

# Contents

*Table of statutes*

*Table of statutory instruments*

*Table of cases*

## Section A: Commentary

A1	Forming and Concluding a Contract	3
	At a glance	3
	Whether agreement has been reached	5
	The incorporation of contract terms	13
	Unusual or onerous terms	21
	The effect of signature	25
	The 'battle of the forms'	25
	The relative importance of the contract terms	28
	Intermediate terms	29
	Signing a contract	30
	Checklist	31
A2	Common and Specific Clauses and Terms	33
	At a glance	33
	Describing the goods or services	35
	Quality and fitness for purpose	38
	When not reasonably fit	50
	Goods supplied under the contract	51
	Where model seen or examined before contract	54
	Digital content	54
	Sales by sample	55
	Effect of slight breaches	55
	Passing of risk	56
	Passing of property	57
	Retention of title	62
	Exclusion clauses and unfair terms	68
	The Unfair Contract Terms Act 1977	70
	The Consumer Rights Act 2014	84
	Liquidated damages clauses	95
	Avoiding penalty clauses	101
	Prepayments and forfeitures	102
	Limitation periods	102
	Excluding liability for misrepresentation	106
	Frustration	113
	Third party rights	117
	Intellectual property rights	119
	Confidentiality and non-disclosure	120
	Service of notices	121

## Contents

	Signature	121
	Proper law clauses	122
	Competition issues	123
	Checklist	125
A3	Export Contracts – Special Issues	127
	At a glance	127
	Legislative framework	128
	Current strategic export control legislation	128
	UN embargoes	129
	Getting an export licence	132
	Checklist	163
A4	Software Contracts – Special Issues	165
	At a glance	165
	Whether software is ‘goods’	166
	Consumer contracts	169
	Intellectual property	169
	Instructions for use	170
	Documentation	171
	Warranties and limitation of liability	172
	The legal status of guarantees	173
	Purchaser’s safeguard against intellectual property infringements	174
	Use and licence of software	175
	Acceptance tests	176
	Restrictions on use	176
	Confidentiality	177
	Source code escrow	177
	Training	178
	Patent/copyright indemnity	178
	Bespoke software	179
	Checklist	184
	Section B: Business-to-Business Contracts	187
B1	Terms and Conditions for the Sale and Supply of Goods	189
	At a glance	189
	General	190
	Checklist	235
B2	Terms and Conditions of Purchase	253
	Checklist	253
	Other possible considerations	267
B3	Licence of Computer Software – Buyer/Licensee	269
	At a glance	269
	Commentary	269
B4	Professional Services Agreement – Supplier	291
	At a glance	291
	Commentary	291

B5	Professional Services Agreement – Buyer	304
	At a glance	304
	Commentary	304
B6	Terms and Conditions for Sale of Goods by Export – Supplier	329
	At a glance	329
	Commentary	329
B7	Terms and Conditions for Purchase of Goods and Services by Import – Buyer	337
	At a glance	337
	Commentary	337
Section C: Business-to-Consumer Contracts		347
C1	Consumer Contracts – Distance and Off-Premises Contracts	349
	Preliminary issues of incorporation	349
	Precedent – Specimen Distance Selling and Off-Premises Contract	349
	Distance contracts concluded by electronic means – placing the order	363
	Presentation of contract terms	363
	Issues as to space	364
	The Model Cancellation Form	364
	On-Premises Contracts	365
	Contracts outside the Regulations	366
	Confirmation of contracts	366
	Internet-related aspects	367
C2	Hire Purchase Contracts	373
	Definition	373
	Hire purchase v conditional sale	373
	Regulated hire purchase agreements	374
	When within the 2010 Regulations	398
	Hire Purchase Agreement regulated by the Consumer Credit Act 1974	398
	Unregulated hire purchase agreements	408
	Conditional sale agreements	411
C3	Online Terms and Conditions of Sale	413
	At a glance	413
	Excepted contracts	413
	Distance selling	414
	Special provisions as to the supply of services	422
	Checklist	423
C4	Online Terms and Conditions for the Supply of Software	425
	At a glance	425
	Issues	426
	Contract terms required by the Regulations	426
	Rights and remedies under the Consumer Rights Act 2014	430
	Checklist	435
<i>Index</i>		437