



NATIONAL CHAPTER
INDONESIA

Volume 6

ALSA INDONESIA

LEGAL ENGLISH 101

**The Implementation of Legal English in
Drafting a Contract**

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ALSA INDONESIA LEGAL ENGLISH 101

THE IMPLEMENTATION OF LEGAL ENGLISH IN DRAFTING A CONTRACT

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I. Introduction of a Contract

A. What is a Contract?

A contract is an agreement between parties that establishes mutual obligations enforceable by law. The essential elements of a legally enforceable contract are mutual assent, as evidenced by a legitimate offer and acceptance, suitable consideration, legal ability, and legality. In certain states, components of consideration may be met by an acceptable alternative. The possible remedies for breach of contract include general damages, consequential damages, reliance damages, and specific performance.

Contracts are promises that the law will enforce. Contract law is generally governed by state common law, and while general overall contract law is common throughout the country, some specific court interpretations of a particular element of the contract may vary between the states.¹

B. Definition of a Contract

Definition of Contract as defined by the Black's Law Dictionary:²

"A contract is "an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law"

The definition of the contract itself is simple to remember. Quoted from Britannica contract Contract as very known as promise enforceable by law.³ The promise may be to do something or to refrain from doing something, also The making of a contract requires the mutual assent of two or more persons, one of them ordinarily making an offer and another accepting. In addition, the contract could provide penalties and restitution in the case of a violation. A contract violation is the failure to fulfill any element of a contract without legal justification.⁴

¹ Cornell Law School: Legal Information Institute. "Contract" <https://www.law.cornell.edu/wex/contract>, accessed 26 February 2023.

² Black's Law Dictionary 7th Edition.

³ Britannica. "Contract" <https://www.britannica.com/topic/contract-law>, accessed 26 February 2023.

⁴ Contract Counsel. "Define Contract" <https://www.contractsounsel.com/b/define-contract>, accessed 26 February 2023.

C. Vital Elements That Must be Included in a Contract

The validity of the contract is inseparable from the important elements in between, including:⁵

1) Offer

Every contract begins with an offer. An offer is a declaration of intent to enter into a contract on particular conditions. It is crucial to determine what constitutes an offer and what does not. There must be no ambiguity or vagueness in offers. The individual who makes the offer is known as the offeror.

2) Acceptance

Acceptance by the offeree (the person accepting an offer) is the unconditional agreement to all the terms of the offer. There must be what is called a “meeting of the minds” between the parties of the contract.

3) Consideration

The purpose of a contract is based on what it provides. For contractual purposes, contracts are not considered binding unless something of value is exchanged between the parties. Property, services, and insurance are all considered contractual considerations.

4) Capacity

Contracts may be unnerving, especially when signing on behalf of an organization. Thus, only parties who can establish legal capacity forward to signing are permitted to enter into a new contract.

5) Legality

All contracts are subject to the laws of the jurisdiction in which they are signed and must abide by these to justify sufficient legality.

⁵ Summize. “Elements of Contract” <https://www.summize.com/resources/elements-of-a-contract>, accessed 26 February 2023.

II. The Essential Clauses in a Contract

The contract contains essential clauses, which are important conditions for the validity of the contract, the following are a list:

A. Indemnification Clause

This clause releases one of the parties from any liabilities that may result in losses being incurred by the other party in the event of non-performance or extenuating circumstances. Indemnification clauses can be a significant element of a contract.

B. Choice of Law Clause

This is where the parties determine the jurisdiction whose laws will be used to interpret the contract. It often spells out the state where any litigation, if required, will take place.

C. Statute of Limitations Clause

Time limits are set for how long a party to an agreement may file a lawsuit or seek legal remedy if the other party fails to uphold its obligations under the terms of the contract.

D. Time is of the Essence Clause

This clause is often found in construction contracts when the duties agreed to in the contract must be performed by a certain date in order to complete a project. If they are not, the damaged party may pursue a breach of contract.

E. Non-Waiver Clause

A non-waiver clause prevents a party from accidentally renouncing its right to pursue damages against the other party in the case of contract violation.

F. Severability Clause

Regardless of whether one part of a contract is found to be invalid, this clause guarantees that the rest of the contract is enforceable. It's necessary to prevent a court ruling on one aspect of a contract making the entire agreement worthless.

G. Arbitration Clause

Arbitration is a necessary clause to help parties to a contract avoid the costs and time that a court case would entail by agreeing to present their situation to an arbitrator.

H. Liquidated Damages Clause

This clause allows a party to recover reasonable damages when it is determined the contract has been breached but actual damages are difficult to determine.

I. Attorney Fees Clause

In the event that there is a breach of contract, this clause provides that the injured party will be reimbursed for any attorney fees that were accumulated during the legal proceedings. Often this clause also covers incidentals such as court fees.

J. Merger Clause

Merger Clause Also known as an integration clause, the language in this clause states that any previously existing agreements, whether written or oral, are made void by the execution of this agreement.

III. Most Common Vocabularies Related to a Contract

No.	Vocabularies	Definition	Explanation
1	Agreement	Persetujuan	A generic term for a legally-binding undertaking between the buyer and supplier, in terms of the obligations, relationships and responsibilities between them, that is commonly described as a contract. The more usual approach is to make it in writing, using either a standard document or a specifically prepared document. Once an agreement has been made, there will be a commitment for both parties.
2	Arbitration	Arbitrasi	The nomination of an independent person or body agreed within a contract to solve disputes between the parties. Arbitration becomes preferable to court because of its nature as a more economical and quicker mechanism and tends to attract less publicity.
3	Assignment	Penyerahan	In law, one party cannot unilaterally transfer or assign any of its liabilities or obligations under a contract but it may be able to assign its rights or some of them. One party can assign its liabilities and obligations to a third party but only if there is a trilateral agreement between the parties concerned. Such an agreement is called 'novation'.

4	Commitment	Komitmen	The result of formalizing an agreement by an act of acceptance. May also be used to describe the financial value of an agreement or the amount committed.
5	Consideration	Pembayaran	Legal term used to describe the payment made for the goods or services provided by a supplier.
6	Cost plus	Biaya Tambahan	Payment terms under which a supplier is reimbursed for actual (ascertained) costs plus an addition for profit, either an agreed fixed amount or a percentage of costs.
7	Debriefing	Tanya Jawab	The term is used to describe the process of explaining to unsuccessful tenderers why they have not been awarded the business and to help suppliers improve their competitive performance.
8	Enquiry	Pertanyaan	Also known as invitation to tender. The buyer that invites suppliers to bid for business are usually setting out the specification and terms and conditions. Enquiry documents comprise all those documents and specification, terms and conditions, sent to suppliers to enable them to bid.
9	Expediting	Mempercepat	An organized and sustained activity to monitor a supplier's progressive achievement with the aim of achieving deliveries on time.
10	Framework Agreements	Perjanjian Kerangka	Also known as standing agreements, standing arrangements, call-off agreements and call-off

		Kerja	contracts. This is a form of 'enabling' agreement with a supplier, covering the terms and conditions (including price) for purchases under the agreement, usually arranged by some central point and under which the buyers 'call-off' to meet their requirements. Unless a specified quantity of supply over a given period has been committed, the arrangement only becomes a legally-binding contract when the call-off is made.
11	Force Majeure	Keadaan Kahar/ Memaksa	The clause itself defines the hazards, dangers or 'Acts of God' that have this effect. The purpose of a force majeure clause is to define circumstances that release the parties from liability.
12	Invitation to Treat	Undangan untuk Melakukan Penawaran	A means of seeking information and inviting prospective offerors to make a contractual offer. A request for quotation or tender issued by a buyer is an invitation to treat. Price lists and catalogs are invitations to treat.
13	Stock out	Persediaan Habis	The situation where all stocks of an item have been exhausted.

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