money order payable to the other party.

7.6. Execution of Instruments. Each of the parties agrees that at any time reasonably requested, he or she shall make, execute and deliver to the other any and all deeds of conveyance, bills of sale, titles, tax exemption declarations or any other instrument which may be necessary to carry out the terms of this Agreement.

8. Agreement Absolute. This Agreement is absolute and irrevocable and, therefore, is not conditioned upon the parties hereto being divorced or upon court approval. It is by the parties agreed that this Agreement shall be considered to be contractual between them and binding as such upon the parties, their executors, administrators, heirs, devisees, beneficiaries, assigns and other legal representatives.

9. Free Will Exercised. Each of the parties acknowledges that this Agreement, as to each of its provisions, has been made of his or her free will and volition and further acknowledges that no coercion, force, pressure or undue influence has been used or exerted by or against the other party.

10. Independent Counsel and Full Disclosure. The parties declare that each has had the independent advice of his or her own counsel, or has rejected such counsel, and that each disclosed to such counsel and/or to the other party the full extent and nature of his or her assets, liabilities, income and expenses.

11. Applicable Law. The parties agree that this Agreement shall be construed enforced according to the laws of the State of _____.

12. Court Costs. Husband or Wife shall be responsible for the court costs herein.

13. Attorney's Fees. The parties shall be responsible for their own attorney's fees. Except as otherwise expressly agreed or ordered by the Court, each party shall be responsible for all other of his or her own individual attorney's fees, incurred on the negotiation of this Agreement or any enforcement of this Agreement in the future.

14. Waiver. Each of the parties waives the right of appeal of adjudgment of divorce, which may be granted in any action in which this Agreement is submitted to the Court and approved in its entirety.

15. Mutual Release of Marital Rights. In consideration of the mutual release contained in this Section, each of the parties hereby releases the other party and his or her respective legal representatives, successors and assigns, from any claim of any individual, and specifically relinquishes any right, title or interest in or to any of the earnings, accumulations, future investments, money or property of the other, any rights of inheritance in the estate of the other, which either may have heretofore, may now or may hereafter have, except as otherwise provided in this agreement, any rights to elect to take against the will of the other, any rights to act as executor or administrator of the will or estate of the other, any rights to receive any allowance from the estate of the other, any additional right which either party has or may have by reason of their marriage, including dower.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement upon the date first above written.

Wife

Husband



LEXIS

made and effective - составлен и вступил в силу
execution of - оформление

property rights - имущественные права

support and maintenance - материальное обеспечение и содержание

dower – приданое, вдовья часть наследства

curtesy - право вдовца на пожизненное владение имуществом
умершей жены

homestead - домашнее имущество, жилище с прилегающим участ-
ком

termination - истечение срока, окончание

to enter into and abide by the agreement - заключить соглашение и
следовать его условиям

joint care – совместное попечение

primary residence - преимущественное местожительство

majority - возраст совершеннолетия

visitation right - право на посещение ребёнка, оставленного судом у
одного из супругов, другим супругом

exercise rights - осуществлять права

as to – относительно, по поводу

hereabouts – перемещения в определенном районе, примерное место
пребывания

residential custodial arrangement – договорённость, связанная с со-
держанием и местом жительства к.-л.

authorization – решение, санкционирование

experiencing any of the following events - претерпевший какое-нибудь
из следующих жизненных событий
reduced sum – льготная (сокращенная) сумма
tax return - налоговая декларация, налоговые отчисления
dependent exemptions - налоговые привилегии при наличии ижди-
венцев
cohabitation - внебрачное сожительство
conjugal relationship - супружеские взаимоотношения
consecutive – постоянный, идущий подряд, не периодический
effects – движимость, пожитки, предметы имущества
free and clear - необременённый
furnishings - предметы домашнего обихода
household appliances - хозяйственно-бытовое оборудование
encumbrance – обременение, обязательство
be transferred - передаваться
Profit-Sharing Plan - система участия в прибылях
Retirement Benefits - выплаты по старости
referenced above - упоминаемый ранее
except as - кроме случаев, за исключением
set aside – зарезервировать, оставлять без внимания
transferring party - передающее лицо
incur – подвергнуться, потерпеть, принимать на себя, нести ответ-
ственность, нести расходы
hold harmless - обеспечивать непричинение ущерба, предохранять
in the possession or control - в распоряжении либо управлении кого-
либо
primary liability - первичное обязательство, основная ответствен-
ность
divorce decree - решение суда о расторжении брака
taxes due - сумма налога, подлежащего уплате; задолженность перед
бюджетом
subsequent to - вслед за, после
petition for divorce - заявление о разводе
separate maintenance - содержание, выплачиваемое мужем жене в
случае соглашения о раздельном жительстве
annulment - постановление о признании брака недействительным
condition - ставить условие или условием
devisee - наследник недвижимости по завещанию
assign - правопреемник
volition - волевой акт, желание
exert - оказать давление, надавить
court costs - судебные издержки
be construed enforced – трактуется/подразумевается как обеспечен-
ный правовой санкцией
adjudgment of divorce - вынесение судебного решения о расторже-
нии брака

relinquish – отказываться, уступать
allowance - денежное содержание



5. SCANNING

Reconciliation Agreement and Release of Separation Agreement

_____, referred to as HUSBAND, and _____, referred to as WIFE, agree:

The parties were lawfully married on _____ [Date] at _____ [Place]. Since such time they have continued to be married.

The parties separated on or about _____ [time interval], and entered into a separation agreement dated _____.

The parties have settled their differences, and desire to terminate the separation agreement. The parties herewith mutually release one another from all claims or demands provided for in the separation agreement. However, if pursuant to the agreement, any property was absolutely transferred between the spouses, such transfers are herewith ratified and shall remain absolute. The parties have reconciled as of _____.

Henceforward, the parties shall live together as husband and wife. Any statutory rights of inheritance or property shall be fully restored. The parties agree that within 10 days of the date of this agreement, the parties shall each examine their wills and testaments, if any, and shall amend the same if necessary to comply with the intent of this agreement.

The parties have each had a full and ample opportunity to consult with legal and other counselors of their own choice and have reviewed the terms of this agreement with their advisors.

The parties have instituted a petition for divorce before the _____ Court, bearing case number _____. The parties shall petition the court for dismissal of this action.

This agreement is the entire agreement between the parties and the same may only be modified by a written agreement executed by both parties.

In witness etc.



LEXIS

separation agreement - соглашение между супругами о раздельном проживании

reconcile as of – примиряться относительно ч.-л., урегулировать ч.-л., уладить что-то

henceforward – отныне, впредь, с этого времени

full and ample opportunity - полноправные и широкие возможности

petition the court for dismissal of the action - ходатайствовать перед судом об отклонении иска



6. SCANNING



Sale of Real Property, etc. (Power of Attorney)

I, _____[*principal*], of _____[*street address*], city of _____, county of _____, state of _____, do make, constitute and appoint _____, of _____[*street address*], city of _____, county of _____, state of _____, my attorney in fact, for me and in my name, place, and stead, to grant, bargain, sell, convey, or lease, or contract for the sale, conveyance, or lease, of the following described property owned by me: _____ [*description of property*]. The attorney in fact is empowered and authorized to grant, bargain, sell, convey, or lease, or to contract for the sale, conveyance, or lease of any or all of the lands described above to any person for any price or prices, and on any terms, as the attorney in fact may deem proper, and to make, execute, acknowledge, and deliver in my name a good and sufficient deed or deeds of conveyance, lease, or other instrument necessary to effect any such sale, conveyance, lease, or agreement.

I further grant to my attorney in fact full power and authority to perform all acts necessary to be done in and about the premises, as amply and fully to all intents and purposes as I could do if personally present.

I authorize the attorney in fact to ask for, demand, sue for, collect, recover, and receive all moneys which may become due and owing to me by reason of any such conveyance, whether by deed, lease, contract, or other instrument.

I further authorize and empower the attorney in fact in my name or otherwise, to ask for, demand, sue for, collect, and recover any and all sums that may be due to me on account of any damage that may have arisen by reason of trespass or other injuries to any of the lands belonging to me situated as mentioned or as de-

scribed here, and I give to the attorney full power and authority to sue and prosecute in my name or otherwise in any court, and in the manner by him [or her] deemed most advisable, the party or parties for such trespass or injury to the mentioned or described lands, with authority to pursue them to judgment, and when necessary to collect the sums recovered by execution, or in any other mode or manner that the attorney may consider advisable.

I further give to attorney in fact full power and authority to appoint a substitute to perform any of the acts that he [or she] is authorized to perform by this instrument with the right to revoke such appointment of substitute at pleasure; and I give and grant to the attorney in fact or his [or her] substitute full power and authority to do and perform everything proper and necessary to carry out and execute the power as I would do if personally present and acting in the premises.

I revoke all powers of attorney previously made by me authorizing any person to do any act relative to the mentioned and described lands, or any part of them, ratifying and confirming whatever the appointed attorney in fact or any of his [or her] substitutes appointed by him [or her], may do in the premises by virtue of this authority.

The rights, powers, and authority of the attorney in fact to exercise any and all of the rights and powers granted here shall commence and be in full force and effect on ___ [Date], and such rights, powers, and authority shall remain in full force and effect thereafter until _____ [*period of time, date of termination, contingency on which powers terminate, or method of termination, such as on written notice*].

In witness etc.



LEXIS

power of attorney - письменная доверенность, полномочие на ведение дела поверенным

attorney in fact - лицо, действующее по доверенности

for me and in my name, place, and stead – от моего имени и в моих интересах

conveyance - передача правового титула на недвижимость

be empowered and authorized - являться правомочным и официальным уполномоченным

effect – выполнять, заключать, совершать, осуществлять

full power and authority - общие полномочия

premises - дом с прилегающими постройками и участком; собственность, подлежащая передаче

amply and fully – полностью, в полном соответствии

sue for, collect, and recover – требовать в судебном порядке, взыскивать, и возвращать
appoint a substitute - назначать представителя, помощника
at pleasure - по собственному усмотрению
proper and necessary - надлежащий и необходимый
relative to - по отношению к, относительно, относящийся к
by virtue of - на основании, в силу
contingency - непредвиденное обстоятельство; вероятное событие, которое невозможно предсказать



7. SCANNING



Power of Attorney

I, _____, of _____, state of _____, have made, constituted and appointed, and by these presents do make, constitute and appoint _____, of _____, city and county of _____, state of _____, my lawful attorney for me and in my name, place and stead and for my use and benefit, and with full power of substitution, to ask, demand, sue for, collect, recover and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever as are now or shall hereafter become due, owing, payable or belonging to me, and have, use and take all lawful ways and means in my name or otherwise for the recovery of them, by actions at law or in equity, attachments, or otherwise, and to compromise and agree for the same, and acquittances, releases and other sufficient discharges for the same for me, and in my name to make, seal and deliver. Also, to bargain, contract, agree for, purchase, receive and take lands, tenements and hereditaments and accept the seizing and possession of all lands and all deeds and other assurances in the law, to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate my lands or interests in lands, tenements and hereditaments, upon such terms and conditions, and under such covenants as he [or she] shall think fit. Also, to prepare and file such tax and other returns as may be required by the state of _____ and the United States of America, and claims for refunds; to vote at all meetings of any corporation or corporations and otherwise to act as my representative in respect of any shares now held or which may hereafter be acquired by me and for that purpose to sign and execute any proxies or other instruments in my name and on my behalf. Also, to make deposits and withdrawals and otherwise engage in all banking transactions at any and all banking institution or institutions, and to have access to such

safety deposit box as may be leased by me. Also, to pay premiums on any and all life insurance policies carried by me, to borrow money on the security of the same or surrender the same and receive the surrender value. Also, to bargain and agree for, buy, sell, mortgage and hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, shares of stock, bonds, choses in action, and other property, in possession or in action, and to make, do and transact all and every kind of business. Also for me and in my name and as my act and deed to sign, seal, execute, deliver and acknowledge such deeds, releases of dower, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, checks, notes, receipts, evidences of debt releases and satisfaction of mortgages, judgments, and other debts, proofs of claims in receiverships and estates and such other instruments in writing of whatever kind or nature as may be necessary or proper in the premises.

Giving and granting to my attorney, and his [or her] substitute or substitutes, full power and authority to do and perform all and every act and thing necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, ratifying and confirming all that my attorney, or his [or her] substitute or substitutes, shall lawfully do or cause to be done in the premises.

In witness, etc.



LEXIS

make, constitute and appoint - определить, назначить и утвердить в должности

by these presents - согласно настоящему документу, в силу сего документа

full power of substitution - полное право замещения/представительства кого-либо

legacy and bequest - оставление наследства и завещательный дар

annuity - ежегодная выплата, установленная завещанием

demand - правопритязание, законное притязание

ways and means - пути и способы изыскания денежных средств

attachment - наложение ареста на имущество

acquittance - расписка об уплате долга, освобождение от обязательства

discharge - ходатайство о зачёте требований

tenement - права, связанные с недвижимостью

hereditament - имущество, могущее быть предметом наследования

assurances in the law – юридический документ о передаче прав на
 недвижимость
 demise - передавать титул, завещать имущество
 remise - уступить
 hypothecate - закладывать недвижимость
 execute any proxies or other instruments - оформлять доверенности
 на голосование или другие правовые документы
 in my name and on my behalf – от моего имени и в моих интересах
 surrender value - сумма, возвращаемая владельцу страхового полиса
 в случае досрочного расторжения договора
 choses in action - движимое имущество, на которое имеет право, но
 ещё не владеет им его собственник
 indenture - договор за печатью; документ, составленный в двух или
 более экземплярах
 bottomry - морской залог
 charter party - договор фрахтования судна
 satisfaction of mortgage – документ о погашении ипотечной задол-
 женности
 receivership - производство по делам о банкротстве



8. SCANNING

Power of Attorney, Revocation

I, _____ (“*Declarant*”), of _____ (Address), through my Power of Attorney dated _____ (“Power of Attorney”) made and appointed _____, my true and lawful attorney in fact for the purposes, and with the powers set forth in the document.

I hereby *give notice* that I have revoked and canceled, and hereby do *revoke and cancel*, the Power of Attorney, and all powers and authority given, provided or implied therein to in that Power of Attorney.

In witness of this act, I have signed this *Notice of Revocation* of Power of Attorney on _____ (Date).

 Revoker of Power of Attorney

On this _____ (Date), before me, personally appeared known to be the person described in and who executed the *foregoing instrument* and acknowledged to me that they executed the same as their free act and deed.

 Notary Public
 Commission Expires on:



LEXIS

declarant – заявитель

give notice – извещать, уведомить, делать предупреждение

revoke and cancel - отменять (полномочия)

notice of revocation - объявление об отзыве полномочий

foregoing instrument - упомянутый выше документ



9. SCANNING



Proxy

I, _____, a stockholder of record of _____ ("Corporation") do hereby constitute and appoint as my lawful attorney, and agent, _____ for a period expiring on _____ to represent me at any and all stockholder meetings of the corporation and at any adjournment thereof, to act for and in the name, place and stead of the undersigned on all matters and things which may be presented for action or consideration at such meetings, giving and granting unto said attorney full power in all respects that I could exercise if present in person.

Date: _____

Shareholder: _____

Witness Signature: _____

Notary's Acknowledgment

On this _____ (Date), before me personally appeared _____ (Name of Shareholder), known to me as the person described in and who executed the foregoing instrument and acknowledged to me that he/she executed the same as said person's free act and deed.

Notary Public



LEXIS

adjournment - перерыв между заседаниями

undersigned - нижеподписавшийся



10. SCANNING



Joint Venture Agreement

This JOINT VENTURE AGREEMENT ("Agreement") is made on _____, 20____ between _____ and _____.

Recitals

The Joint Venturers have agreed to make contributions to a common fund for the purpose of acquiring and holding: _____ called the business interest.

The Joint Venturers consider it advisable to acquire and to hold their business interest through a nominee so as to avoid the necessity of numerous separate agreements, to maintain the legal title to the business interest in a simple and practicable form, and to facilitate the collection and distribution of the profits accruing under the business interest, and _____ has agreed to act as nominee of the Joint Venturers with the understanding that he is also acquiring a participating interest in this joint venture on his own account,

It is therefore agreed:

1. Purpose. The Joint Venturers form this joint venture to acquire and hold the business interest in common and to provide the finances required for its acquisition. To the extent set forth in this Agreement, each of the Joint Venturers shall own an undivided fractional part in the business. The Joint Venturers appoint as their agent _____, whose duty it shall be to hold each of the undivided fractional parts in the business interest for the benefit of, and as agent for, the respective Joint Venturers.

2. Contributions. The Agent acknowledges that he has received from each of the Joint Venturers, for the purpose of this joint venture, the sum set after the name of each Joint Venturer as follows:

Name of Joint Venturer	Contribution

3. Acquisition of Business Interest. The Agent is authorized to acquire and to hold in his own name, but on behalf of the Joint Venturers (of which the Agent is one), the business interest, and to pay \$_____ for it as follows: \$_____ in cash, and the balance of \$_____ by a note in that amount. The note shall bear interest at the rate of _____%, shall be due and payable on _____ [due date], with prepayment privileges, and shall be secured by _____ which the Agent is authorized to execute and deliver.

4. Profits. The Agent shall hold and distribute the business interest and shall receive the net profits as they accrue for the term of this Agreement or so long as the Joint Venturers are the owners in common of the business interest, for the benefit of the Joint Venturers as follows:

Name of Joint Venturer	Proportion

5. Expenses of Venture. All losses and disbursements incurred by the Agent in acquiring, holding and protecting the business interest and the net profits shall, during the period of the venture, be paid by the Joint Venturers, on demand of the Agent, in the ratio which the contribution of each Joint Venturer bears to the total contributions set forth in Paragraph 2.

6. Liability of Agent. The Agent shall be liable only for his own willful misfeasance and bad faith, and no one who is not a party to this Agreement shall have any rights whatsoever under this Agreement against the Agent for any action taken or not taken by him.

7. Term. This Agreement shall terminate and the obligations of the Agent shall be deemed completed on the happening of either of the following events: (a) the receipt and distribution by the Agent of the final net profits accruing under the business interest; or (b) termination by mutual assent of all joint ventures.

8. Compensation of Agent. Unless otherwise agreed to in the future by a majority in interest of the Joint Venturers, the Agent shall not receive any compensation for services rendered by him under this Agreement.

9. Arbitration and Attorneys Fees. The Joint Venturers agree that any dispute, claim, or controversy concerning this Agreement or the termination of this Agreement, or any dispute, claim or controversy arising out of or relating to any interpretation, construction, performance or breach of this Agreement, shall be settled by arbitration to be held in _____ [City], _____ [State] in accordance with the rules then in effect of the American Arbitration Association. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. The Joint Venturers will pay the costs and expenses of such arbitration in such proportions as the arbitrator shall decide, and each Joint Venturer shall separately pay its own counsel fees and expenses.

10. Governing Law; Consent to Personal Jurisdiction. THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF _____ WITHOUT REGARD FOR CONFLICTS OF LAWS PRINCIPLES. EACH JOINT VENTURER HEREBY EXPRESSLY CONSENTS TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF _____ FOR ANY LAWSUIT FILED THERE AGAINST ANY PARTY TO THIS AGREEMENT BY ANY OTHER PARTY TO THIS AGREEMENT

CONCERNING THE JOINT VENTURE OR ANY MATTER ARISING FROM OR RELATING TO THIS AGREEMENT.

In witness, etc.



LEXIS

joint venturer – участник совместного предприятия

business interest - предпринимательский интерес, процент

по сделке, доля в предприятии

nominee - назначенное лицо

accruing profits – начисляемая прибыль, полученная прибыль

understanding - подразумеваемое соглашение

participating interest - долевое участие, доля участия в капитале
компании

in common – совкупно, совместно

acquisition – достижение, получение

undivided fractional part - неделимая часть, доля

bear interest - приносить проценты, приносить прибыль

net profit - чистый доход, чистая выручка

incurred disbursements – понесенные издержки

in the ratio - в отношении, в пропорции

willful misfeasance and bad faith - сознательное злоупотребление властью и умышленное нарушение обязательств

render services - оказывать услуги

controversy - расхождение во мнениях

without regard for - не учитывая



11. SCANNING

Partnership Agreement

This PARTNERSHIP AGREEMENT is made on _____, 20__ between _____ and _____.

1. NAME AND BUSINESS. The parties hereby form a partnership under the name of _____ to conduct a _____. The principal office of the business shall be in _____.

2. TERM. The partnership shall begin on _____, 20__, and shall continue until terminated as herein provided.

3. CAPITAL. The capital of the partnership shall be contributed in cash by the partners as follows: A separate capital account shall be maintained for each partner. Neither partner shall withdraw any part of his capital account. Upon the demand of either partner, the capital accounts of the partners shall be maintained at all times in the proportions in which the partners share in the profits and losses of the partnership.

4. PROFIT AND LOSS. The net profits of the partnership shall be divided equally between the partners and the net losses shall be borne equally by them. A separate income account shall be maintained for each partner. Partnership profits and losses shall be charged or credited to the separate income account of each partner. If a partner has no credit balance in his income account, losses shall be charged to his capital account.

5. SALARIES AND DRAWINGS. Neither partner shall receive any salary for services rendered to the partnership. Each partner may, from time to time, withdraw the credit balance in his income account.

6. INTEREST. No interest shall be paid on the initial contributions to the capital of the partnership or on any subsequent contributions of capital.

7. MANAGEMENT DUTIES AND RESTRICTIONS. The partners shall have equal rights in the management of the partnership business, and each partner shall devote his entire time to the conduct of the business. Without the consent of the other partner neither partner shall on behalf of the partnership borrow or lend money, or make, deliver, or accept any commercial paper, or execute any mortgage, security agreement, bond, or lease, or purchase or contract to purchase, or sell or contract to sell any property for or of the partnership other than the type of property bought and sold in the regular course of its business.

8. BANKING. All funds of the partnership shall be deposited in its name in such checking account or accounts as shall be designated by the partners. All withdrawals are to be made upon checks signed by either partner.

9. BOOKS. The partnership books shall be maintained at the principal office of the partnership, and each partner shall at all times have access thereto. The books shall be kept on a fiscal year basis, commencing _____ and ending _____, and shall be closed and balanced at the end of each fiscal year. An audit shall be made as of the closing date.

10. VOLUNTARY TERMINATION. The partnership may be dissolved at any time by agreement of the partners, in which event the partners shall proceed with reasonable promptness to liquidate the business of the partnership. The partnership name shall be sold with the other assets of the business. The assets of the partnership business shall be used and distributed in the following order: (a) to pay or provide for the payment of all partnership liabilities and liquidating expenses and obligations; (b) to equalize the income accounts of the partners; (c) to discharge the balance

of the income accounts of the partners; (d) to equalize the capital accounts of the partners; and (e) to discharge the balance of the capital accounts of the partners.

11. DEATH. Upon the death of either partner, the surviving partner shall have the right either to purchase the interest of the decedent in the partnership or to terminate and liquidate the partnership business. If the surviving partner elects to purchase the decedent's interest, he shall serve notice in writing of such election, within three months after the death of the decedent, upon the executor or administrator of the decedent, or, if at the time of such election no legal representative has been appointed, upon any one of the known legal heirs of the decedent at the last-known address of such heir. (a) If the surviving partner elects to purchase the interest of the decedent in the partnership, the purchase price shall be equal to the decedent's capital account as at the date of his death plus the decedent's income account as at the end of the prior fiscal year, increased by his share of partnership profits or decreased by his share of partnership losses for the period from the beginning of the fiscal year in which his death occurred until the end of the calendar month in which his death occurred, and decreased by withdrawals charged to his income account during such period. No allowance shall be made for goodwill, trade name, patents, or other intangible assets, except as those assets have been reflected on the partnership books immediately prior to the decedent's death; but the survivor shall nevertheless be entitled to use the trade name of the partnership. (b) Except as herein otherwise stated, the procedure as to liquidation and distribution of the assets of the partnership business shall be the same as stated in paragraph 10 with reference to voluntary termination.

12. ARBITRATION. Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be settled by arbitration in accordance with the rules, then obtaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

Executed this ____ day of _____, 20__ in _____ [place].



LEXIS

as herein provided - как предусмотрено в этом документе
separate capital account - индивидуальный счёт операций с капиталом

at all times – непрерывно, постоянно

share in the profits and losses – принимать участие в прибылях и нести убытки

net losses - общие потери, чистые потери

separate income account - индивидуальный счёт прибылей и убытков
drawings - отвлечённые средства, снятие денег со счёта
withdraw the credit balance - аннулировать кредитовый остаток
regular course of business - обычные условия (деятельности)
checking account - текущий счёт, счёт до востребования
partnership books – бухгалтерские книги товарищества
on a fiscal year basis - на основе отчетности за финансовый год
closing date - дата закрытия бухгалтерской книги, последний день
отчётного периода
liquidating expenses and obligations - расходы и долговые обязательства,
связанные с ликвидацией юридического лица
equalize – сравнивать, уравнивать, равномерно распределять
serve notice in writing - формально извещать в письменном виде
allowance – денежное вознаграждение, надбавка
goodwill - стоимость деловых связей и репутация предприятия, ценность
фирмы, определяющаяся её репутацией



12. SCANNING

Guaranty of Equipment Lease

For value received, and in consideration of, and in order to induce _____ ("*lessor*"), to enter into an equipment lease (lease number _____) dated _____ (*the "lease"*), with _____ ("*lessee*"), providing for the lease of certain equipment now leased or to be leased under the lease and any rental schedule(s) executed pursuant to it (the "*equipment*"), we, the undersigned, jointly and severally, unconditionally guarantee to lessor the full and prompt performance by lessee of all obligations which lessee presently or hereafter may have to lessor under the lease and any rental schedule(s) executed pursuant to it, and under any other agreement related to it, including but not limited to, agreements pursuant to which lessor is called upon to make progress payments to equipment vendors, and the payment when due of all rent and all other sums owing by lessee to lessor under them, and agree to indemnify lessor against any losses lessor may sustain and expenses it may incur as a result of any default by lessee under the lease and/or as a result of the enforcement or attempted enforcement by lessor of any of its rights against us under this lease. We expressly wave all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agree that this guaranty shall be valid and unconditionally binding upon us regardless of:

1. Reorganization, merger or consolidation of lessee into or with another entity, corporate or otherwise, or the sale or other disposi-

tion of all or substantially all of the capital stock, business or assets of lessee to any other person or party, or

2. The death or dissolution of lessee, or
3. The voluntary or involuntary bankruptcy (including a reorganization in bankruptcy) of lessee, or
4. The granting by lessor of any indulgences to lessee, or
5. The assertion by lessor against lessee of any of lessor's rights and remedies provided for under the lease or existing in its favor in law, equity or bankruptcy, or
6. The release of lessee from any of lessee's obligations under the lease or under any other agreements or by operation of law or otherwise, or
7. Any invalidity, irregularity, defect or unenforceability of any provision of the lease or any other agreements, or
8. Any defect in lessor's title to any of the equipment.

We waive notice of and consent to the leasing of all equipment leased under the lease, and any rental schedule(s) executed pursuant to it, to any subleasing or other use of any equipment permitted by lessor (regardless of whom any such sublessee or user may be), to all of the provisions of the lease and any rental schedule(s) and to any amendments of them, and to any actions taken under them, and to the execution by lessee of the foregoing documents and of any other agreements, documents and instruments executed by lessee in that connection. We further agree that our liability under this guaranty shall be absolute primary and direct, joint and several and that lessor shall not be required to pursue any right or remedy it may have against lessee under the lease or otherwise (and shall not be required to first commence any action or obtain any judgment against lessee) before enforcing this guaranty against us, and that we will upon demand, pay lessor the amount of all rents and all other sums, the payment of which, by lessee, is in default under the lease, or any other related agreement, and will, upon demand, perform all other obligations of lessee, the performance of which is in default under the lease.

We agree that the failure of lessor to insist in any one or more instances upon a strict performance or observance of any of the terms, provisions or covenants of the lease or any other agreements, or to exercise any of its rights under it, shall not be con-

strued or deemed to be a waiver or relinquishment for the future of any such terms, provisions, covenants or rights, but such terms, provisions, covenants and rights shall continue and remain in full force and effect. Receipt by lessor of any rent or other sums payable under the lease with knowledge that lessee has breached any of the terms, provisions or covenants of the lease shall not be deemed to be a waiver by lessor of such breach.

Any married person who signs this guaranty expressly agrees that recourse may be had against his or her separate property for all obligations under this guaranty.

No assignment or other transfer by lessor or lessee of any interest, right or obligation under the lease and any rental schedule executed pursuant to it or assumption by any third party of the obligations of lessee under the lease and any rental schedule attached to it shall extinguish or diminish the unconditional absolute primary and direct liability of the undersigned under this guaranty. The undersigned consents to and waives all notice of any such assignment, transfer or assumption. If this guaranty is executed by more than one person, the release of any one guarantor shall not terminate this guaranty as to any other guarantor.

Any assignee of lessor shall have all of the rights of lessor under this lease and may enforce this guaranty against us with the same force and effect as if this guaranty were given to such assignee in the first instance. This guaranty shall inure to the benefit of lessor, and its successors and assigns, and shall be binding upon us and our heirs, executors, administrators, personal representatives, successors and assigns.

This guaranty shall be governed as to validity, interpretation, effect and in all other respects by the laws and decisions of the State of _____. The undersigned do submit to the jurisdiction of any court (federal, state or local) having situs within the State of _____, expressly waiving personal service of process and consent to service by certified or registered mail, return receipt requested, directed to the last known address of the undersigned, which service shall be deemed completed within 10 days after the date of mailing.

In witness, the undersigned have executed this guaranty this _____ day of _____[year].



LEXIS

for value received - за встречное удовлетворение, на возмездных началах

in order to induce - для того, чтобы побудить; с целью вовлечь
rental schedule - календарный график оплаты арендной платы
jointly and severally – солидарно, совместно и каждый порознь
progress payments - промежуточные выплаты
equipment vendor – продавец (поставщик, производитель) оборудо-
вания
waive defense - отказаться от защиты; отменить возможность ссылки
на обстоятельство, освобождающее от ответственности
surety or guarantor - поручитель или гарант
capital stock - основные производственные фонды, акционерный
капитал
indulgence – отсрочка долга, прощение долга
assertion – притязание, отстаивание
invalidity, irregularity, defect or unenforceability - недействительность,
незаконность, ошибочность или невозможность приведения в
исполнение
notice of and consent to the leasing - уведомление о и согласие на
сдачу в аренду
subleasing - субаренда
sublessee – субарендатор, поднаниматель
be in default - просрочить платеж, иметь задолженность
recourse - регрессное требование
assumption - принятие на себя (ответственности по обязательствам
другой стороны)
extinguish or diminish - прекращать или ослаблять
primary and direct liability - безусловная ответственность
assignment - перевод долга
assignee - назначенное лицо, правопреемник
inure to the benefit of - иметь юридическое действие с выгодой для
submit to - вносить на рассмотрение
certified or registered mail - заказная почтовая корреспонденция
return receipt requested - с уведомлением о вручении



13. SCANNING

Lease of Warehouse

This lease, made and entered into this the _____ day of _____
200__, by and between _____ (herein called "owner") and
_____, Inc., a _____ corporation with its principal place of
business in _____ (herein called "lessee"), witnesseth:

That the owner has hereby leased to the lessee, and the lessee has
hereby hired and taken from the owner the following-described
property: _____.

The terms and conditions of this lease are agreed to be as follows:

1. The term of this lease shall be three (3) years, beginning January 1, _____ and terminating December 31, _____, provided, however, that on or before November 1, _____ lessee shall have the option for renewal for another 2 year term provided such option is exercised by written notification to the owner on or before November 1, _____, upon the same terms and conditions as provided for the original term of this lease except as to monthly rental.

2. As rental for said premises, lessee shall pay to owner for the first 12 months of this lease, the sum of \$_____ per month, payable in advance on or before the first day of each month, beginning with the month of January _____, and for the remaining period of lease, the sum of \$_____ per month, beginning January 1, _____, payable monthly in advance on or before the first day of each month, beginning with the month of January _____.

3. It is also mutually agreed as follows:

- (a). The owner shall be responsible for and shall pay all taxes and assessments imposed on the demised premises by any lawful authority.
- (b). The owner shall carry insurance on the building but not on the contents thereof, and shall maintain the roof, walls and structural parts of the building in proper condition for use by lessee.
- (c). Electrical service will be separately metered at the expense of and for the account of the lessee. Any alterations to the building shall be at the expense of the lessee and shall be restored by the lessee at its own expense at the termination of the lease except upon written consent of the owner.

4. The lessee covenants and agrees that it will take good care of the premises and upon the termination of this lease, will surrender the premises in as good order and condition as they are in the beginning of this lease, ordinary wear and tear excepted; and that it will make no unlawful or offensive use of the premises. If the lessee shall fail and neglect to make any payment of rent when due or within 15 days after written notice thereof, or shall violate any of the provisions of this lease, the owner, without any other notice or demand, may at their option, terminate this lease and require the lessee to vacate the premises hereby demised, or may enter the premises and expel the lessee therefrom, or the owner may in lieu of the above or in conjunction therewith, pursue any other lawful right or remedy incident to the relationship created by this lease.

In witness, etc.



LEXIS

have the option - иметь возможность выбора чего-л.

monthly rental - ежемесячная плата за аренду

payable in advance - подлежащий предварительной оплате

taxes and assessments imposed on the demised premises - сумма налоговых обложений, накладываемых на сдаваемую в аренду недвижимость

carry insurance - иметь страховой полис, страховать

structural parts - несущие части

at the expense of and for the account of - за счёт

covenant and agree - брать на себя обязательства и соглашаться

ordinary wear and tear excepted - учитывая естественный износ оборудования

unlawful or offensive use - неправомерное или причиняющее вред использование

when due - при наступлении срока платежа

vacate - выезжать из, освобождать

expel - вытеснять, удалять

in lieu - вместо

incident - связанный



14. SCANNING



Independent Contractor Agreement

This Agreement is entered into as of the _____ day of _____, 20____, between [company name] ("the Company") and [service provider's name] ("the Contractor").

1. Independent Contractor. Subject to the terms and conditions of this Agreement, the Company hereby engages the Contractor as an independent contractor to perform the services set forth herein, and the Contractor hereby accepts such engagement.

2. Duties, Term, and Compensation. The Contractor's duties, term of engagement, compensation and provisions for payment thereof shall be as set forth in the estimate previously provided to the Company by the Contractor and which is attached as Exhibit A, which may be amended in writing from time to time, or supplemented with subsequent estimates for services to be rendered by the Contractor and agreed to by the Company.

3. Expenses. During the term of this Agreement, the Contractor shall bill and the Company shall reimburse [him or her] for all reasonable and approved out-of-pocket expenses which are incurred in connection with the performance of the duties hereunder. Not-

withstanding the foregoing, expenses for the time spent by Contractor in traveling to and from Company facilities shall not be reimbursable.

4. Written Reports. The Company may request that project plans, progress reports and a final results report be provided by Contractor on a monthly basis. A final results report shall be due at the conclusion of the project and shall be submitted to the Company in a confidential written report at such time. The results report shall be in such form and setting forth such information and data as is reasonably requested by the Company.

5. Inventions. Any and all inventions, discoveries, developments and innovations conceived by the Contractor during this engagement relative to the duties under this Agreement shall be the exclusive property of the Company; and the Contractor hereby assigns all right, title, and interest in the same to the Company. Any and all inventions, discoveries, developments and innovations conceived by the Contractor prior to the term of this Agreement and utilized by [him or her] in rendering duties to the Company are hereby licensed to the Company for use in its operations and for an infinite duration. This license is non-exclusive, and may be assigned without the Contractor's prior written approval by the Company to a wholly-owned subsidiary of the Company.

6. Confidentiality. The Contractor acknowledges that during the engagement [he or she] will have access to and become acquainted with various trade secrets, inventions, innovations, processes, information, records and specifications owned or licensed by the Company and/or used by the Company in connection with the operation of its business including, without limitation, the Company's business and product processes, methods, customer lists, accounts and procedures. The Contractor agrees that [he or she] will not disclose any of the aforesaid, directly or indirectly, or use any of them in any manner, either during the term of this Agreement or at any time thereafter, except as required in the course of this engagement with the Company. All files, records, documents, blueprints, specifications, information, letters, notes, media lists, original artwork, notebooks, and similar items relating to the business of the Company, whether prepared by the Contractor or otherwise coming into [his or her] possession, shall remain the exclusive property of the Company. The Contractor shall not retain any copies of the foregoing without the Company's prior written permission. Upon the expiration or earlier termination of this Agreement,

or whenever requested by the Company, the Contractor shall immediately deliver to the Company all such files, records, documents, specifications, information, and other items in [his or her] possession or under [his or her] control. The Contractor further agrees that [he or she] will not disclose [his or her] retention as an independent contractor or the terms of this Agreement to any person without the prior written consent of the Company and shall at all times preserve the confidential nature of [his or her] relationship to the Company and of the services hereunder.

7. Conflicts of Interest; Non-hire Provision. The Contractor represents that [he or she] is free to enter into this Agreement, and that this engagement does not violate the terms of any agreement between the Contractor and any third party. Further, the Contractor, in rendering [his or her] duties shall not utilize any invention, discovery, development, improvement, innovation, or trade secret in which [he or she] does not have a proprietary interest. During the term of this agreement, the Contractor shall devote as much of [his or her] productive time, energy and abilities to the performance of [his or her] duties hereunder as is necessary to perform the required duties in a timely and productive manner. The Contractor is expressly free to perform services for other parties while performing services for the Company. For a period of six months following any termination, the Contractor shall not, directly or indirectly hire, solicit, or encourage to leave the Company's employment, any employee, consultant, or contractor of the Company or hire any such employee, consultant, or contractor who has left the Company's employment or contractual engagement within one year of such employment or engagement.

8. Right to Injunction. The parties hereto acknowledge that the services to be rendered by the Contractor under this Agreement and the rights and privileges granted to the Company under the Agreement are of a special, unique, unusual, and extraordinary character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in any action at law, and the breach by the Contractor of any of the provisions of this Agreement will cause the Company irreparable injury and damage. The Contractor expressly agrees that the Company shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by the Contractor. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies that the Company may have for damages or otherwise.

The various rights and remedies of the Company under this Agreement or otherwise shall be construed to be cumulative, and no one of them shall be exclusive of any other or of any right or remedy allowed by law.

9. Merger. This Agreement shall not be terminated by the merger or consolidation of the Company into or with any other entity.

10. Termination. The Company may terminate this Agreement at any time by 10 working days' written notice to the Contractor. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of the Company, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, the Company at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor.

11. Independent Contractor. This Agreement shall not render the Contractor an employee, partner, agent of, or joint venturer with the Company for any purpose. The Contractor is and will remain an independent contractor in [his or her] relationship to the Company. The Company shall not be responsible for withholding taxes with respect to the Contractor's compensation hereunder. The Contractor shall have no claim against the Company hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

12. Insurance. The Contractor will carry liability insurance (including malpractice insurance, if warranted) relative to any service that [he or she] performs for the Company.

13. Successors and Assigns. All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns.

14. Choice of Law. The laws of the state of _____ shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.

15. Arbitration. Any controversies arising out of the terms of this Agreement or its interpretation shall be settled in _____ in accordance with the rules of the American Arbitration Association, and the judgment upon award may be entered in any court having jurisdiction thereof.

16. Headings. Section headings are not to be considered a part of this Agreement and are not intended to be a full and accurate description of the contents hereof.

17. Waiver. Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.

18. Assignment. The Contractor shall not assign any of [his or her] rights under this Agreement, or delegate the performance of any of [his or her] duties hereunder, without the prior written consent of the Company.

19. Notices. Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as follows:

If to the Contractor: _____

If to the Company: _____

Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

20. Modification or Amendment. No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.

21. Entire Understanding. This document and any exhibit attached constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

22. Unenforceability of Provisions. If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF the undersigned have executed this

Agreement as of the day and year first written above. The parties hereto agree that facsimile signatures shall be as effective as if originals.



LEXIS

engages the contractor – нанять независимого контрагента
engagement – договорённость, соглашение
estimate – калькуляция, предварительная смета
bill – инвойсировать, предъявлять счёт
reimburse - возмещать расходы
out-of-pocket expenses - фактические расходы
notwithstanding the foregoing - несмотря на изложенное выше
reimbursable - подлежащий возврату, возмещаемый
final results report – итоговый отчет
conceived – сконструированный, сформулированный
infinite duration – бесконечно, неопределенный срок
specifications - технические требования, техническая документация
customer list - список клиентов, заказчиков
blueprint – светокопия
upon the expiration - по истечении действия
retention – членство, занятость на службе
represent – сообщать, заявлять
proprietary interest - собственный интерес, заинтересованность
in a timely and productive manner - в своевременной и эффективной форме
expressly free - безусловно (положительным образом) свободен
termination - истечение срока, окончание
right to injunction - право на судебный запрет
irreparable injury and damage - непоправимый ущерб и убытки
injunctive and other equitable relief – судебный запрет и другие средства судебной защиты по праву справедливости
cumulative – совокупный, суммарный
liability insurance - страхование от гражданской ответственности
malpractice insurance - страхование практикующих специалистов на случай судебного преследования
judgment upon award - судебное решение относительно присуждённой суммы
continuing waiver - бессрочный отказ от претензий
attached exhibit – прикрепленное приложение



15. SCANNING

Non-Compete, Contractor

_____, referred to as CONTRACTOR and
_____, referred to as STATION, agree:

_____ is employed by _____ as _____.

CONTRACTOR and STATION acknowledge that as a result of the employer/employee relationship existing that CONTRACTOR will from time to time receive, or create confidential information related to trade secrets, future promotional plans, and that such information might be useful to competitors.

Upon termination of employment by STATION, CONTRACTOR shall not accept employment in any capacity, act as proprietor, shareholder or act as an independent contractor for any broadcasting station located within a radius of ____ miles from the center of the city of license of the STATION, for a period of ____ days.

The parties agree that the damages, which may be suffered by STATION upon violation of this agreement, are irreparable and intangible in nature. Therefore, the parties agree that STATION shall be entitled to injunctive relief to enforce this agreement.

The parties agree that all disputes related to this agreement shall be arbitrated under the rules of the American Arbitration Association, before a single arbiter. The decision of the arbiter shall be final, and may be entered by any Court of competent jurisdiction as a final judgment.

The prevailing party in any dispute related to his agreement shall be entitled to its reasonable counsel fees.

This is the entire agreement between the parties, and this agreement may only be modified in writing executed by both parties.

In witness, etc.



LEXIS

future promotional plans - планы по продвижению и расширению бизнеса

suffer damages - понести убытки

be arbitrated under the rules of - рассматриваться в третейском суде в соответствии с правовыми нормами ...

court of competent jurisdiction - надлежащий суд, надлежащая судебная инстанция

prevailing party - сторона, выигравшая дело

reasonable counsel fees – обоснованный гонорар юриста



16. SCANNING



Agency Agreement

THIS AGREEMENT is made on the 19th day of July 2007
BETWEEN:

(1) CADMIUM AEROSPACE LIMITED, whose registered office is at 168 Hanover Square, London, W1 ('the Principal') AND

(2) MACFADYEN AVIATION LIMITED, whose registered office is at 115 Duxford Road, Cambridge, CM3 ('the Agent').

1. APPOINTMENT

The Principal hereby appoints the Agent and the Agent agrees to act as the Agent of the Principal for the purpose of promoting and selling the Principal's aircraft throughout Europe and North America ('the Territory'). It is further agreed that this agreement shall be valid for a period of two years. Moreover the Principal agrees not to appoint any other agent in the territory and furthermore agrees not to seek nor enter into sales itself within the Territory during the period of the Agreement.

2. AGENT'S OBLIGATIONS

2.1 The Agent hereby undertakes to use its best endeavours to market and achieve sales of the Principal's aircraft in the Territory. The Agent is also henceforth authorised to enter into contracts for the sale of the Principal's aircraft for and on behalf of the Principal.

2.2 In addition, the Agent undertakes to provide the Principal with market reports on monthly sales and competitors' activities.

2.3 The Agent shall make appropriate credit checks on potential customers in order to ensure their credit-worthiness.

3. PRINCIPAL'S OBLIGATIONS

3.1 The Principal hereby agrees that during the continuance of the Agreement it will:

3.1.1 provide the Agent with training on the Principal's aircraft;

3.1.2 provide customers with technical and servicing report;

3.1.3 provide the Agent with marketing and publicity material to assist the Agent with marketing the Principal's aircraft within the Territory.

4. REMUNERATION

4.1 The Agent shall receive from the Principal in consideration of its services hereunder commission as follows:

4.1.1 at a rate of 5% of the Net Selling Price for each single engined 'Strato-Line' airplane sold;

4.1.2 at a rate of 7% of the Net Selling Price for each twin engined 'Skymaster' airplane sold.

EXECUTED BY _____ (Sales Director)

For and on behalf of CADMIUM AEROSPACE LIMITED

EXECUTED BY _____ (Chief Executive Officer)

For and on behalf of MACFADYEN AVIATION LIMITED



LEXIS

undertake - взять на себя обязательства, обязаться

use its best endeavours - приложить все старания

market and achieve - предлагать и успешно осуществлять

credit check - проверка кредитоспособности

credit-worthiness - надёжность заёмщика

commission - комиссионное вознаграждение

for and on behalf of - за и от имени



17. SCANNING



Patent License

_____, referred to as the INVENTOR, and
_____, referred to as the LICENSEE, agree:

INVENTOR licenses LICENSEE to practice an invention related to
_____, in the following territory: _____

This license shall be on an exclusive basis. The license shall be for the life of the patent, and any patents constituting an improvement on the original. Licensee shall pay Inventor \$___. per piece sold 60 days after the end of the month of sale. In other words, a Sale in October shall be due on the last day of December of that same year. However, if in any calendar year the royalties paid to INVENTOR shall be less than \$___ (_____ & ___/100 dollars) the license may be canceled by the INVENTOR within _____ after the end of the _____. Licensee shall have the right to prepay royalties at the end of any calendar year to keep the license in full force and effect, and this agreement in full force and effect. These prepayments may be applied to future Sales by Licensee.

If either party becomes aware of a potential infringement of the licensed patents, they shall immediately notify the other party of the same.

The parties shall meet and then consider means for remedying the potential infringement. If the parties cannot agree as to a common strategy for the same, then the parties shall be free to bring litigation in accordance with the applicable laws for a resolution of the potential infringement.

If the patent shall be found invalid in the jurisdiction of this agreement, this agreement is instantly cancelable and all royalties that may then be due are also immediately cancelable and voidable.

The parties may from time to time exchange confidential information. All such information if written shall be marked "Confidential" or "Trade Secret" or other clear indication of its status. If such information is not in written form then the party claiming that the same is a confidential, or a trade secret shall send a written notice to the other party specifying which information is claimed to be confidential.

The parties shall use reasonable efforts not to disclose the same for a period of _____ after the termination of this agreement. If any of the information disclosed was known to the other party prior to the disclosure, then that party shall not be bound to keep the same confidential.

INVENTOR and his legal or accounting representatives shall have the right to inspect business records of LICENSEE to verify the payment of royalties on a quarterly basis. In no case may Inventor review records more than 12 months prior to the inspection date. Licensee shall not be obligated to pay any additional royalties for Sales 12 months prior to an inspection date. If this dispute goes into litigation, the parties agree that the Licensee shall not be liable for any royalties more than 12 months old as of the date of service of the law suit upon Licensee. In addition, Licensee shall not be responsible for the production of any documents to Inventor for events more than 12 months prior to the serving of any law suit upon Licensee.

1. Notices. Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or a recognized over night delivery service such as FedEx.

If to Inventor: _____ [address].

If to Licensee: _____ [address].

2. No Waiver. The waiver or failure of either party to exercise in any respect any right provided in this agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.

3. Entirety of Agreement. The terms and conditions set forth herein constitute the entire agreement between the parties and supercede any communications or previous agreements with respect to the subject matter of this Agreement. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein. No change can be made to this

Agreement other than in writing and signed by both parties.

4. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

In witness, etc.



LEXIS

licensee – лицензиат, обладатель лицензии

practice an invention – применять, использовать изобретение

life of the patent – срок действия патента

improvement on the original – усовершенствованный вариант прообраза (первоначального изобретения)

royalties - лицензионные платежи, компенсация за использование авторского права

prepay - оплачивать предварительно

be instantly cancelable – сразу же отменить, автоматически аннулировать

disclose - разглашать

on a quarterly basis - ежеквартально

inspection date - дата ревизии

supersede - заменять собой, отменять, лишать силы



18. CANNING



Trade Secret Agreement

_____, referred to as INVENTOR, and _____, referred to as LICENSEE, agree:

INVENTOR has the exclusive rights related to _____, and the same is a trade secret.

INVENTOR has not disclosed this trade secret to third parties.

During the term of this agreement and any renewals or extensions thereof, INVENTOR shall not disclose the process to any party except as authorized herein.

INVENTOR grants to LICENSEE the exclusive right to use the process. INVENTOR shall fully and completely disclose the process to LICENSEE, and shall provide reasonable assistance to LICENSEE in the use of the trade secret. In case of INVENTOR makes

any improvements to the process, the same shall be promptly disclosed to LICENSEE and shall be covered by this agreement.

LICENSEE shall take all precautions, except those which involve gross and impractical economic expense, to keep the process secret. LICENSEE shall render to INVENTOR a periodic report as to the security precautions taken with information related to the secret process and LICENSEE shall implement any requests by INVENTOR, except for requests which involve gross and impractical economic expense.

LICENSEE shall use its best efforts to exploit the secret process to maximize exploitation of the process.

INVENTOR shall not compete with LICENSEE, and shall not participate in any way in the _____ industry, including ownership, employment and contracting.

LICENSEE shall maintain records under generally accepted accounting principles of all sales made hereunder. INVENTOR shall have the right to inspect such books and records at any reasonable time.

LICENSEE shall pay a royalty of ____% to INVENTOR of the net selling price of all goods produced under the process. Such payment shall be made on a quarterly basis, with payment and accountings due within 15 days of the end of the quarter.

Such accountings shall be deemed to be final if no objection or request for audit is received by LICENSEE within 1 year following settlement. In the event of a dispute, the parties shall appoint a disinterested certified public accountant to conduct an audit. Each party may present argument or materials to the certified public accountant. The decision of the certified public accountant shall be final and may be entered as a judgment in any court with jurisdiction. The cost of the audit shall be paid by the prevailing party. In the event that the parties cannot agree on a disinterested certified public accountant, each party shall appoint a certified public accountant and the two shall appoint a third certified public accountant, and the majority of those persons shall appoint the single disinterested Certified Public Accountant. The expense of the panel of appointment shall be borne by each party equally.

This agreement shall commence on _____ and terminate on _____, unless terminated earlier as is provided herein. Upon termination, LICENSEE shall return to INVENTOR all materials related to any

disclosure made by INVENTOR, including copies and materials derived from any disclosure and shall execute an affidavit of compliance. INVENTOR shall be entitled within thirty (30) days of the termination of this agreement to make an inspection of the premises to verify compliance.

The duties herein, other than payment due to INVENTOR, shall not be delegated or assigned without the written consent of the other party.

This is the entire agreement between the parties and the same may only be amended in writing.

In witness, etc.



LEXIS

renewal or extension - возобновление или продление
except as - кроме случаев, за исключением

take all precautions - принимать меры

gross and impractical economic expense - ощутимые и практически
нецелесообразные затраты

disinterested certified public accountant - беспристрастный дипломи-
рованный бухгалтер-ревизор

conduct an audit - проводить ревизию бухгалтерских книг

affidavit of compliance - официальное подтверждение соответствия



19. SCANNING



Patent Assignment

_____, referred to as INVENTOR, and _____, referred to as PURCHASER, in consideration of \$___ (_____ & ___/100 dollars) agree:

INVENTOR assigns to PURCHASER, and their heirs and assigns, all rights related to U.S. Patent Serial No. _____, for an invention described as _____, including rights to apply for a patent or to practice the invention worldwide.

INVENTOR warrants that the title to the patent is free and clear and that INVENTOR is not aware of any adverse claims thereto and shall defend the patent at its expense.

1. Notices. Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or a recognized over night delivery service such as FedEx.

If to Purchaser: _____ [address].

If to Inventor: _____ [address].

2. No Waiver. The waiver or failure of either party to exercise in any respect any right provided in this agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.

3. Governing Law. This Agreement shall be construed and enforced according to the laws of the State of _____ and any dispute under this Agreement must be brought in this venue and no other.

In witness, etc.



LEXIS

apply for a patent - подавать заявку на патент

warrant – гарантировать, подтверждать, ручаться

adverse claim - претензия третьего лица



20. SCANNING



Joint Author's Agreement

_____ and _____ herewith agree:

That the parties hereto are *joint authors* of a *copyrightable work* entitled: _____ (“Work”) which was completed on or about _____. This agreement shall be binding on the successors, heirs and assigns of the joint authors.

Work was registered with the U.S. Copyright Office, and given certificate number _____.

Each party hereto, provided that *proper credit* is given may use portions of this work, not exceeding ____ words, in any future work by joint author. Further, each may use this work as a basis for a new *derivative work*. Proper credit shall consist of stating prominently in the work “portions reprinted with permission of _____ (the other party) and _____, from their copyright work, _____, copyright _____, all rights reserved”.

Either author may authorize reprinting of work in non-commercial academic journals or presses, provided that proper credit is given for the use.

All exploitation of this work for commercial advantage shall require unanimous consent of the parties. Any royalties or other consideration shall be equally divided among the co-authors.

Each co-author grants to the other co-author the right of first refusal to sell their interest in the copyright. Either co-author shall have the right to purchase the same on the same bona fide conditions and terms as may be negotiated between the other author and the prospective purchaser. The co-author exercising the right of first refusal shall have thirty days after notice to accept the same, and an additional 15 days after acceptance to close and make final payment.

In witness, etc.



LEXIS

joint authors - коллектив авторов, соавторы

copyrightable work - подлежащая охране авторским правом

вещь

proper credit – надлежащая запись, обязательное упоминание

derivative work - "производное" издание, произведение по мотивам других произведений

right of first refusal - право преимущественной покупки, право первого выбора

bona fide conditions and terms - равные условия добросовестной сделки

close - договариваться



21. SCANNING



Purchase & Sale of Private Shares

_____, referred to as SELLER, and _____, referred to as PURCHASER, agree:

PURCHASER shall purchase from SELLER ___ shares of Class ___ shares of _____ stock, issued by _____, in consideration of a promissory note in the amount of \$___ (___ & ___/100 dollars) secured by a pledge of the stock and/or \$__ (___ & ___/100 dollars.)

PURCHASER represents that it is qualified under the relevant rules and regulations of the United States Securities and Exchange Commission and the Securities Commission of any state, which may have jurisdiction to purchase these shares. PURCHASER represents they are an accredited investor or investment group as defined by current investment US and state laws.

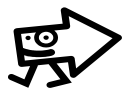
PURCHASER further represents that it is not purchasing these shares with an intention of resale, nor will it take any actions that may result in it being considered an underwriter of the shares.

PURCHASER further represents that it has had adequate opportunity to obtain any information relevant to the decision to purchase, and has also had adequate opportunity to consult with advisors of their choice.

PURCHASER consents to execute the shareholders agreement dated _____ as a condition of this purpose and herein ratifies its total acceptance of that agreement.

This is the entirety of the agreement between the parties. Any disputes must be brought in the city of _____ in the state of _____, and no other.

In witness, etc.



LEXIS

secured by a pledge of the stock - обеспеченный ценными бумагами, под залог облигаций

qualified - правомочный

accredited investor - аккредитованный (имеющий официальные полномочия) инвестор

underwriter - гарант размещения ценных бумаг, андеррайтер, страховщик



22. SCANNING



Trust Declaration, Stocks

This Trust Declaration made as of _____ [date], by and between _____ ("Trustee") and _____ ("Beneficiary").

Whereas the Trustee is the registered owner of _____ shares ("Shares") of the corporation ("Corporation"); and the Shares are to be held by the Trustee as trustee and nominee for the Beneficiary;

Therefore this Declaration of Trust witnesses as follows:

I. The Trustee hereby declares that he or she holds the Shares and all dividends and interest accrued or to be accrued upon the same upon trust for the Beneficiary and agrees to transfer the Shares as directed by the Beneficiary or otherwise deal with the Shares and the dividends and interest payable in respect of the

same in such manner as the Beneficiary shall from time to time direct.

2. The Trustee covenants and agrees that he or she shall at all times, exercise all voting rights in connection with the Shares and otherwise deal with the Shares as nominee for the Beneficiary only and in accordance with the instructions of the Beneficiary.

3. The Trustee shall enter into, execute and deliver as nominee for the Beneficiary only, all such documents, instruments and other agreements as may from time to time be requested by the Beneficiary in connection with the Shares.

4. The Trustee shall, at the request and expense of the Beneficiary, account to the Beneficiary for all sums received with respect to the Shares.

5. The Trustee shall promptly transmit to the Beneficiary all notices, claims, demands or other communications which the Trustee receives relating to the Shares, including notices of shareholder meetings.

6. The Beneficiary hereby releases the Trustee from any and all liability that the Trustee may incur in respect of any action taken by the Trustee either pursuant to the authorization or direction of the Beneficiary or pursuant to the terms of this Declaration of Trust. The Beneficiary shall indemnify and hold the Trustee harmless from all liabilities of any kind and character that may arise out of any act or omission by the Trustee pursuant to the terms of this Declaration of Trust.

7. This Declaration of Trust shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors and assigns.

8. No Waiver. The waiver or failure of either party to exercise in any respect any right provided in this agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.

9. Entirety of Agreement. The terms and conditions set forth herein constitute the entire agreement between the parties and supersede any communications or previous agreements with respect to the subject matter of this Agreement. No change can be made to this Agreement other than in writing and signed by both parties.

In witness, etc.



LEXIS

trust declaration - объявление о распоряжении имуществом на началах доверительной собственности

trustee and nominee - назначенное лицо, распоряжающееся имуществом на началах доверительной собственности

covenant and agree - брать на себя обязательства и согласиться

enter into, execute and deliver - заключать, оформлять и представлять

communication – уведомление, представление информации, обмен информацией



23. SCANNING



Promissory Note

\$ _____

FOR VALUE RECEIVED, _____, the MAKER, promises to pay to the order of _____, the HOLDER, the sum of \$__ (____ & __/100 dollars) payable at _____, _____ with interest at the rate of ____ percent per annum.

This note is No _____ in a certain series of _____ notes.

Should there be a default in the payment of any of the notes, then, at the option of the holder hereof, the remaining notes within the series shall immediately become due and payable.

Upon default, the MAKER shall pay all reasonable costs of collection including attorney's fees.

MAKER



LEXIS

for value received - за встречное удовлетворение

pay to the order of - платить приказу

with interest at the rate of - включая проценты по ставке в ...

upon default – в случае невыполнения обязательств



24. SCANNING



Default

In the event of any such default, lessor may, at its option, do any one or more of the following:

(1) Declare, by written notice to lessee, the entire amount of rent remaining to be paid over the balance of the lease term of all

equipment then leased under this lease, computed from the date of the occurrence of any such event of default (and discounted to its then present value at the rate of ____% per annum) to be immediately due and payable, and the payment of such amount shall be so accelerated and such amount shall be payable by lessee promptly;

(2) Proceed by appropriate court action or actions at law or in equity or in bankruptcy to enforce performance by lessee of the covenants and terms of this lease and/or to recover damages for the breach of them;

(3) Terminate this lease upon written notice to lessee;

(4) Whether or not this lease be so terminated, and without notice to lessee, repossess the equipment wherever found, with or without legal process, and for this purpose lessor and/or its agent may enter upon any premises of or under the control or jurisdiction of lessee or any agent of lessee without liability for suit, action or other proceeding by lessee (any damages occasioned by such repossession being expressly waived by lessee) and remove the equipment, LESSEE HEREBY CONSENTING TO SUCH REPOSSESSION AND WAIVING ANY RIGHT TO NOTICE OR A HEARING OF ANY KIND PRIOR TO SUCH REPOSSESSION.

With respect to any equipment returned to lessor, or repossessed by lessor pursuant to subparagraph (4) above, lessor may hold or use such equipment for any purpose, or may sell same at a private or public, cash or credit sale, or may release same for such term and upon such rental as shall be solely determined by lessor. In the event of the sale or releasing by lessor of such equipment lessee shall be liable for, and lessor may promptly recover from lessee as liquidated damages for breach of this lease, and not as a penalty, an amount equal to the deficiency, if any, between the stipulated loss value of such equipment as of the last day of the month next preceding the month in which such event of default has occurred, and the proceeds of any sale or re-leasing of such equipment, after first deducting from such proceeds all costs and expenses of repossession, storage, repairs, reconditioning, sale, releasing, reasonable attorneys' fees and collection fees with respect to such equipment. In the event of any such releasing the costs and expenses referred to in the preceding sentence shall be deducted from the total amount of the rent payments which lessor contracts for the use of such equipment, and the remaining amount, after such deduction, shall be discounted to its then

present value at a rate of ____% per annum and such remaining amount shall constitute the proceeds of such releasing for purposes of computing the aforesaid deficiency.

Pursuit of any of these actions shall not be deemed to be exclusive, but shall be cumulative and shall be in addition to all other remedies.

In witness, etc.



LEXIS

at its option - по своему усмотрению
computed from the date - исчисляемый с даты
discounted to its then present value – вычитаемый из стоимости в существующих на тот момент ценах
promptly – своевременно, безотлагательно
proceed by appropriate court action – преследовать в судебном порядке
with or without legal process - с или без применения судебной процедуры
occasioned damages – причиненные убытки
release – передавать арендуемое имущество в субаренду
recover - получить обратно, получить по суду возмещение убытков
liquidated damages - заранее оцененные убытки
deficiency – задолженность, недостача
stipulated loss value – установленное снижение стоимости
repossession - восстановление права собственности
reconditioning - восстановление оборудования, переоборудование
pursuit of any of these actions - применение любого из этих судебных средств защиты



25. SCANNING

Settlement Agreement

_____, referred to as PLAINTIFF, and _____, referred to as DEFENDANT, agree:

The parties have been engaged in litigation before the ____ Court of _____, case number _____, styled _____ vs. _____.

On ____ [date], the Court rendered a decision in the matter. The parties desire by this agreement to reach a final and complete settlement of the dispute.

All parties hereto waive the right to file any motions or other legal process to request that the judgment be modified, vacated or appealed in any way.

In full and complete settlement of the disputes litigated and which could have been litigated, the following settlement shall occur:
CASH AWARD TO PLAINTIFF OF \$ _____.

Said settlement shall be consummated no later than _____. The parties shall execute such dismissals as may be required to effect this agreement. In the event that either party fails to consummate the settlement, the parties may apply to the Court stated above to enforce this agreement.

Upon the consummation of the settlement, the parties shall exchange releases in the form attached hereto.

The terms of the settlement shall be confidential and no party hereto shall reveal the terms of the settlement. However, the parties may state that the matter has been amicably resolved.

Dated: _____
Plaintiff _____
Defendant _____

Reviewed and approved by counsel for Plaintiff: _____
Reviewed and approved by counsel for Defendant: _____



LEXIS

styled – под наименованием (судебное дело)
file a motion - подавать ходатайство

be modified, vacated or appealed - изменяться, быть отменённым или обжалованным

cash award – решение суда о денежном возмещении

consummated - вступивший в силу, введённый в действие

dismissal – документ о прекращении иска

amicably resolve – урегулировать на основе взаимного согласия

reviewed and approved - согласовано и одобрено



26. SCANNING

Arbitration Agreement

This is an Arbitration Agreement between the two parties named below.

WHEREAS:

(A) The parties are involved in a dispute;

(B) The parties wish to refer the dispute to binding arbitration

with a view to resolving the Dispute in an efficient, expeditious and inexpensive manner;

In consideration of the premises, the mutual covenants and conditions hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The parties agree that the Dispute shall forthwith be referred to arbitration (the "Arbitration") pursuant to the rules of the American Arbitration Association.

2. The Arbitration shall be governed by the following rules:

(a) the Dispute shall be heard and determined by a single arbitrator ("Arbitrator") who shall be selected by agreement of both parties hereto. The Arbitrator shall make his or her award in writing either within three (3) months after entering on the reference or after having been called on to act by notice in writing from either party to the submission, whichever is the earlier, or on or before any later date to which the parties by writing signed by them may from time to time enlarge the time for making the award;

(b) the Arbitrator shall have the authority to award costs to whichever party he or she deems appropriate, failing which the costs shall be borne equally;

(c) if the Arbitrator has allowed his original or extended time for making an award to expire without making an award, either party hereto may apply to the court having appropriate jurisdiction or to a judge thereof to appoint an arbitrator who shall have the power to act in the reference and to make an award as if he or she had been duly appointed by both parties to the submission and by the consent of such parties;

(d) if an arbitrator is appointed pursuant to paragraph 2(c) above, such arbitrator shall make his award within two months after the original or extended time appointed for making the award of the arbitrator has expired or on or before any later date to which the parties by any writing signed by them may from time to time enlarge the time for making the award, or if the parties have not agreed, then within such time as the court or judge appointing such arbitrator may impose;

(e) the decision of the Arbitrator shall be final, conclusive and binding upon the parties hereto; and

(f) there shall be no appeal from the award of the Arbitrators or Arbitrator in accordance with the provisions of the court having appropriate jurisdiction.

3. The parties agree that the statement of facts which will be presented to the Arbitrator is as set out forth in Exhibit ____.

4. The parties agree to split the costs equally for the Arbitrator and provide sufficient deposits and advances so the Arbitrator can do his or her work in a timely manner.

5. This Agreement shall inure to the benefit of and be binding upon the respective heirs, executors, administrators and assigns of each of the parties hereto.

6. This Agreement sets forth the entire agreement between the parties relating to the subject matter hereof and stands in the place of any previous agreement, whether oral or in writing. The parties agree that no amendment to this Agreement shall be binding upon the parties unless it is in writing and executed by both parties. Any dispute must be brought in the state of _____ and none other.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto as of the date written above.

In witness, etc.



LEXIS

premises - вышеизложенное

forthwith – немедленно, незамедлительно

enter on the reference - принять дело к производству в соответствии с третьей записью

award costs - присуждать судебные издержки

failing which - в противном случае

final, conclusive and binding - окончательный, неоспоримый и обязательный к исполнению

deposits and advances – вклады, депозиты и авансированные средства

Используемые источники:

"Legal English: How to Understand and Master the Language of Law" by William R. McKay and Helen E. Charlton

"Legal Survival Kit" by Deaver Brown

"Translating law" by Deborah Cao

Учебное издание

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Учебное пособие к элективному курсу
«Перевод в сфере договорного права»

Учебное пособие

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