Commercial Contract Drafting and Dispute Avoidance

15 – 19 March 2027
Kuala Lumpur (Malaysia)



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Commercial contract drafting is the work of turning a negotiated business deal into written terms that bind the parties, allocate risk clearly and reduce the chance of later disputes. This one-week course is for contract, procurement, sales and in-house legal practitioners, and its final deliverable is a marked-up commercial contract with negotiated key clauses and an escalating dispute resolution clause.

Introduction

Three approaches frame the course. Principled negotiation, developed by the Harvard Negotiation Project, separates people from the problem and bargains over interests rather than positions. Plain-language drafting is a method of writing legal documents in short, precise sentences that a non-lawyer can follow. The dispute resolution escalation ladder moves a disagreement from internal negotiation through mediation or expert determination to arbitration or litigation. The level is practitioner, concentrated on clause-level work rather than the full contract management lifecycle. Teaching uses drafting exercises on a case supply contract and a construction services agreement.

Course Objectives

- Define the elements that make a commercial contract binding and distinguish a contract from an agreement in principle
- Compare positional and principled negotiation and select the approach suited to a deadlocked commercial term
- Apply drafting rules, including the distinction between will, shall and must, to produce clear and enforceable clauses
- Compare distribution, joint venture and agency structures and select the one that fits a cross-border arrangement
- Interpret liability, force majeure, termination and payment clauses to identify the risk each one allocates
- Justify a dispute resolution clause that escalates from negotiation to the forum best suited to the contract



Target Audience

- Contract and commercial officers preparing supply and services agreements, who must decide which standard terms to accept or amend
- In-house legal advisers reviewing drafts for business units, who must judge whether wording creates the intended obligation
- Procurement and sales managers negotiating with counterparties, who must choose which concessions to trade
- Project managers administering signed contracts, who must assess whether a variation or delay notice has been properly made
- Business development staff structuring cross-border arrangements, who must determine whether distribution, agency or a joint venture fits

Course Outline

Day 1: Contract Foundations and Commercial Structures

- Contract vs Agreement in Principle: When Offer, Acceptance and Consideration Create Obligations
- Contract Form, Ingredients and Structure: Parties, Recitals, Operative Terms and Schedules
- Commercial Arrangements and Innovative Solutions: Partnering and BOOT Contracts Explained
- Negotiation and Drafting Link: How Agreed Positions Become Written Contract Terms
- Closing the Deal: Authority to Sign, Agency Principles and Execution Requirements

Day 2: Negotiating Commercial Terms

- Positional vs Principled Negotiation: Bargaining over Positions Compared with Interest-Based Agreement
- Difficult and Complex Negotiations: Handling Deadlock, Power Imbalance and Multiple Parties
- Hierarchy of Terms: Structuring Complex Documents So Conflicts Between Parts Resolve
- Standard Forms and Precedents: Using and Modifying Templates in International Contracting
- Qualifications and Amendments: Handling Counter-Proposals and Changes Before Signature

Day 3: Drafting Principles and Preliminary Documents

- Will vs Shall vs Must: Choosing Words That Create Obligations or Describe Facts
- Signs of a Well-Drafted Contract: Simple Rules, Legal Requirements and Binding Formation
- Boilerplate Clauses and Heads of Terms: Their Function Before and After Signature
- Distribution vs Joint Venture vs Agency Agreements: Cross-Border Structures Compared
- Share Purchase Agreements and Error Tracing: Allocating Buyer-Seller Risk and Correcting Vague Terms



Day 4: Plain-Language Writing and Key Clauses

- Plain English vs Legalese: Clarity in Contracts and Legal Correspondence Across Sectors
- Operative Provisions and Performance Obligations: Drafting What Each Party Must Deliver
- Title, Risk and Payment Provisions: When Ownership, Risk and Payment Pass
- Variations and Termination: Assignment, Scope Changes, Suspension and Remedies for Default
- Liability Exclusions, Force Majeure and Waiver: Limiting Exposure Through Careful Wording

Day 5: Dispute Avoidance in Practice and the Drafted Contract

- Legal Rights vs Commercial Outcomes: Deciding What a Dispute Is Really About
- Early Warning and Internal Resolution: Applying Negotiation Structures to Emerging Problems
- External Forums Compared: Litigation, Arbitration, Adjudication, Expert Determination and Mediation
- Dispute Resolution Clause Drafting: Applying Earlier Drafting Rules to an Escalation Ladder
- Marked-Up Commercial Contract: Finalising Negotiated Key Clauses and the Dispute Resolution Clause

Skills You Will Gain

- Contract Formation Analysis
- Principled Negotiation
- Hierarchy-of-Terms Structuring
- Plain-Language Drafting
- Boilerplate Review
- Risk and Liability Clause Drafting
- Variation and Termination Drafting
- Dispute Resolution Clause Design

Why Attend This Course

- From signing counterparty templates unchanged to qualifying and amending standard forms for stated reasons
- From negotiating over fixed positions to trading interests that produce workable written terms
- From vague wording that invites argument to clauses whose obligations, risks and remedies read one way only
- From relying on litigation when relations break down to a marked-up contract with an escalating dispute resolution clause



Conclusion

Drafting a commercial contract well means writing down exactly what was agreed, so that each party knows what it must do, what it risks and how disagreements will be settled. The course clarifies three distinctions: positional versus principled negotiation, words that oblige versus words that describe, and legal rights versus commercial outcomes in a dispute. It suits practitioners who prepare or negotiate contracts and want five focused days on clauses rather than a longer contract management curriculum.

Course FAQs

What is commercial contract drafting?

Commercial contract drafting is the preparation of the written terms of a business agreement, such as a supply, services or distribution contract, so that obligations, risk, payment, termination and dispute resolution are stated clearly and can be enforced.

What is the difference between positional and principled negotiation in commercial contract drafting?

Positional negotiation trades fixed demands until one side concedes. Principled negotiation explores each party's underlying interests and uses objective criteria, which tends to produce terms both sides can perform and fewer disputes after signature.

Which approach does commercial contract drafting and negotiation training follow?

The course follows principled negotiation from the Harvard Negotiation Project, plain-language drafting for clause wording, and a dispute resolution escalation ladder running from internal negotiation to mediation, expert determination, arbitration or litigation.

Is commercial contract drafting and negotiation training right for a procurement manager?

Yes. A procurement manager negotiates supplier terms and often accepts or amends standard forms, and the sessions on hierarchy of terms, payment and liability clauses, variations and dispute clauses apply directly to supplier agreements.

What do delegates produce in commercial contract drafting and negotiation training?

Delegates produce a marked-up commercial contract from the case supply agreement, with redrafted operative, payment, liability and termination clauses agreed through negotiation exercises and a dispute resolution clause built on an escalation ladder.

