
Contents

Downloadable precedents	v
Licence agreement	vi
Preface	vii
Table of Statutes	xxv
Table of Statutory Instruments	xxix
Table of Cases	xxxix

Introduction 1

What is 'boilerplate'?	2
Which boilerplate clauses are the most important?	2
Location of clauses in an agreement	4
Origin of the meaning of 'boilerplate'	9

Acknowledgments 10

Purpose of the clause	10
Drafting issues	11
Location in the agreement	12
Linkage and use	12
Sample precedent material	13

Affiliates, group companies and subsidiaries 16

Purpose of the clause	16
Drafting issues	16
Location in the agreement	18
Linkage and use	19
Sample precedent material	19
Extracts from legislation	21

Agency, partnership and joint venture (denials of) 29

Purpose of the clause	29
Drafting issues	32
Location in the agreement	33
Linkage and use	33
Sample precedent material	33

Agents for service 35

Purpose of the clause	35
Drafting issues	35
Location in the agreement	37

Linkage and use	37
Sample precedent material	37
Agreeing to enter and signing an agreement (execution and signature block clauses) 40	
Purpose of the clauses	40
Note on legal terminology	40
Drafting issues	41
Location in the agreement	43
Linkage and use	44
Sample precedent material	44
Amendment or variation 47	
Purpose of the clause	47
Drafting issues	48
Location in the agreement	50
Linkage and use	50
Sample precedent material	51
Case analysis	52
Announcements 54	
Purpose of the clause	54
Drafting issues	55
Location in the agreement	56
Linkage and use	57
Sample precedent material	57
Appointment 60	
Purpose of the clause	60
Drafting issues	61
Location in the agreement	61
Linkage and use	61
Sample precedent material	61
Arbitration, alternative dispute resolution and the use of experts 63	
Purpose of the clause	63
Drafting issues	67
Location in the agreement	72
Linkage and use	72
Consumer issues	72
Sample precedent material	73
Assignment and novation 81	
Purpose of the clause	81
Drafting issues	83
Location in the agreement	86

Linkage and use	86
Sample precedent material	87
Case analysis	90
Auditing, inspection and records	94
Purpose of the clause	94
Drafting issues	95
Location in the agreement	97
Linkage and use	97
Sample precedent material	97
Case analysis	98
Best endeavours, reasonable endeavours and all reasonable endeavours	102
Purpose of the clause	102
Drafting issues	106
Location in the agreement	108
Sample precedent material	108
Case analysis	111
Breach	116
Purpose of the clause	116
Drafting issues	119
Location in the agreement	120
Linkage and use	120
Case analysis	120
Capacity (and authority)	124
Purpose of the clause	124
Drafting issues	126
Location in the agreement	128
Linkage and use	129
Sample precedent material	129
Charges	131
Purpose of the clause	131
Drafting issues	132
Location in the agreement	132
Linkage and use	133
Sample precedent material	133
Commencement date	135
Purpose of the clause	135
Drafting issues	135
Location in the agreement	136
Linkage and usage	137
Sample precedent material	137
Case analysis	138

Contents

Completion 140

- Purpose of the clause 140
- Drafting issues 140
- Location in the agreement 141
- Linkage and use 141
- Sample precedent material 142

Conditions precedent and subsequent 145

- Purpose of the clause 145
- Drafting issues 147
- Location in the agreement 148
- Linkage and use 148
- Sample precedent material 150
- Case analysis 151

Confidentiality 154

- Purpose of the clause 154
- Drafting issues 156
- Location in the agreement 160
- Linkage and use 161
- Sample precedent material 162
- Case analysis 171

Consent 176

- Purpose of the clause 176
- Drafting issues 177
- Location in the agreement 178
- Linkage and use 178
- Sample precedent material 179
- Case analysis 180

Consequences of termination (survival of terms) 183

- Purpose of the clause 183
- Drafting issues 184
- Location in the agreement 185
- Linkage and use 185
- Sample precedent material 186

Consultation 188

- Purpose of the clause 188
- Drafting issues 190
- Location in the agreement 190
- Linkage and use 190
- Sample precedent material 191

Consumer contracts 194

- Purpose of the clause 194
- Drafting issues 196

Sample precedent material	205
Case analysis	208
Extracts from legislation	211
Contra proferentem	215
Purpose of the clause	215
Sample precedent material	217
Contracts (Rights of Third Parties) Act 1999	218
Purpose of the clause	218
Drafting issues	221
Location in the agreement	223
Linkage and use	223
Sample precedent material	224
Case analysis	226
Costs and expenses	231
Purpose of the clause	231
Drafting issues	232
Location in the agreement	232
Linkage and use	232
Sample precedent material	233
Counterparts (or duplicates)	234
Purpose of the clause	234
Drafting issues	236
Location in the agreement	237
Sample precedent material	237
Covenants	238
Purpose of the clause	238
Drafting issues	239
Location in the agreement	239
Linkage and use	239
Sample precedent material	240
Cumulative remedies	242
Purpose of the clause	242
Drafting issues	243
Location in the agreement	244
Linkage and use	244
Sample precedent material	245
Currency	246
Purpose of the clause	246
Drafting issues	246
Location in the agreement	247
Linkage and use	248

Contents

Sample precedent material	248
Data protection 249	
Purpose of the clause	249
Drafting issues	252
Location in the agreement	252
Linkage and use	252
Sample precedent material	253
Statutory definitions	255
Date of agreement 257	
Purpose of the clause	257
Drafting issues	257
Location in the agreement	259
Linkage and use	259
Sample precedent material	259
Deeds 261	
Purpose of the clause	261
Drafting issues	269
Location in the agreement	270
Linkage and use	270
Sample precedent material	270
Definitions 273	
Purpose of the clause	273
Drafting issues	277
Sample precedent material	279
Case analysis	279
Deposits and part payments 284	
Purpose of the clause	284
Drafting issues	287
Location in the agreement	288
Linkage and use	288
Consumer law	288
Sample precedent material	288
Disclaimers 291	
Purpose of the clause	291
Drafting issues	292
Location in the agreement	292
Linkage and use	292
Sample precedent material	293
Entire and final agreement and acknowledgement of non-reliance 294	
Purpose of the clause	294
Drafting issues	297
Location in the agreement	298

Linkage and use	298
Sample precedent material	299
Consumer issues	299
Case analysis	300
Exclusive, non-exclusive and sole	307
Purpose of the clause	307
Drafting issues	308
Location in the agreement	309
Linkage and use	310
Extracts from legislation	311
Sample precedent material	312
Exemption clauses	314
Purpose of the clause	314
Statutory control of exemption clauses	317
Drafting issues	318
Location in the agreement	325
Linkage and use	325
Sample precedent material	326
Case analysis	327
Expiry and termination at will	334
Purpose of the clause	334
Drafting issues	334
Location in the agreement	335
Linkage and use	335
Sample precedent material	335
Force majeure	337
Purpose of the clause	337
Drafting issues	344
Location in the agreement	345
Linkage and use	345
Sample precedent material	345
Freedom of information	349
Purpose of clause	349
Drafting issues	356
Location in the agreement	358
Linkage and use	358
Sample precedent material	359
Further assurance	363
Purpose of the clause	363
Drafting issues	366
Location in the agreement	367
Linkage and use	367
Sample precedent material	367

Contents

Good faith 371

- Purpose of the clause 371
- Drafting issues 376
- Case analysis 376

Indemnities 380

- Purpose of the clause 380
- Drafting issues 381
- Location in the agreement 383
- Linkage and use 382
- Sample precedent material 383

Indexation (inflation) 389

- Purpose of the clause 389
- Drafting issues 389
- Location in the agreement 391
- Linkage and use 391
- Sample precedent material 391

Insolvency (termination for) 392

- Purpose of the clause 392
- Drafting issues 394
- Location in the agreement 395
- Linkage and use 395
- Sample precedent material 396

Insurance 398

- Purpose of the clause 398
- Drafting issues 399
- Location in the agreement 400
- Linkage and use 400
- Sample precedent material 401

Intellectual property 403

- Purpose of the clause 403
- Drafting issues 408
- Location in the agreement 410
- Linkage and use 411
- Sample precedent material 411

Interest 420

- Purpose of the clause 420
- Drafting issues 422
- Location in the agreement 423
- Linkage and use 423
- Sample precedent material 423

Interpretation 425

- Purpose of the clause 425

Drafting issues	425
Location in the agreement	428
Linkage and use	428
Extracts from legislation	429
Sample precedent material	430
Joint and several liability	433
Purpose of the clause	433
Drafting issues	434
Location in the agreement	436
Linkage and use	436
Sample precedent material	436
Consumer issues	437
Case analysis	437
Language	440
Purpose of the clause	440
Drafting issues	440
Location in the agreement	441
Linkage and use	442
Sample precedent material	442
Law and jurisdiction	443
Purpose of the clause	443
Drafting issues	448
Location in the agreement	449
Linkage and use	449
Sample precedent material	450
Months and other expressions of time	453
Purpose of the clause	453
Location in the agreement	459
Linkage and use	459
Sample precedent material	460
Extracts from legislation	463
Case analysis	463
Net sales value (or net invoice price)	465
Purpose of the clause	465
Drafting issues	466
Location in the agreement	467
Linkage and use	468
Sample precedent material	468
Notices	469
Purpose of the clause	469
Drafting issues	470
Location in the agreement	476

Contents

- Linkage and use 476
- Sample precedent material 476
- Case analysis 480
- Option and right of first refusal 483**
 - Purpose of the clause 483
 - Drafting issues 485
 - Location in the agreement 486
 - Linkage and use 486
 - Sample precedent material 487
 - Case analysis 489
- Parties 494**
 - Purpose of the clause 494
 - Drafting issues 494
 - Location in the agreement 498
 - Linkage and use 498
 - Sample precedent material 498
- Payment terms 502**
 - Purpose of the clause 502
 - Drafting issues 502
 - Location in the agreement 505
 - Linkage and use 505
 - Sample precedent material 506
- Priority of terms 510**
 - Purpose of the clause 510
 - Drafting issues 511
 - Location in the agreement 512
 - Linkage and use 512
 - Sample precedent material 513
 - Case analysis 514
- Receipts 520**
 - Purpose of the clause 520
 - Drafting issues 521
 - Location in the agreement 522
 - Sample precedent material 522
- Recitals 523**
 - Purpose of the clause 523
 - Drafting issues 525
 - Location in the agreement 526
 - Linkage and use 526
 - Sample precedent material 527

Reporting	528
Purpose of the clause	528
Drafting issues	528
Location in the agreement	529
Linkage and use	529
Sample precedent material	531
Retention of title	533
Purpose of the clause	533
Drafting issues	536
Location in the agreement	537
Linkage and use	537
Sample precedent material	538
Schedules	544
Purpose of the clause	544
Drafting issues	545
Location in the agreement	546
Linkage and use	547
Sample precedent material	548
Set-off and retention	549
Purpose of the clause	549
Drafting issues	550
Location in the agreement	551
Linkage and use	551
Consumer issue	551
Sample precedent material	552
Severance and invalidity	554
Purpose of the clause	554
Drafting issues	555
Location in the agreement	556
Linkage and use	556
Sample precedent material	557
Case analysis	558
Stamp duty (and Stamp Duty Land Tax)	562
Purpose of the clause	562
Drafting issues	564
Location in the agreement	564
Linkage and use	564
Sample precedent material	565
Sub-contracting	566
Purpose of the clause	566
Drafting issues	567
Location in the agreement	569

Contents

- Linkage and use 569
- Sample precedent material 570
- Subject to contract (and other denials of a legally-binding contract) 572**
 - Purpose of the clause 572
 - Drafting issues 574
 - Location in agreement 578
 - Linkage and use 578
 - Sample precedent material 578
 - Case analysis 580
 - Extracts from legislation 588
- Successors and assigns 589**
 - Purpose of the clause 589
 - Drafting issues 590
 - Location in the agreement 590
 - Linkage and use 590
 - Sample precedent material 591
- Termination for breach 593**
 - Purpose of the clause 593
 - Drafting issues 598
 - Location in the agreement 601
 - Linkage and use 601
 - Sample precedent material 601
 - Case analysis 605
- Territory 611**
 - Introduction 611
 - Drafting issues 613
 - Location in the agreement 614
 - Linkage and use 614
 - Sample precedent material 615
- Time of the essence 617**
 - Purpose of the clause 617
 - Drafting issues 621
 - Location in the agreement 621
 - Sample precedent material 622
 - Case analysis 624
- Title (or property) and risk 626**
 - Purpose of the clause 626
 - Location in the agreement 629
 - Sample precedent material 629
 - Extracts from legislation 630

Value Added Tax 633

- Purpose of the clause 633
- Drafting issues 633
- Location in the agreement 634
- Linkage and use 634
- Sample precedent material 634

Waivers and releases 637

- Purpose of the clause 637
- Drafting issues 640
- Location in the agreement 640
- Linkage and use 640
- Sample precedent material 641

Warranties 644

- Purpose of the clause 644
- Drafting issues 648
- Location in the agreement 649
- Linkage and use 649
- Sample precedent material 649

Appendix Boilerplate Agreement 663

Index 673

(Faint text from reverse side of page)

Banking and Financial Dealings Act 1971 454

Bills of Sale Act 1878 588

Bills of Sale Act (1878) Amendment Act 1982 530

Capital Allowances Act 2001 514

Civil Jurisdiction and Judgments Act 1982 452

Consumer Credit Act 1974 673

Consumer Credit Act 2006 17, 31, 32, 126, 127, 128, 263, 264, 269, 276, 277, 425, 434, 543

Consumer Rights Act 2015 31, 123, 253

(3), (3) 213

(3) 219

(6)-(7) 258

(8) 264

15(1) 263

16 243, 264, 266

(17) 254

(Faint text from reverse side of page)

Competition Act 1998 562

Competition Act 1998 562

Consumer Credit Act 1974 673, 696

100 286

Consumer Rights Act 2015 194, 195, 196, 197, 199, 203, 204, 206, 211, 254, 260, 271

Part 2 (ss 61-74) 195, 196, 210

s 5(3) 256

9 204

(2), (3) 197

10 218