

Here are the key strategies and considerations for drafting clear, precise, and unambiguous contract language, presented in a structured format.

Best Practices for Drafting Clear and Precise Contracts

Drafting contract language that is clear, precise, and free from legalese or ambiguity is crucial for ensuring that agreements accurately reflect the parties' intentions and prevent future disputes. The following strategies and considerations provide a framework for achieving this goal.

1. Focus on Clarity

Clarity is the foundation of an effective contract. The language should be immediately understandable to all parties, not just legal professionals.

- **Use Plain and Modern Language**
 - **Avoid Legalese and Archaic Words:** Eliminate terms like "hereinafter," "witnesseth," "aforesaid," "hereto," "thereof," "whereupon," and "pursuant to". Replace verbose expressions like "in the event that" with "if," and "for the duration of" with "during".
 - **Minimize Redundancy:** Reduce "couplets and triplets" (e.g., "null and void" to "void," "all and every" to a single word, "covenant and agree" to "agree"). Avoid phrases like "agrees that" or "covenants that" when the lead-in already establishes agreement.
- **Keep Sentences Short and Direct:** Long, complex sentences are harder to read and significantly increase the risk of ambiguity. Break down complex ideas into shorter, more manageable sentences.
- **Use Active Voice:** The active voice is generally preferred for its clarity and directness. It clearly identifies who is responsible for an action (e.g., "The Seller shall deliver the goods" is clearer than "The goods shall be delivered by the Seller").
- **Employ Proper Punctuation:** Correct use of commas, semicolons, and other punctuation is essential for conveying the intended meaning and preventing misinterpretation.
- **Avoid Rhetorical Emphasis:** Do not add unnecessary words or phrases for rhetorical flourish (e.g., "whatsoever," "under no circumstances," "if and only if," "for the avoidance of doubt"). These add needless words without affecting legal meaning. Similarly, avoid using typography (e.g., all caps, bolding, italics) for rhetorical emphasis, as it can be distracting.
- **Ensure Consistency in Language:** Use the same word or phrase consistently to convey the same meaning throughout the contract. Using different words for the same concept can lead readers or courts to assume that an unintended difference in meaning was intended.

2. Strive for Precision

Precision involves accurately translating the business deal into enforceable legal obligations and rights.

- Translate the Business Deal into Legal Concepts

A transactional lawyer's expertise lies in breaking down the client's commercial terms ("deal facts") and mapping them to specific legal concepts under Bangladeshi law. This requires asking foundational questions about each deal term to determine if it functions as a representation, covenant, condition, discretionary authority, or declaration.

- **Master the Categories of Contract Language**

- **Representations (Statements of Fact):** Use "represents and warrants" (or simply "states") to introduce statements of past or present fact. This maximizes potential remedies for misrepresentation and breach of warranty. Draft in the present or present perfect tense and use the active voice. Qualifiers (e.g., based on knowledge or materiality) are crucial tools for risk allocation and must be carefully worded. For lengthy lists of representations, use schedules and incorporate them by reference.
- **Covenants (Promises for Future Performance):** Use "shall" to create a binding duty. Avoid using "will," "agrees to," or "is responsible for". A well-drafted covenant must clearly address the "five Ws and one H": Who performs, What must be done, When and Where it must be done, to Whom it is owed, and How the performance must be rendered. Clearly define the required degree of obligation (e.g., "absolute obligation," "best efforts," "reasonable efforts").
- **Conditions (Triggers for Obligations):** These are best drafted using an "if/then" structure. The "if" clause describes the contingent event (in the present tense), and the "then" clause states the obligation that is triggered (using "shall"). Ensure the contingent event is "collateral" and not solely within the control of the party whose obligation is conditional.
- **Discretionary Authority:** Use "may" to grant a party a choice, right, or permission to act without creating an obligation. The scope of discretion should be clearly defined, specifying whether it is absolute or qualified. Note that even language granting "sole discretion" is subject to an implied duty of good faith in Bangladesh.
- **Declarations (Agreed-upon Statements of Fact or Policy):** These are statements the parties agree are true for the contract's duration. They should be drafted in the present tense. Common examples include definitions, governing law clauses, and statements of purpose.
- **Define Key Terms:** Use a dedicated definitions section to establish a private dictionary for the agreement. This ensures precision, prevents uncertainty, and avoids potential voidness for vagueness under Section 29 of the Contract Act, 1872. Best practices include:
 - Listing defined terms alphabetically.
 - Capitalizing the first letter of each word in the defined term.
 - Using the present tense for the definition (e.g., "Agreement means...").
 - Avoiding the inclusion of substantive obligations or covenants within a definition.

- **Manage Time References:** Be explicit.
 - Specify if dates/times are inclusive or exclusive (e.g., "from and including..." vs. "to but excluding...").
 - State the time of day and time zone to avoid ambiguity (e.g., "by 5:00 PM Dhaka time").
 - To state a deadline, use "before" or "no later than" instead of the ambiguous "at".
 - For periods, "no later than X days after [event]" is clearer than "within X days of [event]".
- **Address "And" and "Or" Ambiguity:** Be precise with conjunctions. Explicitly state whether "or" is intended to be inclusive (A or B or both) or exclusive (A or B, but not both). Clarify if "and" applies to items individually or as a collective group. Avoid the ambiguous construction "and/or".
- **Avoid Undue Generality and Vagueness:** While some general terms may be necessary (e.g., "reasonable efforts"), be as specific as possible. When using a vague term, consider adding specific examples, objective parameters, or quantitative thresholds to reduce uncertainty.

3. Eliminate Ambiguity

Ambiguity exists when a provision can be reasonably interpreted in more than one way. Proactive drafting is the best defense.

- **Understanding Ambiguity**
 - **Sources of Ambiguity:** Ambiguity can arise from various sources, including:
 - **Lexical Ambiguity:** Words with multiple common meanings.
 - **Antecedent Ambiguity:** Unclear which noun a pronoun or pointing word refers to.
 - **Syntactic Ambiguity:** Sentence structure allows for multiple interpretations.
 - **Conflicting Provisions:** Different clauses in the contract appear to contradict each other.
- Canons of Interpretation in Bangladeshi Law

Bangladeshi courts, following common law tradition, use established canons of construction to resolve ambiguity. These include the plain meaning rule, interpreting the contract as a whole, contra proferentem (construing ambiguous terms against the drafter), and considering the commercial purpose of the agreement. The drafter's goal should be to write with such precision that resorting to these canons becomes unnecessary.

- **Address Specific Ambiguity Traps**
 - **"Here-" and "There-" words:** Archaic words like "herein," "hereby," and "thereof" create ambiguity about their scope (e.g., does "herein" refer to this section, this

article, or the entire agreement?). Replace them with clear alternatives like "in this Agreement" or "in this Section".

- **"Such" as a Pointing Word:** Avoid using "such" as a substitute for "this," "that," "these," or "those." It can be imprecise and often sounds stilted to non-lawyers.
- **"Including":** When a list follows the word "including," it can be unclear if the list is illustrative or exhaustive. To clarify that the list is illustrative, the phrase "including without limitation" is often used, though in many legal contexts "including" is already interpreted this way.
- **"Material" and "Material Adverse Change (MAC)":** These terms are inherently vague. If used, they should be defined with as much clarity as possible. Specify the perspective for judging materiality (e.g., "a change that would be considered material by a reasonable person in the Buyer's position") and consider using quantitative guidelines or specific thresholds to reduce vagueness.
- **"Willful" and "Willfully":** These terms are ambiguous as to whether the intent applies to the *action* or the *consequences* of the action. It is better to use "intentional" or "intentionally" and to specify the scope of the required intent.