

Contract and Copyright Drafting Skills

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B L O O M S B U R Y

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ABSENCE

- This section is from **A-Z A.001** to **A-Z A.050** in the **A-Z**.

It can also be cross referenced with other application main subject headings such as **Bank Holidays, Death, Gardening Leave, Health, Holidays, Invalidity, Medical Report, Policies** and **Termination**.

- Absences of all different types can have an impact on both the work completed and the consequences within a contract. The exact wording of a clause regarding absence may allow you to terminate an agreement with confidence as a person has not complied with that term.
- Or you may avoid having a notice served upon you personally for breach of a clause due to absence if it was not authorised in advance. If the clause within the contract allows you to notify the company as soon as possible after the event has started which resulted in you being absent without prior agreed notice.
- There are different types of absences which may or may not apply and the clauses are adjusted accordingly depending on whether you are drafting very strictly and do not want someone to be away without a significant reason or whether you are being more liberal and accepting that there may be circumstances which are unplanned where a person's absence may arise, but that does not mean that it should necessarily follow that notice is served to terminate the contract.
- There is obviously a connection between absence and whether or not any payment of fees should be made for those days taken away. Payment may be adjusted over a period of time to take account of the actual reason for absence and the verification of the facts whether it be in the form of a medical certificate, a personal note or some other evidence.
- Some of the information required may be set out in the staff handbook which is a separate document quite often supplied after the agreement is signed and not actually referred to in the main agreement. It then becomes arguable as to whether it formed any part of the terms of the original agreement. If it was not seen by the other party until after terms were agreed then there is a very strong argument that it cannot form part of the terms even if it was referred to in the contract.
- The better route is to include any significant document or brochure which forms part of the agreement either in the main body of the

ACCEPTANCE

- This section is from **A-Z A.051** to **A-Z A.130** in the **A-Z**.
- It can also be cross referenced with other main headings such as **Adverse Change, Cancellation, Copyright Clearance, Delivery, Editorial Control, Material, Rejection, Termination** and **Title** in the **A-Z**.

What do we mean by acceptance and why does it matter?

- First make a distinction between delivery of a product or material and actual acceptance of it by a company. They do not have to take place at the same time and most often do not if there are clauses in an agreement to that effect. It is also necessary to recognise the point at which the liability and risk relating to the products passes from one party to the other. If at some stage products are damaged in a fire or lost, then who bears the cost? **Delivery** and **Risk** are other main clause headings in the **A-Z** which are relevant to this subject.
- The point at which a person or company has accepted a consignment of products to their premises or received delivery of some master material may or may not be the point in time at which ownership and title of the actual physical material passes to them. There may be acceptance in the context that material has arrived; or the acceptance may also be the point of change of ownership of that material; or acceptance may be subject to checking the quality of the material delivered. In addition acceptance and transfer of ownership and risk may be subject to payment being made in full for the stipulated price of the products or material delivered plus delivery, taxes and other costs incurred.
- The transfer of ownership of the physical products and material is not to be confused with the completely separate issue of the transfer and ownership of the copyright, trade mark and intellectual property rights in a product or master material. When looking at any contract you must make a list of the physical and technological material created which is completely separate from the rights side.
- Both are important and must be addressed within the terms of the agreement. It is often the case that it is either not dealt with or the two areas are assumed to be the same. Failure to effect transfer of ownership of the physical material can result in a distributor having

the right to claim it back if no payment is received. When you buy an item off the shelf you are buying the physical ownership of the material – nothing else. In these clauses you need to make this distinction between title, ownership and possession of material as opposed to copyright, intellectual property rights. Copyright ownership is the main clause heading of **Title** in the **A-Z**.

Different types of acceptance

- The key with acceptance is to either make it an automatic and irrevocable matter whereby it is almost a foregone conclusion that there is no objection and content will be suitable. Or to take the polar opposite position and to create a delay and procedure for a true analysis and inspection to take place and consequently to delay any payments.
- Acceptance as a mechanism for testing the content and quality of material supplied can be very useful. It is important to set out the limits during which material may be examined and then approved or rejected. As well as the detail of the method and process of rejecting any such material.
- A time period may be set out within which a product or material may be accepted or rejected. This time limit can be from 24 hours to one month – there is no restriction.
- Clearly a business would want to make this period as short as possible where they are making the delivery. A company accepting delivery should argue to have a longer period so that they can count the stock and examine it. There are also clauses in the section on **Quality Control** in the **A-Z** which would be helpful.
- If any product, material or service is to be rejected then the reasons for rejection will usually be required to be specified – unless the parties agree that no reason is required.
- It should also be set out who will bear cost of delivery of the rejected products or material.
- The company making the delivery of the product or material may be permitted to make a substitution and deliver another item.
- A product or material may be stated to be deemed to have been accepted where the packaging has been removed or a person has started using the service.
- A clause may specify that acceptance may be deemed to have taken place as soon as a product has been delivered.

- Acceptance of the terms and conditions may be linked to signature of the agreement. The agreement may allow a cooling off period of a number of days within which it is still possible to cancel the agreement.
- In **A-Z A.060** in Film and Television the clause specifically states that delivery is not linked to acceptance of material for use by the company. The company has an agreed number of days to view and assess the material. Then the company has the choice whether to accept and use all or only part of the material. The company notifies the other party of their proposed terms of use and the proposed fee which can then be accepted or declined.

A-Z A.060

Where [Material] is submitted to any department of the [Company] then it shall not be deemed to be accepted at the point of delivery. The [Company] shall have a period of [number] days within which to view and assess the [Material] and to decide whether it is suitable for exploitation and use by the [Company]. The [Company] shall notify the [Agency] that all and/or part of the [Material] has been accepted and offer the terms of use required and the fee proposed. The [Agency] may then accept and/or decline the offer by the [Company] which shall be in accordance with [specify document] of the [Company].

- It may be that there are a series of approvals or acceptances and consultations that must take place for a project to be successful. The clause therefore addresses the procedures to be put in place to ensure that there are no unnecessary delays as in **A-Z A.056** in Film and Television.

A-Z A.056

The [Company] shall endeavour to ensure that all subjects that may require approval and/or acceptance shall be carried out as quickly as possible and shall not delay the [Project]. The parties shall operate by allowing each other at least [-] working days to respond to any request. All requests of any nature shall be sent for the attention of [-] and copied to [-].

- In **A-Z A.051** in DVD, Video and Discs the licensee is given one month to accept or reject the material delivered. The licensee may email the reasons for rejection and must allow the licensor to provide a substitute master copy.

A-Z A.051

The [Licensee] agrees to reject or accept the [Master Material/other] within [one month] of delivery. In the event that the material is not acceptable then the reasons shall be set out by email or letter and the [Licensor] provided with the opportunity to provide a substitute Material which is not accepted shall be collected by the [Licensor] or returned at the [Licensor's] expense.

- In **A-Z A.052** in DVD, Video and Discs acceptance is deemed to take place on delivery and is subject to the payment having been made for the disc. If the wrong product has been delivered then it may be returned if the packaging has not been removed. This restriction would only be reasonable if the content could clearly be seen without packaging around it.

A-Z A.052

The [Company] shall deliver the [DVD/Disc] subject to receipt and clearance of the payment. The [Client] shall be deemed to have accepted the [DVD/Disc] once it is delivered and shall not be entitled to return the [DVD/Disc] once opened from the packaging unless there is a defect or damage to the [DVD/Disc]. Where the wrong order has been delivered then the [DVD/Disc] should be returned unopened and unused to the [Supplier]. [None of these conditions are considered by the [Company] to supersede your statutory legal rights as a consumer.]

- In **A-Z A.058** in Film and Television the material is deemed to have been accepted if no notice of rejection is received based on technical or quality grounds within a fixed number of days. This clause makes clear that there is no transfer of ownership of the material until payment has been received in full by the licensor. The distributor shall bear the cost of any damage or loss from the time of delivery of the material despite the fact that payment may not have been made and no ownership has passed.

A-Z A.058

The [Distributor] shall be deemed to have accepted the [Material] if no notice of rejection on quality and/or technical grounds is received by the [Licensor] within [number] days of delivery. The ownership of the physical material shall not be transferred to the [Distributor] until payment in full has been received by the [Licensor]. All risks shall pass to the [Distributor] upon delivery in respect of the loss, damage and/or destruction of the [Material] and the [Distributor] agrees to reimburse the [Licensor] in respect of the full cost of any replacement that may be necessary.

- Acceptance of terms and conditions and the making of a booking for anything are inextricably linked to payment of any sums due and whether or not any money can be claimed back if the agreement is then cancelled by a client.
- The refund or payment which may be made if, after acceptance of the agreement, it is cancelled may be all the money or it may be graded percentages or none at all.
- If it is a business which cancels a booking after it has been made for any reason and not the customer then the company may offer a full refund or seek to get the client to consider an alternative date for an event or course or holiday.
- In **A-Z A.062** in General Business and Commercial the client has accepted the quote but the company then cancels. Although an alternative may be offered by the company the client is not obliged to accept it and is entitled to a full refund of all sums paid.

A-Z A.062

The [Client] is deemed to have accepted the [quote/written offer/brochure details] when they agree to pay the sums specified by the [Company]. In the event that for any reason the contract cannot be fulfilled by the [Company] then an alternative equivalent standard booking shall be offered or where this is not accepted by the [Client] a full refund shall be made by the [Company].

- In **A-Z A.063** in General Business and Commercial it is made quite clear that completion of the work, delivery of the goods and signature of the receipt form do not constitute acceptance of the goods, work or services under this agreement. If it is not clearly stated in an agreement in this form then it is still open to argument to put the case otherwise

that acceptance did take place at an earlier time. Either through the mere fact of the completion of the work or the delivery of product material to a notified address or because of a clause in a receipt which was signed at the point of delivery. The clause **A-Z A.063** provides the client with 28 days to accept or reject the goods, service or work. In this case any material to be returned is then stated to be at the company's cost not the client.

A-Z A.063

Completion of the work, delivery of the goods or signature of a receipt form shall not constitute acceptance under this Agreement. The [Client] shall have a period of [28 days] in which to inspect the [Goods/Services/Work] and to provide written confirmation by email, fax or letter of acceptance or where material is not accepted to advise the [Company] to arrange collection or post it at the [Company's] cost.

The importance of the words – acceptance subject to contract

- Even before a formal contract is drawn up by one party and sent to the other there may be an extensive exchange of documents, quotes, emails between the parties. It is not unknown for one party to later rely on these discussions to claim that a fully binding agreement has been reached and that the other party is bound to pay for the work.
- **A-Z A.064** in General Business and Commercial makes it clear that a quote or tender or exchange of emails with a third party company shall not constitute acceptance by a business or government department. It states that all proposals are subject to an approval process, in this case by the Board or the Chief Executive, and must adhere to the company's policies and usual practices. It goes even further to state that any letter or other document sent to the company that has provided the quote or tender is only an acceptance in principle of working with the company and is subject to a final contract being concluded. This means that until an agreement is actually finalised there is no obligation to the company. Without these words the company providing the work or service would seek to argue that a binding agreement was reached at the point the quote or tender was accepted.

A-Z A.064

Any tender, quotation or exchange of letters setting out the proposed terms in respect of [Goods/Work/Services/other] to be provided to the [Company/Government Department] shall not be deemed and should not be considered a contractual acceptance by the [Company/Government Department]. All proposals must be approved by the [Board of Directors/Chief Executive] and adhere to the [Company's] policies and practices. Any letter, email or other document is an acceptance in principle and as such is subject to contract and conditional upon the signature and conclusion of a formal document setting out in detail all the rights and obligations of the parties.

Acceptance of terms for access to a website, app, stored material or software

- In relation to the internet and accessing websites, apps and audio material as well as downloading material. The general principle is to state the terms and conditions of use on the site either directly as you enter the site or by a link at the bottom of the first page or on the relevant section. The same principle applies to accessing films, DVDs, CDs and other formats although more commonly the terms of use are on the packaging and the copy of the format itself. You are either asking a person to confirm their agreement to the terms and conditions or stating that, by the mere access to and use of the site, they are bound by the terms of use which have been set out. Basically the strategy is do not access and use the site if you do not agree with the terms and conditions which have been set out within the site.
- You can use something quite simple as in **A-Z A.066**, **A-Z A.067** and **A-Z A.068** in Internets and Websites. Acceptance in this context is of the terms and conditions which you have set out for access and use. You may also want to look at the main clause heading in the **A-Z of Downloading and Access**.

A-Z A.066

Any person who would like to use this [Website] must agree to be bound by the terms and conditions of the [Company] and you are deemed to have accepted such terms when you access and use the [Website].

A-Z A.067

I agree that by ticking the box [and logging my details] that I have confirmed my acceptance that I will access, order products and use the [Website] in accordance with those terms and conditions specified in the [Terms and Conditions] pdf set out below. That I agree that I shall not be entitled to continue to use the [Website] if I no longer wish to be bound by such terms and conditions. Provided that I shall still be obliged to pay any sums that may be due or owing to the [Company] and the [Company] shall deliver any products that may have been ordered.

A-Z A.068

Important – please read this document carefully before [using the website/breaking the seal to release the disc as by doing so you are agreeing to be bound by the following conditions [-].

Conditions which may be imposed

- The fact that any access granted is solely on the basis that it is for personal home use and not for commercial exploitation or use by multiple persons or a business.
- A warning about posting material where copyright, trade marks or other intellectual property rights are owned by a third party.
- The person using the website or app must provide an indemnity in respect of any text, image or other material which they post or reproduce which results in a settlement having to be made as a result of a claim against the companies which own or control the website. The exact basis of the indemnity can vary and you should look at the clause heading in the **A-Z of Indemnity**.
- The company or companies who own and control the website or content or supply the data may disclaim any responsibility for losses or damages which may arise based on any information on the material.
- A company may require any person or business that uses the website or app to do so entirely at their own risk and cost and accept responsibility for any losses or damages that arise.
- A company may include a clause that they shall have the right at any time to refuse access for any reason. The terms can also be drafted to avoid liability for both any direct and indirect losses that occur as a result of accessing the site. A clause may also limit the

liability to a fixed sum. For **Liability, Losses and Disclaimers** clauses look at the main clause headings under that subject heading in the **A-Z**.

- Again there is no actual signature to any of the terms in **A-Z A.072** in Internet and Websites. Here a disc or USB is being loaded onto a laptop or other machine for use by an individual and the terms are accepted by loading it for use.

A-Z A.072

By installing the software which is on the [Disc/USB] into your computer you accept that you will be required to fulfil and be bound by the terms and conditions of the Licence Agreement which sets out the terms of trading and supply of the [Company]. If you do not wish to accept these terms then do not install or load the [Disc/USB/other].

- Similarly, where software is downloaded from a site, the same principle can apply as in **A-Z A.074** in Internet and Websites.

A-Z A.074

The use and access to the software is subject to the [User] agreeing to the terms and conditions displayed on this [Website] [reference] and the [User] will be deemed to have accepted and entered into agreement with the [Company] by downloading the software from the [Website].

- There are websites and apps where the whole essence of their enterprise is for persons using the site to share and exchange and send on material to others on the site and elsewhere. So the owners who control it are not so concerned with controlling usage and the supply of material to other persons using the site. They may however be more concerned with controlling the content of what is posted and restricting access to those who cross the boundaries which they set as acceptable content. There will also be an emphasis on ensuring that a person does not display any material which belongs to third party which would result in a potential legal action. This however does not mean that a person who is supplied with any content would automatically have the right to commercially exploit such material from the site. An example of the clause is in **A-Z A.073** in Internet and Websites.

A-Z A.073

There are no contractual terms and conditions which you must accept to use this [Website]. However we expect you to recognise and respect that material is displayed which is owned by other people. If you wish to use any of it for private home use and/or educational research and reports then you must provide a proper credit of their name and our [Website] as the source on which you found it. No authorisation is provided for any commercial use of any nature and prior written consent of the copyright owner is required in each case. Any person who acts in an unreasonable manner and/or is defamatory and/or is in breach of the rights of any nature of a third party and/or the [Company] may be excluded by the [Company] from the [Website]. The [Company] may also seek to be indemnified for all costs and expenses incurred and/or sums paid in settlements and/or as a result of legal proceedings. Further the [Company] shall have the right to recover all its own legal, in-house management and other professional experts' costs and legal expenses that may be incurred as well as a claim for damages, interest, and to recover all sums incurred.

- Conversely many websites want very strict terms of access, use and exploitation of any data, material and content posted, displayed and developed on its site. Trade mark, copyright and other intellectual property ownership and protection of all elements of a website are crucial to the success of a business. It is vital that from an early stage these are owned and controlled by the business.
- You need to be clear what terms a person is actually accepting to use the website and whether a person accessing the site has to click a section to proceed as confirmation of their acceptance or whether access and use of the site without this is enough.
- You need to be certain as to the manner in which you are permitting access and use of the site. If they cannot reproduce and copy material and all commercial exploitation is prohibited. Then this needs to be set out. There are two lists: what is allowed and what is not. Both however short, need to be done to be effective.
- In **A-Z A.076** in Internet and Websites the purpose of the clause is to permit access to and viewing of a commercial website to view material for a short period of time. There is no long term right to store, reproduce or supply to a third party any of the material which is accessed on the site. This is very difficult to enforce and is not aimed at any person or company who seeks to abuse their use of a website for commercial gain.

A-Z A.076

This is a commercial [Website] which is owned and controlled by [Company]. All trademarks, logos, videos, films, images, text, databases, photographs, graphics, audio material, blogs, downloads, uploads, podcasts, music and any other material in any other format whether television, radio, DVDs, mobile phone content, and/or interactive games on this [Website] are owned, controlled and/or licensed from the copyright owner by the [Company]. You accept by your use and access to this [Website] that you agree to be bound by the following terms and conditions:

- 1.1 That as a visitor to this [Website] you have no right to copy, store, and retrieve, reproduce, supply, transfer and/or authorise the use of any such material by a third party.
- 1.2 That any copies made by you on your laptop, computer, and/or any storage and/or retrieval and/or interactive device such as a USB, mobile phone, gadget, disc or otherwise shall be temporary and only for your own personal use for no more than [number] hours.
- 1.3 That you agree after that period to delete all copies of any material. You agree that failure to do so could result in the threat of legal proceedings and/or a claim by the [Company] against you personally for damages and costs and/or any other remedy and/or any other copyright owner of any material at any time.

- A very strong area of concern is where people post or distribute material which is obscene, illegal, offensive and abusive and otherwise not acceptable. The acceptance of the terms and conditions for access may have long term consequences for the operation and content of a website or app for a company.
- There are three layers of reasons as to why this should be addressed. First to avoid the possibility of the website or app company being sued for a criminal or civil matter or reported to an ombudsman or other government authority. Clearly this risk will vary in each country of the world. Secondly, as a business, you need to have your own moral and ethical code as to what is acceptable. One company may not operate the same policy of vetting material as another in a different market. Thirdly there needs to be a procedure in place and a system for removing material which the company has decided should not be on their site. You may decide that a blanket right to remove material is the most effective system without any prior notice and no need to engage in any justification of the reasons.

- In **A-Z A.077** in Internet and Websites the website company is responsible and legally liable for the consequences of any damages, fines and other expenses that may arise from a legal action against them.

A-Z A.077

Access and use of this website is subject to the laws of the country in which you are living as well as where this site is used. Acceptance by the [Company] of your use of this site does not absolve you from a personal legal liability for the material and content that you submit and/or display and/or supply to third parties. The [Company] does not accept any responsibility for any costs, damages, fines, expenses and/or otherwise that you may incur through a criminal and/or civil action against you by any person, body or other local government and/or national entity.

- Where access to the website or app involves downloading some of software or other material linked to the site or where a book is accompanied by a CD or DVD. Then the company is also likely to set out not only terms and conditions for access to the website but also a separate list of terms and conditions for each of the other types of formats of content they are providing access by a person. This would usually be in the form of a limited non-exclusive licence which is specifically for personal use and which prohibits commercial use.
- When drafting clauses relating to the purchase and supply of products, merchandising or for the supply of a service. If you are the company who is delivering the products or service then the aim is to get the other business to agree that the products or service provided is acceptable as soon as possible. Acceptance is linked to payment. If you want this to take place quickly if you are the distributor or supplier, you should want to get some or all of the payment in advance of the delivery or the start of any service. Also avoid any delaying process of acceptance which would cause any products or service to be rejected.
- Acceptance could take place at the point of delivery or when the invoice is signed by the purchaser as in **A-Z A.102** in Purchase and Supply of Products.

A-Z A.102

Signature of the invoice by the [Purchaser] shall be acceptance of the [Product] [and the terms and conditions of the invoice].

- Acceptance of the products or service could be deemed to take place at the point of delivery as in **A-Z A.104** in Purchase and Supply of Products.

A-Z A.104

The delivery of the [Products] to the [Company] shall constitute acceptance unless upon receipt of the [Products] the [Company] specifies the grounds of rejection or dissatisfaction.

- If you are the company receiving the products or service you want to build into the contract a delay in final acceptance which provides you with the chance to examine, inspect, test and evaluate what has been provided before making any first payment or additional payments if one has been made on account. To then be able to choose whether to reject any products or services supplied, terminate the contract and be entitled to a full refund. Any products would have to be returned in the state they were delivered and undamaged unless it was agreed otherwise.
- In **A-Z A.100** in Purchase and Supply of Products the company agrees to accept or reject the goods and pay the sum due in full provided that a clear list of conditions have been complied with.

A-Z A.100

The [Company] agrees to accept or reject the [Goods] and pay the sum due in full provided that they are delivered as follows:

- 1.1 Delivery date [-].
- 1.2 Type of Goods [-].
- 1.3 Quantity [-].
- 1.4 All [Goods] shall be of premium quality in accordance with the [Sample Prototype] and shall not be damaged or otherwise not fit or suited to the specified purpose.
- 1.5 Specified purpose of the [Goods] [-].
- 1.6 All [Goods] are to bear the words, logo or image specified in the [Sample/Prototype] and packaging as set out in the attached Schedule [-].

- In **A-Z A.105** in Purchase and Supply of Products there is an agreed period to inspect the goods and packaging from delivery. It is agreed that the company shall be able to accept the goods or reject them on the grounds of quality, content and fitness provided that a written

document to that effect is sent during the review inspection. Failure to do so will mean that the goods will have been accepted in default and payment will be due. Ownership of the goods shall pass when payment has been received.

A-Z A.105

The [Company] shall be given a period of [number] [weeks/months] from receipt of the [Goods] in which to inspect the products and associated packaging. During that period the [Company] shall be entitled to accept or reject the [Goods] for any reason which is related to the quality and/or content and/or fitness for purpose. At the end of that review period unless the [Supplier] has received a written response in any form rejecting the [Goods] then they shall be deemed to have been accepted by the [Company] and subject to payment of the sums due become the property of the [Company].

- Where a third party is supplying a service of any type it is essential to have a clause in the agreement which allows you to view and test the service before it is finally accepted. This allows you to check that the quality and content match the standard which you believe you had ordered.
- As it is likely that acceptance of the service by your company will result in additional contractual payments to the third party which may last for many years. The delay and assessment of the service allows you to be in a position of strength when negotiating. There would also be clauses which would be added regarding quality and content in the main clause heading **Quality Control** in the **A-Z** expected for such a service which is a main clause heading in the **A-Z**.
- Where the product or service is not accepted there should be subsequent termination or cancellation clauses which can be found upon in the agreement. **Termination** and **Cancellation** are both main clause headings in the **A-Z**.
- Different criteria may be applied when dealing with a distributor or company as opposed to a consumer or individual where consumer legislation will often apply dependent on whether the item or service has been bought in a shop or on-line or through direct delivery from an overseas supplier.
- It should be appreciated that any company may decide to purchase as a purchaser of their products or services additional options as a result of company policy which is much greater than the minimum requirements. Here again it is a business making a policy of their own which affects their terms and conditions of trading.

- In merchandising which involves the creation of illustrations, artwork and designs there is acceptance by a distributor in respect of the original material which is delivered by the author and artist in a range of formats. There is also acceptance of editorial changes to that work by someone else at a later date which the author and artist may approve or reject. Where the artist has assigned all the rights in his or her work to the author then any approval or rejection will be limited to the author. The distributor may agree that the delivered work cannot be changed without the approval or consent of the author. Alternatively the author may agree that the distributor shall have the right to change the commissioned illustrations and artwork as they think fit including characters, colours and layout and to permit third parties to do so. There are additional clauses relating to this in **Editorial Control** and **Consultation** in the **A-Z**.
- In **A-Z A.083** in Merchandising both the artist and the author agree that the distributor may market merchandise based on the book or script and may change the names, text and storylines. This is a very wide clause and basically relinquishes control to the distributor. The author and artist may still have approval mechanisms in place for being consulted and approving or rejecting material.

A-Z A.083

The [Author/Artist] accept and agree that the [Distributor] shall be entitled to develop, adapt, produce, distribute and market toys, food related products, clothes, stationery, audiotapes, computer games, DVDs, a programme or series for television, and any other item or product based on the [Book/Script]. The [Author/Artist] accept and agree that the artwork, text, names, and storylines may be different and not necessarily an accurate reflection of the [Book/Script].

- Factor in a prototype or sample which must be accepted or rejected of the merchandise or service as part of the agreement.
- There may be a prototype or sample made of the proposed product such as a children's dressing up costume or a lunch box or toy or the branding reproduced on the packaging of a food or the words reproduced with lyrics and music for a recording. For a service there may be an online sample supplied as an example or a pilot developed as part of the service for a project. If, as a company, you are supplied with a prototype or pilot at an early stage which you can view, examine and test and then accept or reject you may also have a clause which allows the company to terminate the whole agreement. This may save your company a serious amount of money for a project which is not

on the right path and considerably reduce risk and losses to many companies who have entered into software supply and development agreements which could have avoided significant costs and expenses if there has been an exit route factor in contracts.

- A clause may set out that the prototype or sample shall be in accordance with specifications that have been agreed. The specifications should be clearly described in as much detail as possible and images, sizes and content listed in documents attached to the agreement.
- Once notification has been provided that prototype or sample is accepted by the client then the company can be authorised to create the final versions. The acceptance is not only of the dimensions and shape, but the type of material used to create also any packaging.
- In **A-Z A.085** in Merchandising the material being delivered must be in accordance with the sample products. Where this is the case the merchandising material will be accepted the same day as delivery and also payment made of the fee. However if there is any error or omission and the material delivered does not match the sample and order the client may reject all the order. In which case any money paid may be refunded by the company.

A-Z A.085

Provided that the merchandising material supplied by the [Company] is in exact accordance with the sample products then the merchandising material shall be accepted by the [Client] on the day of delivery and the fee paid for the balance on the same day. Where there is an error or omission in the design, quality, number and/or any other reason why the merchandising material fails to match the sample and order. Then the [Client] may reject all the order and request a full refund to be paid immediately.

- In contrast in **A-Z A.086** in Merchandising it is accepted that there may be variations in the samples provided before manufacture of the finished product. In this case the manufacturer has agreed to provide a new sample where there are changes so that the company can decide whether to go ahead with production. In any event there is a statement that the company shall not be obliged to accept the order unless it is in accordance with the agreed samples. This may apply to toys, food, household items and any goods where the colour and appearance may vary.

A-Z A.086

The parties agree that there may be colour, technical, material and layout variations between the samples provided before manufacture and the finished product. The [Manufacturer] agrees to notify the [Company] of any discrepancies and to provide a new sample on each occasion so that the [Company] can decide whether to proceed with the production. The [Company] shall not be bound to accept delivery of the order unless it is in accordance with any such agreed samples.

- In a publishing agreement the author wants to limit the grounds for the rejection of the manuscript and any title, character names, logos, illustrations, photographs and images which are created and developed by the author or which the author has sourced and put together from third parties who own the material.
- The author will only want the publisher to reject the book within a defined period such as one month after delivery. If the work is not accepted or rejected within that period then the clause may state that it is deemed accepted as in **A-Z A.089** in Publishing. This type of clause is not common in publishing agreements.

A-Z A.089

In the event that the [Author] shall deliver the [Work] by the specified delivery date [and in the form and content agreed between the parties] the [Publisher] shall be allowed [-] days to provide written confirmation of the acceptance or rejection of the [Work]. In the event that there is no such confirmation then [-] days after the specified delivery date the [Work] shall be deemed to have been accepted by the [Publisher].

- The author will only want the work rejected on as limited grounds as possible namely that the manuscript was not submitted by the delivery date; or that the work did not meet the description set out in the synopsis. Whereas the publisher would wish to rely on a more general ground as well that the work was not of the quality and standard required to be suitable for publication. This last ground is a subjective assessment by the publisher as to the content.
- When drafting clauses relating to the proposed content of the book it helps the author to try to establish and describe in the agreement or attached synopsis exactly what is expected by the publisher.

- Many publishing contracts do not have the synopsis which is submitted attached and just set out the basic facts of the proposed title, subject matter and A4 page length and format the work is to be delivered.
- It is a fact that many books do vary to some extent from the synopsis and develop in a direction which does not exactly match the original proposal. This will not become a contractual issue if, at the stage, draft material is submitted and discussed and agreed by the parties.
- The publisher will have two aims: one to get the work completed, delivered, proofed and packaged as soon as possible; two, that the author adheres to the delivery date and that any delay will have an impact on the planned publication date.
- In **A-Z A.088** in Publishing the publisher has only a limited period to reject the work and accepts that the two grounds on which to do so are: the quality of the writing and the failure to comply with the specifics of the synopsis.

A-Z A.088

The [Publisher] agrees to accept or provide written reasons for rejection of the [Work] within [-] of delivery. The [Publisher] agrees that any rejection of the [Work] shall be limited to the following grounds namely failure by the [Author] to meet the required professional writing standards agreed and/or failure to comply with the specifics of the summary synopsis.

The [Publisher] agrees that it shall accept the [Book] for publication provided it is delivered in complete form by the [date] and is a true reflection of the agreed summary in both content and style.

- In **A-Z A.091** in Publishing the clause tries to avoid the problem of late delivery where the work is not delivered on time. Where the publisher would normally serve notice to terminate the agreement on that date unless an extension is agreed. This clause allows the author to have an additional three-month period for valid reasons before the publisher may terminate the agreement. If it is terminated then a repayment schedule for the advance is in place. This clause then avoids the problem of a demand from the publisher for any advance which is non-returnable that it be paid in full immediately. This clause is not common in publishing agreements.

A-Z A.091

The [Publisher] shall not be entitled to refuse to accept the [Book] if the reason for the delay in delivering the manuscript is due to ill-health or injury of the [Author]. Provided that the delivery date shall only be extended by a maximum of [three calendar months], after that date the [Publishers] may terminate the agreement by notice in writing at any time. It is agreed that the parties shall resolve the issue of repayment of the sums due by negotiation and that in any event the [Author] shall be entitled to a repayment period scheduled over at least [-] years.

- In **A-Z A.094** in Publishing there are no limitations as to the grounds on which the publisher may reject the work. There is simply a notification as to whether it is accepted or rejected. Here the publisher accepts that upon acceptance by them any sums due on delivery must be paid quickly.

A-Z A.094

After the complete manuscript has been delivered to the [Publisher] in the agreed format. The [Publishers] agree that within [ten days] excluding weekends that they shall notify the [Author] as to whether they accept or reject the [Work]. If the [Work] is accepted then the [Publisher] shall immediately arrange for payment of any sums due on delivery without delay.

- In **A-Z A.095** in Publishing the publisher agrees to set out its reason if a work is not accepted, but is agreeing to negotiate the work being resubmitted with amendments. This allows a second chance for acceptance of the work. In the last part the final rejection is linked to an agreement that all rights held by the publisher shall then revert to the author. The publisher also agrees that no repayment is required of any sums paid to the author to date. This clause is not common in publishing agreements.

A-Z A.095

In the event that the [Work] is not accepted then the [Publisher] shall specify the reasons in writing by letter. The [Publisher] agrees that it shall enter into negotiations with the [Author] to permit the [Author] to have the opportunity to resubmit the manuscript after it has been amended based on the grounds of rejection specified by the [Publisher]. In the event that the [Work] is not accepted after it is resubmitted. The [Publisher] agrees to ensure that all rights in the [Work] of any nature shall revert to the [Author] and that the [Author] shall not be obliged to repay any sums paid prior to delivery of the manuscript.

ACCESS

- This section in the **A-Z** is from **A-Z A.131** to **A-Z A.185**.
- This subject can also be cross referenced with other main clause headings such as **Copyright Notice, Cancellation, Copyright Warnings, Disclaimer, Downloading, Error, Facility Access, Insurance, Liability, Location Access, Loss, Omission, Rights, Risk, Termination** and **Title** in the **A-Z**.
- Access to land or premises by an employee or contractor and the terms on which they may enter or may be denied access or made to leave without notice as in **A-Z A.131** in Employment.

A-Z A.131

There is no automatic right of access to the premises and land owned or controlled by the [Company]. You are only entitled to enter the building specified in your contract of employment during your normal hours of work. No access is permitted at other times without the prior consent of [Name]. The [Company] reserves the right to deny access at any time for any reason. The [Company] reserves the right to request that you leave the building, premises or land whether during your normal working day or not and may require that you be escorted by a representative from security.

- Access may be unrestricted or very limited and may only be permitted for a specified role or purpose as in **A-Z A.133** in Employment.

A-Z A.133

The [Employee] shall have access at any time to the premises of the [Company] for the sole purpose of fulfilling the duties and responsibilities set out in the job description. There is no right to use the facilities, premises and/or resources for any other purpose, nor to enter the premises outside the hours of [specify].

- The terms of access may also specify any health and safety warnings, security requirements, noise levels and other policies of the company. This is also dealt with in main clause headings **Facility Access** and **Location Access** in the **A-Z**.

- In **A-Z A.146** in General Business and Commercial the clause provides a warning that you use the site at your own risk and adhere to warning signs. This clause does not permit the company to exclude liability for personal injury and death.

A-Z A.146

Access to and use of this [location/activity] is entirely at your own risk and we expect you to take all reasonable precautions to protect your property and to act in a reasonable manner. There are health and safety signs and warnings displayed for your guidance which relate to age, height, equipment and conduct which you are advised to follow.

- The company which owns the freehold or lease for the premises will want to try to ensure that they are only potentially liable for a claim by a third party for personal injury or death caused by the negligence of the company or its employees or its sub-contractors on the premises. Other main clause heading sections which deal with related issues are **Disclaimer, Liability and Risk** in the **A-Z**.
- A clause may also require that the person must not damage the premises, remove any items, material or even data if relevant. The institute or university may also have an automatic right to refuse entry and withdraw the right to enter the premises. The institute or university will also ensure that it is not liable for any losses, damages and expenses incurred as a result of such a decision as set out in **A-Z A.183** in University, Library and Educational.

A-Z A.183

- 1.1 Access to the [Collection/Archive] shall be entirely at the discretion of the [Institute] and there shall be no automatic right of entry and/or use of all and/or any part any of the material in the [Collection/Archive].
- 1.2 The [Institute] reserves the right to deny, withdraw and/or restrict entry and/or to request that any person leave the premises for any reason and without providing any grounds and justification for doing so. Whilst the [Institute] has terms and conditions for access that must be adhered to by any visitors, researchers and/or any other person.

- 1.3 The [Institute] reserves the right to amend and/or alter these terms and conditions at any time without notice. No liability is accepted by the [Institute] for any losses, damages, costs, expenses and/or any other sums that may arise directly and/or indirectly as a consequence of there being no access to the [Collection/Archive] at any time for any commercial, academic and/or other projects.
- 1.4 Access to the [Collection/Archive] shall be entirely at the person and/or companies own risk except where any personal injury and/or death is directly caused by the negligence of the [Institute].

- Access to a person or company may state in a clause that this does not authorise them to provide access to other unauthorised third parties.
- There is the right to have access to, and to remove, stock or documents or even data under an agreement. This is useful where accounting and payment has not taken place or one party wishes to verify the information. It also assists to have a contractual term to rely upon to claim back master material and stock when a distributor is in financial difficulties.
- **A-Z A.139** in DVD Video and Discs provides a company with the right to access to the premises of a distributor to remove the master material, stock, marketing material and packaging. Where the distributor has failed to account for royalties from a film and the company owns the material.

A-Z A.139

In the event that the [Distributor]:

- 1.1 Fails to account for any royalties and/or make payments for any sums due to the [Company] for the exploitation of the rights in the [Film/Game] granted under this Agreement.
- 1.2 Operates where financially insolvent and/or is likely to be placed in receivership, administration and/or is unable to meet its financial commitments.

Then the [Distributor] agrees that the [Company] shall have the right to enter the premises, offices and warehouses [without prior written notice/with [number] hours prior written notice] and to recover and remove all master material relating to the [Film/Game], all packaging, marketing and stock which either belong to the [Company] and/or compensate for the value of the sums which are due and have not been paid to the [Company].

- In **A-Z A.141** in Film and Television the access is to a specific section of the site for agreed dates and times. The company which is being granted access is bound to reinstate the site to its original condition and pay all the costs and expenses of drainage, gas, electricity and water and other charges and cost which arise from its use of the site. The clause would be used for location access for a film or a festival. Site maps and schedules are attached to the main contract.

A-Z A.141

The [Company] shall not be allowed unlimited access to the [Premises] and shall have no automatic right of entry. The [Company] shall be permitted to use the locations marked in red specified on the attached Site Map in [Appendix A] and in accordance with the [Date] and Date Schedule in [Appendix B]. In addition to the Licence fee charged for access from [date] to [date] the [Company] shall also be liable to pay to the [Licensor] additional electricity, gas, water, drainage, sewer and other charges and expenses that arise or become due as a result of the [Company's] access to and/or use of the [Premises] and any loss and/or damage. The [Licensor] shall be entitled to reinstate the [Premises] to the condition it was in prior to the access and/or use by the [Company]. Where it is necessary to replace old with new as the old version cannot be repaired the [Company] shall be responsible for the additional cost.

- In **A-Z A.143** in Film and Television access to the premises is not granted by the owner. However the company has agreed to pay the cost of any damages, costs, expenses, fees and liability that may arise directly or indirectly from their access and use of the site. There is a limit set on the total liability by the company. Normally you would want to be responsible for unquantifiable indirect costs and expenses. There is no requirement to provide receipts or other evidence to support a claim by the owner nor is there any time limit within which the cost must be paid by the company.

A-Z A.143

The [Company] shall be permitted unlimited access to and use of the [Premises] at any time and may store, park, film and use the [Premises] in such manner as it thinks fit for the purpose of making the [Film]. The [Company] agrees that it shall be obliged to pay the [Owner] for any damages, costs, expenses, fees and liability that may arise as a direct and/or indirect result of its access to and/or use of the [Premises].

- In **A-Z A.144** this clause addresses the access route to a site and the fact that it must be kept clear. It also sets noise levels which must be complied with by the company.

A-Z A.144

Access to the location by the crew, actors, transport, lighting, catering and other personnel engaged in the [Film] shall be in accordance with the route/markings in Schedule [-]. The [Company] agree that they shall ensure that noise levels do not exceed [number] decibels after [time] each day and that no access route shall be blocked and/or obstructed at any time.

- Standards of behaviour may be set for persons using office premises or a site. This may apply to an employment contract or for a contractor or for an event.
- In **A-Z A.145** this is a widely drafted clause where a company reserves the right to exclude a person from the premises. There is also no obligation to provide a refund or fees; nor to carry out a more detailed investigation, but the company may decide to report the matter to the police. This clause would be relevant to a club or festival and is really a statement of policy as well as a term of the contract.

A-Z A.145

The [Company] reserves the right to withdraw the right of entry, exclude, expel, remove and/or suspend any person who in their reasonable opinion is using offensive or threatening language, acts and/or behaves in a manner which is unacceptable and/or is believed to be drunk, on illegal drugs or other substances or carrying an offensive weapon or an item which is considered a danger to the safety of others and/or who has been warned that their conduct on previous occasions is unacceptable. The decision of the [Company] is final. There shall be no obligation to refund any sums paid for membership, or in fees, to carry out any further investigations or to disclose confidential sources. The [Company] reserve the right to report any matter to the [police/other].

- In **A-Z A.178** in Sponsorship the sponsor has no right to authorise access to the event or festival unless valid tickets have been issued. The sponsor must abide by the rules of access to the site and the company reserves the right to expel any person whose conduct is unacceptable. The sponsor would not be entitled to a refund.