Categories of Contract Language
Quick Reference

Category of Contract Language	*Verb Structure*	*Context*	*Example*	*Reference*
Agreement	*agree*	Used only in the lead-in	*The parties therefore agree as follows:*	
Performance	*hereby* + simple present	Expresses actions performed by signing the contract	*Acme hereby purchases the Assets from Doe*	
Obligation (Imposed on the Subject of the Sentence)	*shall* + infinitive	Imposes a duty on the subject of the sentence (if a party)	*Acme shall purchase the Shares from Doe.*	
Obligation (Imposed on Someone Other Than the Subject of the Sentence)	*must* + infinitive	The subject isn't a legal person and so cannot assume a duty	*The Closing must take place at Acme's offices.*	
	must + infinitive	The subject, although a legal person, isn't a party and so cannot assume a duty	*The arbitrator must issue the award no later than 20 days after the last day of the hearing.*	
ALTERNATIVE	*shall cause*	Language of obligation imposed on the subject of the sentence—used if the subject is one or more parties and the object isn't a person	*Parent shall cause the Closing to take place at Acme's offices.*	
	shall cause	Language of obligation imposed on the subject of the sentence—used if the subject is one or more parties and the object is an instrumentality of the subject	*Parent shall cause Sub to sell the Widget Assets.*	
Discretion	*may* + infinitive	If the subject has the discretion to take or not take a specified action	*The Indemnified Party may at its expense retain separate co-counsel.*	
	is not required to + infinitive	Conveys absence of obligation	*Acme is not required to replace the Widget Equipment.*	
Prohibition	*shall not* + infinitive	Imposes a prohibition on the subject of the sentence	*The Customer shall not modify the Equipment without Acme's prior written consent.*	

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Policy	Simple present	Policies that apply on effectiveness of the contract	*New York law governs this agreement.*	
	Simple present	Policies that state a time of effectiveness or lapsing of effectiveness	*This agreement terminates on December 31, 2019.*	
	will + infinitive	Policies that relate to future events that might not take place or the timing of which is uncertain	*This agreement will terminate upon the closing of a Qualified IPO.*	
	will + linking verb	Policies that relate to future events that might not take place or the timing of which is uncertain	*Any attempted transfer of Shares in violation of this agreement will be void.*	
Condition (Generally)		A condition is a future and uncertain event or circumstance on which the existence of a legal relation depends		
Condition (Using a Conditional Clause)	Simple present	Used in the conditional clause	*If Jones ceases to be employed by the Company, …* [continued in next row]	
	will + infinitive	Used in the matrix clause, if the verb in a matrix clause would, absent the conditional clause, be in the present tense (*shall*, *may*, and *must* are unaffected by presence of a conditional clause)	[continued from previous row] … the Option will terminate.	
Condition (Using Language of Policy)	Simple present	Introduced with *that-*clause, whether single condition or part of a list	*The Buyer's obligations under this agreement are subject to satisfaction of the following conditions: … that Acme's statements of fact are accurate … .*	
	Present perfect	Introduced with *that-*clause, whether single condition or part of a list	*The Buyer's obligations under this agreement are subject to satisfaction of the following conditions: … that the Buyer has received an opinion of Acme's counsel … .*	

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Condition (Using Language of Obligation)	*must*	Introduced with *to* infinitive clause or clause beginning with *for*	*To be reimbursed, Acme must submit to Widgetco*	
Declaration	*states*	Serves to assert accuracy of a fact the declaring party has knowledge of	*Acme states that the Equipment is listed on schedule A.*	
	acknowledges	Serves to accept accuracy of a fact the other party has knowledge of	*Acme acknowledges that the Consultant is in the business of providing services to others.*	
Intention	*intends that + will*	Used instead of language of policy if a given status depends on circumstances after the contract is signed	*The parties intend that the Consultant will be an independent contractor.*	
Recommendation	*recommends, advises,* or *encourages + that*	Allows a party with greater bargaining power to avoid dispute by pointing out something the other party might otherwise miss	*The Company recommends that the Participant consult a legal adviser if …*	