

Contents

	The author	iii
	Introduction	1
1	FORMATION OF A CONTRACT – INTRODUCTION	4
	A contract can be made orally or in writing.....	4
	Laws of different countries	4
	Groups of legal systems	5
	European law.....	6
2	FORMATION OF A CONTRACT (1)	8
	The use of heads of agreement, memorandums of understanding and letters of intent	8
	Subject to contract	9
	Duty of good faith	11
	Pre-contract documents – international transactions.....	11
	Checklist for drafting pre-contract documents.....	13
	Confidentiality agreements	13
3	FORMATION OF A CONTRACT (2)	18
	Offer.....	18
	Acceptance.....	20
	Battle of the forms.....	20
	Ways of communicating acceptance	21
	Consideration	22
	Intention to create legal relations.....	23
	Certainty of terms	23
	Do contracts have to be in writing?.....	24
4	TERMS OF A CONTRACT	26
	Express terms	26
	Representations and misrepresentations	27
	Parol Evidence Rule	28
	Implied terms.....	29

	Effective payment obligations	33
	“Reasonable endeavours” and “best endeavours”	36
5	CONTRACTUAL AND LEGAL REMEDIES	40
	Performance obligations	40
	Defective performance	40
	Defective performance – remedy	40
	Delays in delivery	41
	Time of the essence	41
	Liquidated and ascertained damages and penalties	42
	Breach of contract – legal remedies	44
	Privity of Contract and Contracts (Rights of Third Parties) Act 1999 ..	44
	Termination	46
	Anticipatory breach of contract	48
	Duty to mitigate	49
	Interest on damages	49
	Late Payment of Commercial Debts (Interest Act) 1998	50
	Other remedies that may be available	50
6	DEEDS	54
	A deed or simple contract?	54
	Documents commonly executed as deeds	55
	Executing a contract as a deed	55
7	EXCLUSION, FRUSTRATION AND FORCE MAJEURE CLAUSES	58
	Incorporation	58
	Construction	58
	The Unfair Contract Terms Act (UCTA)	59
	Exemption clauses	59
	Frustration	61
	Force majeure	64
8	DAMAGES	68
	Damages	68
	Remoteness of loss	68
	Measure of damages	69

9	JURISDICTION, GOVERNING LAW, DISPUTE RESOLUTION	72
	Litigation	72
	Jurisdiction over contractual disputes	73
	Choice of law	74
	Closest connection	74
	Arbitration	77
	Institutional arbitration or ad hoc.....	78
	Arbitration under the UNCITRAL Rules.....	79
	Alternative dispute resolution	80
	Conciliation.....	80
	Mediation	81
	The mini trial.....	81
	Expert determination	82
10	BOILERPLATE CLAUSES AND MISCELLANEOUS PROVISIONS	84
	Agency/Partnership.....	84
	Assignment and sub-contracting	85
	Conflicts of language	86
	Costs	86
	Counterparts.....	87
	Entire agreement.....	87
	Insolvency and bankruptcy.....	88
	Communication notices.....	89
	Publicity.....	90
	Set off	90
	Severance clause	91
	Time of the essence	92
	Waiver	92
11	GLOSSARY	96