

FIGURE 1 ■ QUICK REFERENCE FOR THE CATEGORIES OF CONTRACT LANGUAGE

<i>Category of Contract Language</i>	<i>Verb Structure</i>	<i>Context</i>	<i>Example</i>	<i>Ref.</i>
Agreement	<i>agree</i>	Used only in the lead-in	<i>The parties therefore agree as follows:</i>	3:30
Performance	<i>hereby + simple present</i>	Expresses actions performed by signing the contract	<i>Acme hereby purchases the Assets from Doe</i>	3:33–35
ALTERNATIVE	Negative form of the present continuous	Language of policy expressing that the party isn't taking the specified action on signing the contract	<i>In this agreement the Buyer is not assuming any Excluded Liabilities.</i>	3:47
Obligation (Imposed on the Subject of the Sentence)	<i>shall + infinitive</i>	Imposes a duty on the subject of the sentence (if a party)	<i>Acme shall purchase the Shares from Doe.</i>	3:72–74
Obligation (Imposed on Someone Other Than the Subject of the Sentence)	<i>must + infinitive</i>	The subject isn't a legal person and so cannot assume a duty	<i>The Closing must take place at Acme's offices.</i>	3:133
	<i>must + infinitive</i>	The subject, although a legal person, isn't a party and so cannot assume a duty	<i>The arbitrator must issue the award no later than 20 days after the last day of the hearing.</i>	3:134
ALTERNATIVE	<i>shall cause</i>	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	<i>Parent shall cause the Closing to take place at Acme's offices.</i>	3:143–144
	<i>shall cause</i>	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	<i>Parent shall cause Sub to sell the Widget Assets.</i>	3:143–144

Category of Contract Language	Verb Structure	Context	Example	Ref.
Discretion	<i>may + infinitive</i>	If the subject has the discretion to take a specified action	<i>The Indemnified Party may at its expense retain separate co-counsel.</i>	3.188
	<i>is not required to + infinitive</i>	Expresses absence of obligation	<i>Acme is not required to replace the Widget Equipment.</i>	3.268
	<i>is not prohibited from + gerund</i>	Expresses absence of prohibition	<i>Acme is not prohibited from removing the Widget Equipment.</i>	3.277
Prohibition	<i>shall not + infinitive</i>	Imposes a prohibition on the subject of the sentence	<i>The Customer shall not modify the Equipment without Acme's prior written consent.</i>	3.278
Policy	Simple present	Policies that apply on effectiveness of the contract	<i>New York law governs this agreement.</i>	3.307
	Simple present	Policies that state a time of effectiveness or lapsing of effectiveness	<i>This agreement terminates on 31 December 2019.</i>	3.307
	<i>will + infinitive</i>	Policies that relate to future events that might not take place or the timing of which is uncertain	<i>This agreement will terminate upon the closing of a Qualified IPO.</i>	3.307
	<i>will + linking verb</i>	Policies that relate to future events that might not take place or the timing of which is uncertain	<i>Any attempted transfer of Shares in violation of this agreement will be void.</i>	3.307
Condition (Generally)		A condition is a future and uncertain event or circumstance on which the existence of a legal relation depends		3.313

Category of Contract Language	Verb Structure	Context	Example	Ref.
Condition (Using a Conditional Clause)	Simple present	Used in the conditional clause	<i>If Jones ceases to be employed by the Company, ...</i> [continued in next row]	3.321
	<i>will</i> + infinitive	Used in the matrix clause, if the verb in a matrix clause would, absent the conditional clause, be in the present tense (<i>shall, may, and must</i> are unaffected by presence of a conditional clause)	[continued from previous row] ... the Option will terminate.	3.324
Condition (Using Language of Policy)	Simple present	Introduced with a <i>that</i> -clause, whether a single condition or part of a list	<i>The Buyer's obligations under this agreement are subject to satisfaction of the following conditions: ... that Acme's statements of fact are accurate</i>	3.354
	Present perfect	Introduced with a <i>that</i> -clause, whether a single condition or part of a list	<i>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</i>	3.354
Condition (Using Language of Obligation)	<i>must</i>	Introduced with a <i>to</i> infinitive clause or a clause beginning with <i>for</i>	<i>To be reimbursed, Acme must submit to Widgetco</i>	3.356, 3.361
Declaration	<i>states</i>	Asserts as accurate a fact the declaring party has knowledge of	<i>Acme states that the Equipment is listed on schedule A.</i>	3.416
	<i>acknowledges</i>	Accepts as accurate a fact the other party has knowledge of	<i>Acme acknowledges that the Consultant is in the business of providing services to others.</i>	3.436

Category of Contract Language	Verb Structure	Context	Example	Ref.
Intention	<i>intends that + will</i>	Used instead of language of policy if a given status depends on circumstances after the contract is signed	<i>The parties intend that the Consultant will be an independent contractor.</i>	3.44 ²
Recommendation	<i>recommends, advises, or encourages + that</i>	Allows a party with greater bargaining power to avoid dispute by pointing out something the other party might otherwise miss	<i>The Company recommends that the Participant consult a legal adviser if ...</i>	3.45 ²

3.6 This chapter includes tables containing one or more examples of a category of language, with each example being followed by variations on that example. Each initial example is identified by two numbers in a set of brackets, the first designating the number of the table and the second designating the number of the example within that table. For example, [3-3] denotes the third example in table 3. Each variation is given the same designation as the related initial example but is distinguished by adding a lowercase letter. For example, [3-3b] denotes the second variation on [3-3].

3.7 In addition, each example and each of its variations is annotated with the following symbols to indicate how acceptable it is:

- ✓✓ means this usage is recommended
- ✓ means that this usage, although acceptable, can be improved; that you should use it with caution; or that how acceptable it is depends on the context in which it is used
- ✗ means this usage isn't recommended
- ✗✗ means avoid this usage

GENERAL CONSIDERATIONS

Use the Third Person

3.8 In business contracts use the third person, as in *Acme shall purchase the Shares from Doe*. That's standard practice.

3.9 Some contracts are in the first and second person, using *we*, *us*, and *our* for one party and *you* and *your* for the other. Using both the first and second