

References are to paragraph numbers except where specified as page number (p.).

**A**

- according to, in accordance with*, 13.262–63
- acknowledge*. *See* acknowledgments
- acknowledgments, 3.313–18
  - acknowledge* used in combination with other verbs, 3.318
  - relation to recitals, 3.315
  - rhetorical emphasis in, 3.317
  - used inappropriately to introduce other language, 3.316
- acronyms. *See* initialisms
- action or proceeding*, 13.1–3
- active voice. *See* voice
- address of party, whether to include in introductory clause, 2.68–69
- affiliate*
  - example of a defined term with a definition that's largely clear, 6.68
  - having a parent enter into a contract on behalf of an affiliate, 2.55–58
  - referring to, in the introductory clause, 2.52, 2.76–77
  - incorporating, in the definition of defined terms for party names, 2.88
  - time of determination, 13.4–6
- after*, 10.9, 10.11, 10.44
- agreement*
  - in title, 2.9–10
  - not using defined term *this Agreement*, 2.110–14
  - not using initial capital in, 2.18, 2.111
  - versus *contract*, 2.9
- agrees that*, 3.18
- agrees to*, 3.83–85
- all*, 11.84
- all capitals
  - don't for party-name defined terms, 2.90
  - don't use for entire provision, 16.32
  - for party names in introductory clause, 2.50
  - for party names in signature blocks, 5.25, 5.33
  - in article headings, 4.6
  - in title, 2.2
- allonge*, 1.17, 13.7
- ambiguity, 7.5–19. *See also* *and*; *or*; references to time; syntactic ambiguity
  - and*, 11.8–33, 11.78–82, 11.120–28
  - and/or*, 11.73–77
  - and . . . or*, 11.78–82
  - antecedent ambiguity, 7.13–19
  - any*, 11.85–86
  - comma, 12.16, 12.26–27, 12.30–40, 12.41, 12.43, 12.41–54, 12.55–66
  - “creative” ambiguity, 7.6–7
  - each*, 11.83–84, 11.86
  - every*, 11.83–84, 11.86
  - in formulas, 14.14
  - latent ambiguity, 7.23
  - lexical ambiguity, 7.10–12
  - material*, 9.3–6, 9.32
  - may*, 3.160–61
  - may not*, 3.213, 3.224
  - may . . . only*, 3.155–59
  - notice*, 13.458–64
  - notice periods, 10.47–48
  - or*, 11.34–72, 11.78–82, 11.87–116, 11.120–28
  - plural nouns, ambiguity relating to, 11.3–8
  - references to time, 10.7–76
  - syntactic ambiguity, 12.1–66
  - using enumeration to eliminate, 12.3, 12.8, 12.15, 13.489, 14.23–24, 14.25, 14.27, 14.34
  - using tabulation to eliminate, 12.8, 12.15
  - willful*, 13.761–62
- amendment, 18.1–20
  - as opposed to amendment and restatement, 18.3–4
  - as opposed to supplement, 18.10
  - change affecting entire provision, 18.15–20
  - change affecting part of provision, 18.12–14
  - introductory clause in, 18.6
  - language of performance in, 18.9
  - layout of, 18.20
  - lead-in of, 18.7
  - title of, 18.5
  - use of italics in, 18.20
- amendment and restatement
  - as opposed to amendment, 18.3–4
  - introductory clause in, 18.6
  - lead-in of, 18.8
  - title of, 18.5
- among* versus *between* in introductory clause, 2.46–48
- and*
  - ambiguity of, 11.8–33, 11.78–82, 11.120–28
  - stating meaning of, in a provision specifying drafting convention, 15.17
- and/or*, 11.73–77
- and . . . or*, 11.78–82
- anniversary*, 13.8
- annual meeting*, 13.10–11
- any*, 11.85–86
- apostrophe
  - curly and straight, 16.51–57
  - shareholders' agreement*, 13.598, 13.600

using with *notice* and periods of time, 13.465

*applicable*, 13.12–17

*approved as to form and content*, 5.59

archaisms, generally, 1.4–6

Arial font, 16.3, 16.6

*arising out of or relating to*, 1.50, 13.18–32

articles, 4.3–7

- don't use initial capitals in references to, 4.96, 17.26
- enumeration, 4.7
- grouping sections in, 4.3–4
- heading, 4.6

*as amended*, 13.33–39

- provision specifying drafting convention regarding, 15.8, 15.9

*as consideration*, 13.40–44

*as liquidated damages and not as a penalty*, 13.45–52

*as of date*, 2.33, 5.17

*as the case may be*, 13.53–55

*as well as and together with*, 13.698–701

*at any time*, 3.197–98, 3.253, 13.175, 13.666–68

*at law or in equity*, 1.56

*at its sole discretion*, 3.168–96, 7.35

*at no time*, 1.60

attachments, 4.69–83. *See also* exhibits;

- schedules
- alternative terms for, 5.65–66
- as part of contract, 5.96–99
- don't emphasize references to, 5.71
- don't use initial capitals in references to, 5.72
- enumerating, 5.73–79
- exhibits, 5.80–81
- kinds of, 5.64, 5.67
- placement of, 5.68–69
- referring to, 5.70–72
- resolutions, to, 20.49–50
- schedules, 5.82–95
- virtual, 5.100–05

*attest*, 5.53

*at the time at which*, 17.14

*attorn*, 1.17, 13.7, 13.56–13.62

*attorney work product*, adding notation to draft, 4.110

Australia, p. xxxiv, 2.124, 3.57, 3.72, 3.74, 4.59, 5.48, 5.65, 5.69, 8.31, 8.38, 13.401, 13.404, 13.405. *See also* Commonwealth nations

*automatically*, 13.63–67

autonomous definitions, 6.15–39. *See also*

- defined terms; definitions; integrated definitions
- and virtual attachments, 5.103–04, 6.39
- definitional verbs, 6.23–30
- emphasis, 6.22
- enlarging definition, 6.24–25
- full, 6.23
- includes*, 6.24–27
- limiting definition, 6.24–25
- means*, 6.23, 6.25–27
- means and includes*, 6.26

- not including integrated definition in, 6.38
- placement, 6.19–21
- refers to*, 6.27
- structure of, 5.16–18
- stuffed, loaded, 6.31–37

autonomy, lawyer reluctance to surrender, p. xxxi–xxxii

## B

backdating, 2.44–45

backending, 4.78–86

*basis*, 13.68–72

*because*, 1.59, 13.73–75

*before*, 10.10, 10.11, 10.46

*best efforts*. *See also* *efforts* standards; *reasonable efforts* compared to *reasonable efforts*, 1.19, 8.8–40

*best endeavours*. *See best efforts*

*between*

- in references to points in time, 10.11
- versus *among* in introductory clause, 2.46–48

*biannual*, 10.57

*biennial*, 10.57

*billion*, 13.398–99

*bimonthly*, 10.57

*biweekly*, 10.57

blocks of text, optimal length of, 4.56–60

body of the contract. *See also* article;

- enumerated clauses; section; subsection

arranging, 4.65–77

- blank space after, 5.61
- components of, 4.2–64
- giving heading to, 2.165–67
- meaning, 3.1

*books and records*, 13.76–80

boosting a defined term, 6.55–56

bringdown condition and materiality, 9.15, 9.18, 9.30, 9.38–51, 9.52–57, 9.84, 9.102

British English, 12.56, 13.71, 13.56, 13.87, 13.244, 13.649, 20.34. *See also* England, United Kingdom

buried verbs, 13.228, 13.463–64, 17.7–9

*business day*

- denoting periods of time in, 10.52
- provision specifying drafting convention regarding date for taking action and, 15.5

*buy* versus *purchase*, 13.81–84

*by*, 10.10

*by and between*, 2.46

*bylaws*, 13.85–87

## C

*calendar month*, 10.67

*calendar year*, 10.66

Calibri font, 4.63, 16.8–9, 16.15, 16.17, 16.40, 16.42

*can*, 3.143

Canada, p. xxxiv, 2.36, 5.31, 8.36–37, 10.31, 12.23–28, 13.59–62, 13.320, 13.328, 13.401. *See also* Commonwealth nations

- categories of contract language, 3.1–344. *See also* language of agreement; language of belief; language of declaration; language of discretion; language of intention; language of obligation; language of performance; language of policy; language of prohibition; language of recommendation
- active voice in, 3.10–15
  - introduction to, 3.1–6
  - third person in, 3.7–9
- certain*, 13.88
- that certain*, 13.673
- certify*, 13.89–91
- change in control, change of control*, 13.92
- civil law, 2.81, 5.56, 13.413, 13.694
- clarity as a characteristic of optimal contract language, 1.3–36
- colon
- don't use instead of definitional verb, 6.29
  - one space after, 16.45
  - to introduce a series of statements of fact, 3.300
  - to introduce a set of enumerated clauses, 4.32, 4.36
- column, two, format, 4.61–64
- comma
- ambiguity, 12.16, 12.26–27, 12.30–40, 12.41, 12.43, 12.41–54, 12.55–66
  - don't use in formulas, 14.12
  - in enumerated clauses, 4.33, 4.36
  - serial comma, 12.55–66
  - to express fractional amounts, 13.398
  - with *such as*, 13.628, 13.630, 13.632
- commits to*, 3.86
- Commonwealth nations, 2.16, 2.100, 2.108, 2.165, 3.116, 4.59, 6.74, 16.63. *See also* Australia, Canada, England
- competitive*, 13.93–96
- complete and accurate*, 13.97–104
- comply with versus perform*, 3.138–39
- concluding clause, 5.2–23
- authorization, 5.20
  - function of, 5.2
  - in resolutions, 20.38–47
  - tense used in, 5.15–16
  - traditional form of, 5.18–22
  - two kinds of, 5.3–7
  - using *as of* date in, 5.17
  - using *signing* rather than *executing and delivering* in, 5.8–14
- condition
- condition precedent* and *condition subsequent*, 3.248
  - meaning, 3.246–48
  - use of *material adverse change* in closing conditions, 9.38–39
- conditional clause, 3.249–57
- function of, 3.249–51
  - matrix clause, 2.166–67, 2.172–73
  - position of, in sentences, 3.257
  - verbs in conditional clause, 3.252–54
  - verbs in matrix clause, 3.255–56
- conditions, expressing, 3.246–69
- using conditional clauses, 3.249–57
  - using language of obligation, 3.263–69
  - using language of policy, 3.258–62
- confidential*, adding notation to draft, 4.110
- conflict, 7.24–25
- consent after signature blocks, 5.60
- consent, written. *See also* resolutions
- attachments, 20.49–50
  - concluding clause, 20.38–47
  - counterparts, 20.47
  - date to use in, 20.41–46
  - lead-in of, 20.8–16
  - recitals of, 20.17–21
  - signature blocks, 20.48
  - title of, 20.5–7
- consequential damages*, 1.21, 13.105–24
- consideration. *See also* recital of consideration
- addressing a lack of consideration, 2.160–63
  - as consideration*, 13.40–44
- consistent, contract language should be, 1.63–66
- Construction Specifications Institute, 3.88
- consumer contracts, p. xxix, 1.29, 3.9, 3.58, 4.76
- contract versus agreement*, 2.9
- contractions, 17.29
- contractual*, 13.125–27
- costs and expenses*, 13.128–30
- coupled with an interest*, 1.21, 1.24, 13.131–40
- couplets, 1.42
- Courier font, 16.7, 16.14
- covenant*, 3.130–34
- covenants and agrees to*, 3.86
- covenants to*, 3.86
- cover sheet, 2.169–70, 4.103
- craft, contract drafting as, p. xxxi
- cross-references, 4.87–102
- don't emphasize, 4.97
  - don't use initial capitals in, 4.96, 17.26
  - function of, 4.87–91
  - hyperlinking, 4.99
  - including headings, 4.98
  - kinds of, 4.88–89
  - omitting of *this agreement* and *hereof* from, 4.92
  - referring to enumerated clauses, 4.95
  - to definitions, 6.79–90
  - updating, 4.100–02
  - using *section* in cross-references to subsections, 4.94
  - wording of, 4.92–99
- D**
- dangling text, 4.37
- date
- as of*, 2.33, 2.36, 5.17, 19.5, 19.16
  - format of, in introductory clause, 2.29–30

- function of, in introductory clause, 1.22  
 in introductory clause different from date of signing, 2.31–45  
 whether to include in introductory clause, 2.21–27  
*dated for reference*, 2.36  
 dating signatures, 2.34, 5.5–7  
*day*  
 unit for apportioning quantities per unit of time, 10.68  
 unit of period of time, 10.52  
*day and year first above written*, 5.22  
*deem*, 3.30, 13.67, 13.141–47  
*default*, 13.148–60  
*default versus event of default*, 13.149–55  
*has occurred and is continuing*, 13.156–60  
 defined terms. *See also* autonomous definitions; defined terms for party names; definition section; definitions; integrated definitions  
 combining, 6.95  
 defining in singular or plural, 6.5, 15.13  
 defining on site versus in definition section, 6.64–70  
 effect on readability, 6.91  
 for party names, 2.83–109  
 nature of, 6.3–9  
 parts of speech used as, 6.3  
 party used as, 2.102–06  
 purpose, 6.2  
 redundancy when using, 6.94  
*this Agreement*, 2.110–14  
 selecting, 6.10–13  
 to refer to parties collectively, 2.101–06  
 types of definitions, 6.14–61, 6.62  
 using, efficiently, 6.91–95  
 using in defined term word used in definition, 6.4, 9.80  
 using initial capitals in, 6.7–8  
 defined terms for party names, 2.83–109  
 based on party name, 2.93–96  
 creating and using, 2.84–90  
 don't provide alternatives for, 2.99  
 don't use all capitals for, 2.90  
 if used before defined, 6.87–90  
*party of the first part, party of the second part*, 2.107–09  
 referring to affiliates and subsidiaries in definition of, 2.88  
 referring to successors in definition of, 2.89  
 selecting, 2.91–100  
 to refer to parties collectively, 2.101–06  
 two kinds of, 2.91–92  
 using common noun for, 2.97–100  
 when to use initialism for, 2.95–96  
 where to position parentheses when defining, 2.87  
 whether to use *the* with common noun used as, 2.98  
 definitions. *See also* autonomous definitions; defined terms; integrated definitions  
 autonomous, 6.15–39  
 cross-references to, 6.79–90  
 integrated, 6.40–61  
 whether to use autonomous or integrated, 6.62  
 definition section, 6.663–78. *See also* defined terms; definitions  
 function of, 6.63  
 placement of, 5.92, 6.71–73  
 referring to, 6.86  
 using two columns for, 6.74–78  
 versus defining terms on site, 6.64–70  
*desire* (verb) in purpose recitals, 2.131, 2.133  
*disclaim*, 13.161–63  
 discretion. *See* language of discretion  
 division, performance by, 1.54–55  
 document assembly, p. xxxii  
*does not expect*, 3.222  
*does not include*, 6.24–25, 6.27  
 double materiality, 9.52–57  
 drafting conventions, provisions specifying, 15.1–21  
*due*, 3.245  
*due or to become due*, 13.164  
*duly*, 13.165–74  
*during . . . employment*, 13.175–76  
*during the term of this agreement*, 13.177–79  
*during such time as*, 17.14  
*duty versus obligation*, 3.136–37
- E**  
*each*, 11.83–84, 11.86  
*each and every*, 1.60  
*earlier of X and Y*, 13.674–76  
*effective date*, 2.28, 2.36, 2.42  
*efforts* standards, 8.1–73  
 caselaw, English, Canadian, and Australian, on, 8.31–38  
 caselaw, U.S., on, 8.21–30  
*endeavours*, 7.38, 8.31–35, 8.38, 8.42  
 enforceability of, 8.41–43  
 function of, 8.1–3  
 meaning of different, 8.7–40  
 spectrum of, 8.4–6  
 Uniform Commercial Code and, 8.39–40  
*either . . . or*, 11.43  
*ejusdem generis*, 13.286, 13.376  
 electronic signatures, 5.57–58  
*end versus terminate*, 13.180–84  
 England, p. xxxiv, 1.43, 2.16, 2.81, 3.52, 3.154, 3.247, 3.277, 3.286–88, 5.26, 5.30, 5.37, 5.47, 7.18, 7.38, 8.31–35, 8.42, 13.122, 13.506, 13.606, 14.30, 17.30. *See also* British English, Commonwealth nations, United Kingdom  
 English used in contracts around the world, ?  
*entitled to, is*  
 don't use in language of obligation, 3.107, 3.122–23, 3.219  
 in language of discretion, 3.209–12

- entitled to, is not*  
 as alternative to language of discretion, 3.219  
 in language of prohibition, 3.225–27
- enumerated clauses, 4.28–52  
 avoiding dangling text after, 4.37  
 enumeration, 4.38–46  
 first-line-indent versus hanging-indent  
   format, 4.47–51  
 function of, 4.28–31  
 integrated versus tabulated, 3.25–28  
 not using headings in, 4.52  
 punctuation in, 4.32–33  
 tabulation, 4.34–37  
 using enumeration to eliminate ambiguity,  
   12.3, 12.8, 12.15, 13.489, 14.23–24, 14.25,  
   14.27, 14.34
- enumeration  
 articles, 4.7  
 enumerated clauses, 4.38–46  
 in formulas using prose, 14.23–24  
 MSCD enumeration scheme, 4.53–55, 4.61  
 sections, 4.11–12  
 subsections, 4.23–25, 4.26  
*especially*, 13.185–89  
*event of default*, 13.149–55  
*every*, 11.83–84, 11.86  
*except as provided in*, 13.475  
*execute and deliver*, 5.8–14, 13.190–95  
*executed as a deed*, 5.47–48  
 exhibits. *See also* attachments; schedules  
   enumeration, 5.73–79  
   function, 5.80  
   provision specifying drafting convention  
     regarding, 15.15  
   referring to, in body of the contract, 5.81  
*expiration and termination*, 13.648–59
- F**
- fact that, the*, 17.17–18  
 failure to address an issue, 7.26–32  
*fax*, 13.196–200  
 50%  
   and meaning of *likely*, 13.382  
   and meaning of *substantial* and *substantially*,  
     13.622  
   instead of *half*, 13.501–02  
 first and second person, writing contracts in,  
   3.8–9  
*fixed fee*, 13.201–following, 10.44  
 fonts, 16.2–17  
   Arial, 16.3, 16.6  
   Calibri, 4.63, 16.8–9, 16.15, 16.17, 16.40,  
     16.42  
   Courier, 16.7, 16.14  
   cross-system compatibility, 16.10–15  
   Times New Roman, 16.3–6, 16.9, 16.14, 16.38  
 footers. *See* headers and footers  
*for any reason or no reason*, 13.203–09  
*force and effect*, 13.210–12  
*for example*, 13.289
- formal, formally*, 13.213–15  
 formulas, 14.11–51  
   rounding result of, 14.41–46  
   specifying order of operations in prose,  
     14.14–24  
   using mathematical equations to express,  
     14.48–51  
   using prose to express, 14.12–47  
*form and substance*, 13.216–19  
*for the avoidance of doubt*, 13.220–28  
 forward slash, 13.727–28  
 fractions  
   decimal fractions, 13.396–99  
   in formulas, 14.35–36, 14.38  
   instead of percentages, 13.503  
   using virgule to state, 13.728  
 fraud and intentional misrepresentation,  
   13.229–36  
*from*, 10.9, 10.11, 10.44  
   stating meaning of, in a provision specifying  
     drafting convention, 15.14  
*from the beginning of time*, 13.237–38  
*from time to time*, 3.199–204  
 frontloading, 2.1, 2.11, 4.78–86, 5.92  
 front of the contract. *See* title; introductory  
   clause; recitals; cover sheet; index;  
   table of contents; index of definitions  
*full-time*, 13.239–43  
*furthermore*, 1.59
- G**
- Garner, Bryan A., 3.57  
 gender-specific language, avoiding, 15.11,  
   17.10–13  
 good faith and reasonableness, 13.557–66  
 good faith, implied duty of, 3.137, 3.169–96,  
   7.35, 8.18, 13.207–08, 13.563, 13.593–94  
*goods and chattles*, 1.43  
 governing-law provision, 3.331, 13.18, 13.644  
 granting language, 3.31–43, 3.205–06  
*Grantee–Grantor* as defined terms, 2.97  
*grant* versus *grant to*, 3.38–43  
*greater of X and Y*, 13.674–76  
*gross negligence* and *negligence*, 13.435–57  
*guaranty* as term of art, 13.250–54  
*guarantee* versus *guaranty*, 13.244–49  
*guarantees that*, 13.255–59
- H**
- half* instead of 50%, 13.501  
 headers and footers, 4.103–11  
   file names, 4.109  
   logos, 2.169, 4.111  
   notations in, 4.110  
   page numbers, 4.103–08  
 headings  
   articles, 4.6  
   don't use in subsections, 4.27  
   in recitals, 2.122–25  
   provision specifying drafting convention

regarding, 15.7  
 section, 4.15–21  
*here- and there-* words, 3.21, 7.19,  
 13.260–61, 13.677  
 provision specifying drafting convention  
 regarding, 15.12  
*hereby*, 2.146, 3.20–21, 13.260, 15.12,  
 20.11–12, 20.14  
*hereof*, 4.92, 13.260, 15.12  
*herein*, 13.260, 15.12  
*hereinafter* used with integrated definitions,  
 2.86, 6.42  
*hereunder*, 7.17–19, 15.12  
*hold harmless*, 1.19, 1.47, 13.323–34  
*hypothecate*, 1.14, 1.52

**I**

*if and only if*, 1.60  
*if . . . then*, 3.251  
*I have authority to bind*, 5.31  
*immediately*, 13.524–28  
 and *promptly*, 13.518–37  
 implied warranty of merchantability,  
 emphasizing disclaimer of, 16.28  
*in accordance with*, *according to*, 13.262–63  
*in accordance with this agreement*, used in  
 recitals, 2.135–38  
*in all respects*, 1.60  
*in consideration of the premises*, 2.149–50  
*in lieu of*, 17.14  
*in order to/for*, 17.14  
*in the event that/of*, 17.14  
*in witness whereof*, 5.18, 5.22  
*including, includes*, 13.264–90  
*includes* used as definitional verb, 6.24–27  
*includes without limitation, includes but is not  
 limited to*, 13.264, 13.270–73, 13.278  
*including with limitation*, 13.290  
*including without limitation, including but not  
 limited to*, 1.58, 13.264, 13.270–73, 13.278  
 provision specifying drafting convention  
 regarding, 15.16  
*inclusive, exclusive*, with respect to periods of  
 time, 10.8, 10.9, 10.10, 10.12, 10.14, 10.15  
*incorporated by reference*, 2.139–40, 13.291–96  
*indefinitely and perpetually*, 13.297–301  
*indemnify*, 13.302–37  
 and *will be liable for*, 1.16, 1.17  
 as a term of art, 13.335–37  
*defend*, 13.334  
 function, 13.302–20  
*hereby indemnifies versus shall indemnify*,  
 13.321–22  
*indemnify and hold harmless*, 1.19, 1.47,  
 13.323–34  
*indenture*, 2.10, 13.338–40  
 index of definitions, 2.171, 4.103, 6.80–85,  
 6.86, 6.90  
 indicative mood, 3.88–95  
 initial capitals

*don't overuse*, 17.21–26  
*don't use*, in references to agreements,  
 2.18, 2.111  
*don't use*, in references to attachments, 5.72,  
 17.26  
*don't use*, in references to sections and  
 articles, 4.96, 17.26  
 in defined terms, 5.7–8  
 initialisms  
*don't use* as alternative defined term, 6.6  
*don't use*, in defined term for agreement,  
 2.114  
 providing definitions for, 6.9  
 using, for party-name defined terms, 2.94–96  
*in other words*, 13.341–42  
*in particular*, 13.343–44  
 Institution of Civil Engineers, 3.97  
 insurance policy as contract, 2.10  
 integrated definitions, 5.33–53. *See also*  
 autonomous definitions; defined terms;  
 definitions  
 boosting a defined term, 6.55–56  
 clarifying scope of, 6.52–53  
*collectively*, 6.54  
 emphasis, 6.44–45  
 matching parts of speech of defined term  
 and, 6.60–61  
 not using *hereinafter* with, 6.42  
 placing defined-term parenthetical, 6.44–51  
 stacking defined terms, 6.57–59  
 structure, 6.41–43  
 intentional misrepresentation and fraud,  
 13.229–36  
 intent to be legally bound, statement of, 2.80,  
 2.156, 5.21  
 international cultural differences in drafting,  
 p. xxxiv  
 internationally, use of this manual,  
 pp. xxxiii–xxxiv  
 introductory clause, 2.13–114  
*between* versus *among* in, 2.46–48  
 creating defined terms for party names in,  
 2.83–109  
 date stated in, 2.21–43  
 describing in, limited role of  
 parties, 2.59–62  
 describing parties in, 2.66–82  
 format, 2.15–16  
 function, 2.13  
 identifying parties in, 2.49–53  
 in amendment, 18.6  
 order of the parties in, 2.54  
 referring in, to lists of parties, 2.63–65  
 referring in, to parent company entering  
 into contract on behalf of  
 affiliate, 2.55–58  
 referring in, to performance by a division,  
 2.74–75  
 referring in, to type of agreement, 2.17–19  
 verb to use in, 2.20

*irrevocably*, 3.25–28, 13.200  
*is binding upon*, 17.14  
*is to be*, 3.328  
*is unable to*, 17.14  
*it being understood*, 13.345–49

**J**

*joint and several*, 13.350–63

**K**

*know all men by these presents*, 2.14  
*knowledge*, 13.364–75

**L**

language of agreement, 3.16–18  
 language of belief, 3.319–21  
 language of declaration, 3.270–318. *See also*  
   acknowledgments; representations  
   acknowledgements as, 3.313–18  
   alternatives to statements of fact, 3.306–08  
   function, 3.270–72  
   statements of fact as, 3.273–305  
 language of discretion, 3.141–222  
   and action subject to a condition, 3.238–39  
   *at its sole discretion* in, 3.168–96, 7.35  
   expressing prohibition by exception to, 3.236  
   *is entitled to* in, 3.209–12  
   *is not required to* in, 3.213–22  
   *may* in, 3.142  
   *may . . . only* in, 3.155–59  
   *may not require* in, 3.164–67  
   suboptimal alternatives to *may*, 3.143  
   timing and frequency of permitted action,  
     3.197–204  
   whether discretion is limited, 3.144–54  
 language of intention, 3.322–31  
 language of obligation, 3.44–140  
   don't use in resolutions, 20.37  
   don't use instead of language of performance,  
     3.24  
   to express conditions, 3.263–69  
 language of obligation imposed on someone  
   other than the subject of a sentence,  
     3.102–24  
   contexts in which occurs, 3.102–07  
   don't use *is entitled to* in, 3.107, 3.122–23,  
     3.219  
   don't use *receive* in, 3.106, 3.121  
   *shall cause* in, 3.114–17  
   *shall, must, or will* to convey, 3.108–20  
   ways of avoiding, 3.112–20  
 language of obligation imposed on the subject  
   of a sentence, 3.46–101  
   *agrees to* in, 3.83–85  
   don't use the simple present tense in,  
     3.96–98  
   indicative mood in, 3.88–95  
   *is responsible for* in, 3.99–101  
   problematic usages in, 3.83–87

  when exercising discretion requires  
     cooperation, 3.207–08  
   whether to use *shall, must, or will* to convey,  
     3.46–82  
 language of performance, 3.19–43, 20.24–29  
   don't use *agrees to* as, 3.83  
   don't use *do* as an auxiliary in, 3.23  
   don't use the passive voice in, 3.22  
   don't use, to indicate absence of performance,  
     3.29  
   function of, 3.19  
   granting language, 3.31–43, 3.205–06  
   *hereby* in, 3.20–21  
   in an amendment, 18.9  
   *irrevocably* in, 3.25–28  
   performative resolutions, 20.24–29  
   tense used in, 3.19  
 language of policy, 3.240–45  
   categories of, 3.241  
   function of, 3.240  
   passive-type policies, 3.244–45  
   used to express conditions, 3.258–62  
   verbs in, 3.242–43  
 language of prohibition, 3.223–39  
   and action subject to a condition, 3.238–39  
   by way of exception to language of discretion  
     or obligation, 3.236–37  
   don't use *shall never*, 3.230–31  
   don't use *shall refrain*, 3.228–29  
   *is not entitled to*, 3.225–27  
   *may not*, 3.224  
   *must not*, 3.223  
   *shall not*, 3.223  
   using of collective nouns with, 3.233–35  
 language of recommendation, 3.332–34  
 latent ambiguity, 7.23  
*later of X and Y*, 13.674–76  
 Latinisms, 13.376–77  
 lawyerisms, 17.14  
 lead-in, 2.79, 2.145–67, 3.16–18  
   and incorporation by reference, 2.139  
   in an amended and restated contract, 18.8  
   in an amendment, 18.7  
   language of agreement in, 3.16–18, 3.341  
   recital of consideration in, 2.149–64  
   recommended form of, 2.145  
   written consent, 20.8–16  
*lease* (noun), 2.10  
*lease* (verb), 3.37  
*lesser of X and Y*, 13.674–76  
 letter agreement, 19.1–16  
   components, 19.3–16  
   function of, 19.1–2  
*license* (verb), 3.35–37  
*Licensee-Licensor* as defined terms, 2.97  
*lien*, 1.53  
*likely*, 13.378–84  
*locus sigilli, L.S.*, 5.38  
*lump sum*, 13.385–87

**M**

MAC. *See material adverse change*

MAE. *See material adverse effect*

manual of style, need for in contract drafting,  
pp. xxx–xxxii

*material*, 9.1–32

ambiguity of, 9.3–6, 9.32

defining, 9.13–18

how used, 9.7–12

limiting use of, 9.25–31

versus *material adverse change*, 9.41–43

*material adverse change*, 9.33–135

aggregation, 9.36, 9.37, 9.48–49, 9.62,  
9.123–26

baseline date, 9.65, 9.72

carve-outs to definition of, 9.127–31

defining, 9.73–135

double materiality, 9.52–57

field of change, 9.93–113

how provisions using, relate to other  
provisions, 9.132–35

initialism for, 9.73

in bringdown condition, 9.50

meaning of, 9.82–85

*prospects*, 9.103–13

quantitative guidelines, 9.86–92

using, 8.34–72

using defined term *Material* when defining,  
9.75, 9.83–85

verbs in *material adverse change* provisions,  
8.58–62

versus *material*, 9.41–43

where used, 9.34–40

using, as opposed to *material adverse effect*,  
9.63–71

*material adverse effect*, 9.63–71. *See also material  
adverse change*

*materially*, 9.1, 9.15–18, 9.30, 9.45–47

defining, 9.15–18

in bringdown condition, 9.30, 9.45–47

materiality

bringdown condition and, 9.15, 9.18, 9.30,  
9.38–51, 9.52–57, 9.84, 9.102

double materiality, 9.52–57

mathematical equations, 14.48–51

matrix clause. *See conditional clause*

*may*

ambiguity inherent in, 3.160–61

*at its sole discretion* with, 3.168–96, 7.35

in language of discretion, 3.142

redundant in restrictive relative clauses,  
3.335, 3.338

stating meaning of, in a provision specifying  
drafting convention, 15.19

timing and frequency of permitted action,  
3.197–204

to convey possibility, 3.160–63

*may at its sole discretion*, 3.168–96, 7.35

*may not*, 3.213, 3.224

*may . . . only*, 3.155–59

*may refuse*, 3.222

*may require*, 3.164–67

*means*, 6.23, 6.25–27

*means and includes*, 6.26

*merely, mere*, 3.3, 13.388–91

*midnight*, 10.20–23

*might*, 3.162

money, stating amounts of, 13.392–405

currencies, 13.400–03

provision specifying drafting convention  
regarding, 13.405–05, 15.6

*month*

*calendar month*, 10.67

unit for apportioning quantities per unit of  
time, 10.64–65, 10.67

unit of period of time, 10.53, 10.56

*moral turpitude*, 13.406–24

*Mortgagee–Mortgagor* as defined terms, 2.97

MSCD enumeration scheme, 4.53–55, 4.61

*must*

in language of obligation imposed on  
someone other than the subject of a  
sentence, 3.108, 3.110

in language of obligation imposed on the  
subject of a sentence, 3.62–64

in language of obligation to express  
conditions, 3.266

don't use in language of policy to express  
conditions, 3.261

*must not*, in language of prohibition, 3.223

*mutatis mutandis*, 13.376, 13.425–27

*mutual, mutually*, 13.428–34

**N**

needless elaboration, 1.55–58

*need not*, 3.221

*need only*, 3.266

*negligence* and *gross negligence*, 13.435–57

nominalization. *See buried verbs*

*noon*, 10.21–22

*notice*

and *prior notice*, 13.458–64

apostrophe with, 13.465

notice periods, ambiguity in, 10.47–48

notices provisions, 2.68–69, 13.91, 13.504

*notwithstanding*, 13.466–70

and eliminating nullified provisions,  
13.476–77

*novation*, 1.17, 1.24, 13.478–80

*now, therefore*, 2.149–50

numbers

don't use both words and digits for,  
13.393–95, 14.1–8

using words then digits for, 14.9

numbers, consecutive ranges of, 14.52–63

distinguishing between stepped rates  
and shifting flat rates applied to,  
14.52–59

gap in, 14.62–63

overlap in, 14.60–61, 14.63

**O**

*obligation*. See also language of obligation  
 and *breach*, 3.140  
 and *covenant*, 3.130–34  
 and *prohibition*, 3.135  
*comply with* versus *perform*, 3.138–39  
 versus *duty*, 3.136–37  
*on*, 10.9, 10.10, 10.58  
*only*, 13.481–86  
*on one or more occasions*, 3.199–204  
*on the one hand . . . on the other hand*, 13.487–96  
*or*  
 ambiguity of, 11.34–72, 11.76, 11.78–82,  
 11.87–116, 11.120–28  
 specifying meaning of, in a provision  
 specifying drafting convention, 15.17

**P**

parentheses, 2.11, 2.86–89, 4.28, 6.41–43, 6.87,  
 12.15, 12.54, 13.348, 13.497–98, 14.1,  
 14.15–17, 14.24, 14.25–28  
 parties  
 defined terms for names of, 2.83–109  
 describing, in the introductory clause,  
 2.66–82  
 entering into a contract on behalf of an  
 affiliate, 2.55–58  
 extraneous information relating to, 2.79–82  
 identifying, in the introductory clause,  
 2.49–53  
 incidental information relating to, 2.76–78  
 referring to lists of, in the introductory  
 clause, 2.63–65  
 serving an administrative function, 2.71–72,  
 2.89  
 whether to provide address for, in  
 introductory clause, 2.68–69  
 with limited role, 2.59–62, 5.36  
*party*  
 as a defined term, 2.106–06  
 as an adjective, 13.499  
 provision specifying drafting convention  
 regarding, 15.10  
*party of the first part, party of the second part*,  
 2.107–09  
 passive voice. See voice  
*payable*, 3.244  
*pay* versus *pay to*, 3.43  
*per annum*, 17.14  
 percentages, 13.500–03  
 expressing results of calculation as, 14.13,  
 14.37–40  
*perfection, perfect*, 1.9  
 period  
 adding or deleting enumerated clause in  
 amendment, 18.17, 18.19  
 bold, after section heading, 4.15  
 in a set of enumerated clauses, 4.29  
 in a set of resolutions, 20.22  
 in section numbers, 4.11

space after, 16.45  
*perpetually and indefinitely*, 13.297–301  
*personal delivery*, 13.504–07  
 persuade, contract language should not, 1.59–61  
*plan of exchange*, in title, 2.8  
*plan of merger*, in title, 2.7  
 plural, whether singular means, 13.748–60  
 role of *any*, 13.755–58  
 possessives, 17.29  
*power and authority*, 16.19  
 precision as a characteristic of optimal contract  
 language, 1.37–40  
*prevailing party*, 13.508–16  
*prior notice and notice*, 13.458–64  
*prior to*, 10.46, 17.14  
*privileged and confidential*, adding notation to  
 draft, 4.110  
*product and units of the product*, 13.517  
 prohibition. See language of prohibition  
*promises to*, 3.86  
*promptly*, 13.521–23  
 and *immediately*, 13.518–37  
 pronouns, a provision specifying drafting  
 convention regarding, 15.11, 15.20  
*proprietary*, 13.538–40  
*pro rata* and prorating, 10.70, 10.72, 13.70,  
 13.361, 13.377, 14.36, 14.46  
*prospects*, 9.103–13  
*provided that*, 13.541–48  
*provided, however, that*, 13.541  
 provisos. See *provided that*  
 punctuation. See also apostrophe; colon;  
 comma; quotation mark; semicolon; period  
 traditional view of, 17.30  
*purchase* versus *buy*, 13.81–84  
*pursuant to*, 17.14

**Q**

quotation mark  
 curly and straight, 16.51–57  
 don't use with attachment enumeration, 5.71  
 in creating autonomous definitions, 6.22  
 in creating integrated definitions, 2.86,  
 6.44–45

**R**

*reasonable efforts*. See also *efforts* standards;  
*best efforts*  
 carve-outs from definition of, 8.61–66  
 compared to *best efforts*, 1.19, 8.8–40  
 defining, 8.56–66  
 determining whether a party has made,  
 8.44–51  
 using only, 8.52–55  
 wording *reasonable efforts* provisions, 8.67–73  
*reasonable endeavours*. See *reasonable efforts*  
 reasonableness and good faith, 13.557–66  
*reasonable, reasonably*, 7.34, 13.549–56  
 recital of consideration, 2.149–64  
 and New York General Obligations Law, 2.156

and Uniform Written Obligations Act, 2.156  
 establishes rebuttable presumption, 2.159  
 false, 2.153–55  
 recitals, 2.115–44  
   defining terms in, 1.143  
   function of, 2.41, 2.74, 2.77, 2.109, 2.116–21,  
   2.158, 13.496, 18.4  
   *in accordance with this agreement* in, 2.135–38  
   incorporation by reference and, 2.139–40  
   kinds of, 2.117–19  
   narrative prose in, 2.127–29  
   no need for enumeration in, 2.126  
   omitting archaisms from, 2.123, 2.128  
   omitting rights and obligations from, 2.140  
   relation to language of declaration, 3.135  
   significance in determining whether a  
     contract is under seal, 5.38  
   significance in determining whether a lease  
     was executed as a deed, 5.48  
   to amendment, 18.6  
   to written consent, 20.17–21  
   *true and correct* and, 2.141–42  
   using defined terms in, 2.144  
   using heading with, 2.122–25  
   verb in purpose recitals, 2.130–34  
*reckless, recklessness*, 7.38, 13.441–43,  
 13.451–57  
 redundancy, omitting, generally, 1.41–58  
 references to time, 10.1–76. *See also* *day*; *week*;  
*month*; *year*  
   alternatives to uncertainty in references to  
     points in time, 10.15–17  
   apportioning quantities per unit of time,  
     10.62–76  
   how to state a time of day, 10.33–36  
   *midnight*, 10.20–23  
   *noon*, 10.21–22  
   periods of time, 10.43–61  
   points in time, 10.7–42  
   prepositions to denote points in time,  
     10.9–13  
   provision specifying drafting convention  
     regarding, 15.4, 15.14  
   specifying the time of day, 10.18–36  
   time of day as a boundary between periods of  
     time, 10.24–28  
   time zones, 10.37–42, 15.4  
   using *at* to state a deadline, 10.29  
*refers to*, 6.27  
 registration number of party, including in  
   introductory clause, 2.70  
*register* as defined term, 6.8, 6.27  
*remediate*, 13.567–69  
*remit, remittance*, 13.570–73  
 repetition, contract language should omit, 1.62  
*represents and warrants*, 3.273–98  
   alternatives to, 3.289–93, 3.299–305  
   as term of art, 3.275–77  
   cost of using, 3.294–98  
   inconsistent with standard English, 3.278–82

  lack of support for use of, 3.283–88  
   *represents*, 1.12, 1.17, 1.23, 3.302–05. *See also*  
     *represents and warrants*  
   *representations and warranties*. *See* *represents and*  
     *warrants*  
   *required to, is not*, 3.143, 3.213–22  
   resistance to change, p. xxxiii  
   resolutions. *See also* consent, written  
     factual resolutions, 20.23–33  
     performative resolutions, 20.24–29  
     suasive resolutions, 20.34–36  
   *resolved*, 20.20–21  
   *respective, respectively*, 13.574–84  
     *respective*, 13.575–81  
     *respectively*, 13.582–84  
   *responsible for, is*, 3.99–101  
   restrictive relative clause, 3.335–38  
   restrictive and nonrestrictive clauses  
     and *which*, 12.41–54  
     and *such as*, 13.626–33  
   rhetorical emphasis, 1.60–61, 3.213, 3.232,  
     3.317, 13.227, 13.256, 16.37  
   *rightfully, rightful*, 13.585–89  
   Romanette, 4.38  
   rounding numbers, 10.70, 14.41–46

## S

(*s*), 17.28  
*said*, 7.15, 7.19, 13.590–91  
*same*, 13.592  
*satisfactory*, 7.35, 13.593–95  
 schedules. *See also* attachments; exhibits  
   disclosure schedules, 5.83–90  
   enumeration, 5.73–79  
   function, 5.82  
   placing contract sections in, 5.91–92  
   provision specifying drafting convention  
     regarding, 15.15  
   using *in* or *on* with, 5.93–95  
 seals, 5.37–45, 5.49, 5.50–51  
   and consideration, 5.41  
   and statutes of limitations, 5.42  
   current significance, 4.38–45  
   original function of, 5.37  
 sections, 4.8–21  
   don't use initial capitals in references to, 4.96,  
     17.26  
   enumeration, 4.11–12  
   first-line-indent versus hanging-indent  
     format, 4.13–14  
   function of, 4.8–10  
   grouped in articles, 4.3–4  
   headings, 4.15–21  
   text not falling within, 4.21  
*security interest*, 1.9  
*semiannual*, 10.57  
 semicolon  
   adding enumerated clause in amendment,  
     18.17  
   don't use in recitals, 2.129

- ending resolutions with, 20.22
- in section headings, 4.18
- to separate enumerated clauses, 4.33
- when stacking defined terms, 6.27
- with provisos, 13.541
- semimonthly*, 10.57
- semiweekly*, 10.57
- sentence, length of, 17.2–5
- set forth in*, 17.14
- several*. *See joint and several shall*
- shall*
  - in language of obligation imposed on the subject of a sentence, 3.46–82
  - stating meaning of, in a provision specifying drafting convention, 15.18, 15.19
  - used to mean *has a duty to*, 3.46–48, 3.73–82
- shall*, misuse of, p. xxx
  - discretionary, 3.47
  - example of inconsistency, 1.64
  - example of *shall* failing the “has a duty” test, 3.79
  - in conditional clauses, 3.253
  - in definitions, 6.28
  - in definitional verb, 6.30
  - in language of discretion, 3.216
  - in language of intention, 3.328
  - in language of obligation imposed on other than subject of sentence, 3.108–09, 3.123
  - in language of obligation to express conditions, 3.263–69
  - in language of policy, 3.243, 6.30
  - in language of policy to express conditions, 3.259, 3.261
  - in resolutions, 20.37
  - in restrictive relative clauses, 3.335–37
- shall cause*, 3.114–17
- shall never*, 3.230
- shall not*, in language of prohibition, 3.223
- shall procure*, 3.116
- shareholder* or *stockholder*, 13.596–97
- shareholders agreement*, 13.598–602
- should*, 3.47, 3.254, 20.34
- signatory*, 13.603–05
- signed, sealed, and delivered*, 5.38
- signature block, 5.24–59
  - authorization, 5.29, 5.31
  - dating signatures, 2.34, 5.5–7
  - deeds, 5.46–48
  - don’t use more than one entity name per signature block, 5.26
  - electronic signatures, 5.57–58
  - format, 5.25–35
  - having legal counsel sign, 5.59
  - notarizing signatures, 5.54–56
  - parties with limited role, 5.36
  - seals, 5.37–45, 5.49, 5.50–51
  - two persons signing for one entity, 5.30
  - witnessing signature, 5.52–53
- signature page, 5.23, 5.62–63
- signature page follows*, 5.61
- significant*, 8.4
  - defining, 9.19–24
  - limiting use of, 9.25–31
- signing*, 5.13
- singular means plural, whether, 13.748–60
  - role of *any*, 755–58
- sole and exclusive*, 13.606–13
  - sole and exclusive*, 13.611–13
- solicit*, 13.614–17
- sources of uncertainty, 7.1–39. *See also*
  - ambiguity; vagueness
  - ambiguity, 7.5–19
  - conflict, 7.24–25
  - failure to address an issue, 7.26–32
  - undue generality, 7.20–23, 7.32, 10.14
  - vagueness, 7.33–39
- specific*, 13.618–20
- stacking defined terms, 6.57–59
- standard English
  - as compared to plain English, 1–29
  - as opposed to “tested” contract language, 1.30–36
  - in contracts, 1.28–29
- starting*, 10.9
- statements of fact. *See also* representations
  - alternatives to, 3.306–08
  - as language of declaration, 3.271
  - don’t include, in concluding clause, 5.20
  - don’t refer to, as becoming inaccurate, 3.311
  - don’t use *breach* in connection with, 3.309–10
  - material* in, 9.5, 9.6, 9.9, 9.11, 9.25–31
  - placement of introductory language to, 4.21
  - using *material adverse change* in, 9.35–37, 9.39
  - using *represents and warrants* to express, 3.273–305
  - using only *represents* to express, 3.302–05
  - using *states* to express, 1.23, 3.299–301
- states*, using, instead of *represents*, 1.23, 3.299–301
- stockholder* or *shareholder*, 13.596–97
- strictly*, 1.60
- strings of synonyms or near-synonyms, 1.42–54
- style guide, use of in contract drafting, p. xxxi
- style in contract drafting, p. xxxi
- subject to*, 2.136, 13.471–74
  - and eliminating nullified provisions, 13.476–77
- subject to the terms of this agreement*, 2.136, 13.473–74, 13.475
- subject, verb, and object, gap between, 17.6
- subjunctive, in language of policy used to express conditions, 3.254
- subsections, 4.22–27
  - don’t use headings in, 4.27
  - enumeration, 4.23–25, 4.26
  - first-line-indent format, 4.26
  - function of, 4.22
  - using *section* to refer to, 4.94
- subsequent to*, 17.14

*subsidiary*

- example of a defined term with a definition
  - that's largely clear, 6.68
- capitalizing the defined term for, 6.7
- incorporating, in the definition of defined terms for party names, 2.88
- referring to, in the introductory clause, 2.52, 2.76–77
- time of determination, 13.4–6
- substantial, substantially*, 13.621–23
- successors and assigns*, provision specifying drafting convention regarding, 15.21
- such*, 7.18–19, 13.591, 13.635–37
- such as*, 13.644–34
- survival, 13.638–47
  - of claims, 13.639–41
  - of provisions, 13.644–44
  - of representations, 13.645–47
- supplement, 18.10
- symbols in tables in chapter 3, meaning of, 3.6
- syntactic ambiguity
  - in mathematical formulas, 14.14
  - meaning of, 12.1
  - modifiers, 12.2–40
  - serial comma, 12.55–66
  - that* and *which*, 12.41–54

**T**

- table of contents, 2.168–69, 4.103
- tabulation
  - of enumerated clauses, 4.34–37
  - of mathematical formulas, 14.47
  - of the introductory clause, 2.16
  - using, to eliminate ambiguity, 12.8, 12.15
- terminate* versus *end*, 13.180–84
- termination* and *expiration*, 13.648–59
- termination for convenience*, 13.660–71
- termination for any reason or no reason*, 13.203–07
- termination without cause*, 13.669
- terms and conditions*, 13.672
- terms of art
  - improvised, 1.18–20
  - misapplied, 1.11–17
  - problematic, generally, 1.7–27
  - replacing, 1.22–27
  - top-heavy, 1.21
- tested contract language, myth of, 1.30–36
- that*, 12.41–54
- that certain*, 13.673
- the*, extraneous, 17.27
- therefore*, 1.59
- there is, there are*, 17.19
- there-* words, 13.260–61
- therefor*, 13.677–78
- these presents*, 2.14, 5.18, 5.22
- third party*, 2.107, 13.679–84
- third-party beneficiaries, 2.56–57, 13.684
  - and the defined term *Party*, 2.103–06
- third person, writing contracts in, 3.7–9
- through*, 10.10

*throughout the universe*, 13.685–86

- time. *See* references to time
  - time is of the essence*, 1.21, 13.687–97
  - timely*, 13.71
  - time zones
    - provision specifying drafting convention regarding, 15.4
    - specifying, in reference to time of day, 10.37–42
  - Times New Roman font, 16.3–6, 16.9, 16.14, 16.38
  - title, 2.2–12
    - agreement* and *contract* in, 2.9–10
    - given to amendment or amended and restated contract, 18.5
    - making title concise, 2.3–4
    - not using jargon in, 2.5
    - of written consent, 20.5–7
    - supplementing, 2.11
    - unnecessary to track terminology of state statutes in, 2.7–8
  - to*, 10.10, 10.11
    - stating meaning of, in a provision specifying drafting convention, 15.14
  - together with* and *as well as*, 13.698–701
  - to the extent permitted by law*, 13.702–04
  - to the extent that*, 17.16
  - trademarks, references to, 13.705–20
  - transfer* as defined term, 6.3, 6.8, 6.27
  - triplets, 1.42
  - true and correct*, 2.141–42
  - two-column format, 4.61–64
  - typography. *See also* all capitals; initial capitals; fonts
    - bold, 2.86, 4.15, 4.97, 6.7, 6.22, 6.44, 16.21, 16.23, 16.33, 16.35, 20.7
    - characters per line, 4.62, 16.41–43
    - design embellishments, 16.61–65
    - emphasis, 16.21–37
    - first-line indents, 16.58–60
    - fonts, 16.2–17
    - font size, 16.38–40
    - italics, 4.16, 4.97, 6.7, 16.21, 16.33, 16.35, 16.36, 18.20
    - justification, 16.18–20
    - line spacing, 16.44
    - quotation marks, curly and straight, 16.51–57
    - rhetorical emphasis through, 16.37
    - serif versus sans serif, 16.16–17
    - space after punctuation, 16.45–50
    - underlining, 4.16, 4.97, 13.541, 16.21, 16.24
- U**
- under no circumstances*, 1.60
  - undertakes to*, 3.86
  - under the provisions of*, 17.14
  - undue generality, 7.20–23
  - Uniform Commercial Code, 3.169, 3.182, 3.193, 3.284, 3.303, 3.340, 5.45, 8.39–40, 13.163, 13.734, 16.28–30, 16.33–34

United Kingdom, p. xxxiv, 3.97, 13.398. *See also*  
 British English, England  
*units of the product and product*, 13.517  
*unless and until*, 13.721–22  
*unless the context requires otherwise*, 13.723–24  
*unless the parties agree otherwise*, 13.725  
*until*, 10.10  
   stating the meaning of, in a provision  
   specifying drafting convention, 15.14  
*until such time as*, 17.14

## V

vagueness, 7.33–39. *See also efforts standards*;  
*material*  
*immediately*, 7.34, 13.518–37  
*moral turpitude*, 7.37  
*negligence and gross negligence*, 13.435–57  
*promptly*, 7.34, 13.518–37  
*reasonable, reasonably*, 7.34, 13.549–56  
*reckless, recklessness*, 7.38, 13.441–43,  
 13.451–57  
*satisfactory*, 7.35, 13.593–95  
*substantial, substantially*, 7.37, 13.621–23  
*wanton*, 7.38, 13.442–44, 13.451  
*very*, 13.726  
*vendor*, using, as the defined term for a party  
 name, 2.100  
*virgule*, 13.727–28  
 voice  
   active, versus passive, 3.10–15, 3.22, 3.78–79,  
   3.94, 3.103, 3.113, 3.215, 13.143, 13.659,  
   20.28, 20.39  
   passive-type policies, 3.244–45

## W

waiver of jury trial, emphasizing, 16.31  
*want* (verb) in purpose recitals, 2.131–34  
*wanton*, 7.38, 13.442–44, 13.451  
*warrant* (verb), 1.17, 1.25, 13.732–44. *See also*  
*represents and warrants*

*warrant* (noun), *warrant certificate, warrant*  
*agreement*, 13.729–31  
*warranty*, 13.732–47  
*week*  
   unit of period of time, 10.54  
   unit for apportioning quantities per unit of  
   time, 10.68  
*whatsoever*, 1.60  
*whereas*, 1.4, 2.128  
*which*, 12.41–54  
*wholly and fully*, 1.60  
*wish* (verb) in purpose recitals, 2.131, 2.133  
*will*  
   in language of obligation imposed on  
   someone other than the subject of a  
   sentence, 3.108, 3.111  
   in language of obligation imposed on the  
   subject of a sentence, 3.65–69  
   in language of policy, 3.242  
   misuse of, in language of policy to express  
   conditions, 3.261  
   stating meaning of, in a provision specifying  
   drafting convention, 15.18  
   to express future time, 3.50–53  
*will be expected to*, 3.87  
*willful, willfully*, 7.11, 13.442–43, 13.452,  
 13.761–62  
*within*, 10.49–50  
*without limiting the generality of the foregoing*,  
 13.767–70  
*witnesseth*, 2.123, 4.22  
*wordsmithing* as a term of denigration, 1.39  
*wrongfully, wrongful*, 13.589

## Y

*year*  
   unit of period of time, 10.55, 10.56  
   unit for apportioning quantities per unit of  
   time, 10.63, 10.65–66  
*calendar year*, 10.66