

# COMMON TERMS FOUND WITHIN THE CONTRACT FOR THE SALE AND PURCHASE OF A DENTAL PRACTICE

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<b>AGREEMENT/CONTRACT IS RESCINDED; RESCISSION</b>	<p>Where the contract is made void, annulled or set aside for reasons that may be specified in the contract.</p> <p>In such circumstances the contract will be of no legal force and have no binding effect, the parties are put back into the position in which they were before the contract was made.</p> <p>Rescission will not be available if one of the bars to rescission is present (such as affirmation of the contract or lapse of time).</p>
<b>ALL REASONABLE ENDEAVORS</b>	<p>Contractual obligations are normally absolute and failure to satisfy an obligation will be a breach of contract. Parties to a contract may therefore want to qualify an obligation by only agreeing to "try" to achieve it. "Endeavours" clauses are commonly used for this purpose.</p> <p>There is a spectrum of endeavours clauses, with "best endeavours" (see definition below) being more stringent than "all reasonable endeavours" (defined in the paragraph below) and "reasonable endeavours" (see definition below).</p> <p>Thus, a party to the contract may be required to perform or comply with certain obligations by using 'all reasonable endeavours'. In doing so, it is important to note this statement is more onerous than what is meant in the ordinary sense of the word. The party should explore all avenues reasonably open to it, and explore them all to the extent reasonable, but the party is not obliged to totally disregard its own commercial interests, nor required to continue trying to comply if it is clear that all further efforts would be futile. This is more onerous than 'reasonable endeavors' (see definition below).</p>
<b>ANTECEDENT BREACH OF CONTRACT</b>	<p>A preceding occurrence, cause or event which causes a breach of contract by a party to the contract.</p>
<b>ASSIGNMENT; ASSIGNED</b>	<p>The transfer of a right from one party to another. For example, a party to a contract (the assignor) may, as a general rule and subject to the express terms of a contract, assign (transfer) its rights under that contract to a third party (the assignee) with or without the consent of the party against whom those rights are held.</p>

<p><b>BEST ENDEAVORS</b></p>	<p>A party to the contract may be required to perform or comply with certain obligations by using 'best endeavours', the requirement must at least be the doing of all that reasonable persons reasonably could do in the circumstances. This does not include actions which would lead to its financial ruin, undermine its commercial standing or goodwill, or have no likelihood of being successful.</p> <p>Do note that this is a clearly an onerous obligation.</p>
<p><b>BOOK DEBTS</b></p>	<p>Monies owed to an individual or company or other legal entity for goods supplied or services provided to a third party for the supply of those goods or services. Individuals, companies or other legal entities that owe the money are referred to as Debtors.</p>
<p><b>CHARGE</b></p>	<p>A security usually taken by a lender over an asset owned by the borrower which gives the lender the right to have the particular asset and its proceeds of sale appropriated to the discharge the debt if the borrower is in default of certain terms of the agreement with the lender.</p> <p>A charge does not transfer ownership; it is merely an Encumbrance (see definition below) on the asset.</p>
<p><b>CONDITION</b></p>	<p>A term of a contract is of such vital importance that it goes to the root of the transaction; essentially it is a major term of the contract.</p> <p>Breach of a condition gives rise to the claimant's right to terminate the contract (treat the contract as discharged) and claim damages for any loss.</p> <p>An example of where a breach of condition may take place in the context of the purchase of a dental practice is where the Warranties (see definition below) contained in the contract are found to be inaccurate after exchange of contracts has taken place.</p>
<p><b>COVENANTS</b></p>	<p>An agreement or promise to do or provide something, or to refrain from doing or providing something, which is meant to be binding on the party giving the covenant (who may be referred to as the "covenantor")</p> <p>An example of an agreement to refrain from doing something is a "restrictive covenant" which may be found in the contract, pursuant to which the seller is restricted from providing dental services to the patients of the practice that has been sold in order to protect the purchaser's acquisition of the goodwill attached to the practice.</p>
<p><b>DEBTORS</b></p>	<p>An individual, company or other legal entity that owes something, usually a payment, to another party for goods supplied or services provided by that party.</p>

<p><b>DEED OF PARTNERSHIP</b></p>	<p>A document containing an agreement between two or more persons (referred to as partners) that details the rights and obligations of each partner participating in a venture. For example, a deed of partnership will typically specify how proceeds from the partnership's business are to be divided among the partners.</p>
<p><b>DEED OF RETIREMENT</b></p>	<p>A document containing an agreement that details the provisions relating to the retirement of e.g. a partner in the business.</p>
<p><b>DISCLOSURE; DISCLOSURE LETTER</b></p>	<p>'Disclosure' is the process of the Seller making general and specific disclosures against the Warranties (see definition below) contained in a contract for the sale and purchase of a business. The disclosures are made to qualify the statements contained in the warranties and are made to protect the Seller.</p> <p>The Seller usually makes is Disclosures in a Disclosure Letter addressed from the Seller to the Buyer.</p> <p>This is a key document in any private acquisition of a business. It is usually prepared by the Seller's solicitors. If a Seller fails to disclose a relevant matter, in respect of the Warranties, he may be sued by the Buyer for breach of warranty. A bundle of documents is usually attached to the Disclosure Letter to support the Seller's disclosures; this is referred to a "disclosure bundle".</p>
<p><b>DISCLOSED</b></p>	<p>A term referring to the extent to which a Disclosure must be made by the Seller, for example, fairly disclosed (with sufficient explanation and to detail to identify the nature scope and implications of the matters disclosed).</p>
<p><b>DUE DILIGENCE</b></p>	<p>The process by which a buyer of a business investigates the records and trading history of the business to support its value and find out whether there are matters on which it requires further information. In the acquisition of a business, reports from accountants and legal advisers are usually prepared to record the findings of the legal and financial due diligence process. The due diligence process is supported by Warranties (see definition below) in the contract.</p>
<p><b>ENCUMBRANCE</b></p>	<p>Any burden, interest, right or claim of a third party over property which adversely affects the use of, or the ability to transfer, property belonging to the owner of that property. An example of an encumbrance is a Charge (see definition above) Sometimes the term is used more narrowly to refer just to security interests or similar arrangements affecting property.</p>

<b>FULL TITLE GUARANTEE</b>	On a sale of property by a Seller, he may be asked to covenant that it is sold free from all charges, Encumbrances and adverse rights and with Full title guarantee, i.e. that he has the right to dispose of the property. This does not include any charges, encumbrances or adverse rights which the Seller does not know and could not reasonably be expected to know about.
<b>GOING CONCERN</b>	A term often used to refer to a business that is operating as an ongoing business.
<b>GOODWILL; GOODWILL VALUE</b>	The value attached to the established reputation of a business regarded as a quantifiable asset In accounting terms, it is the difference between the value of a business as a whole as a Going concern and the aggregate of the fair values of its identifiable net assets.
<b>GUARANTOR</b>	A promise by one party (the Guarantor) to assume responsibility for the debt obligation of another for example a borrower, if that borrower defaults.
<b>INTELLECTUAL PROPERTY RIGHTS</b>	Intangible property rights (IPRs) that are a result of intellectual effort. IPRs include both registrable rights namely patents, trade marks and design rights and unregistered IPRs for example copyright, confidential information and database rights. IPRs may be the basis of a company's competitive advantage. In the context of a dental practice, confidential information relating to the practice and patient databases are examples of valuable IRPs.
<b>LIABILITY</b>	Something for which one party is liable to another party; It may be an obligation, responsibility, or debt and is typically can be financial.
<b>MISREPRESENTATION</b>	A false statement of fact or law made by one party to the other party which induces the recipient of that statement to enter a contract thereby causing it loss. An action for misrepresentation can be brought in respect of a misrepresentation of fact or law.
<b>MANIFEST ERROR</b>	A complete disregard of case facts and the applicable rule or law as an indisputable error of judgment.

<p><b>NOVATION</b></p>	<p>A three-way contract which extinguishes an existing contract and replaces it with another contract in which a third party takes up the rights and obligations which duplicate those of one of the original parties to the agreement. Once Novation has taken place the original contract is said to have been novated.</p> <p>For example, in the context of a sale of a dental practice the associateship agreements may be novated whereby the existing contract between the seller and the associate is replaced with a contract between the buyer and the associate.</p>
<p><b>OBLIGATION</b></p>	<p>A legal duty of one party usually contained in a contract (for example to pay or do something) for the benefit of another party.</p>
<p><b>REASONABLE ENDEAVORS</b></p>	<p>A party to the contract may be required to perform or comply with certain obligations by using 'reasonable endeavours'. In doing so the party should adopt and pursue a reasonable course of action in order to achieve the result, bearing in mind its own commercial interests and the likelihood of success, and which need not be exhaustive of every course available to it.</p> <p>The party must therefore balance balancing "the weight of their contractual obligation" to the other party against "all relevant commercial considerations" such as the obligor's relations with third parties, its reputation, and the cost of that course of action.</p>
<p><b>REASONABLE TIME</b></p>	<p>Reasonable time refers to the time needed by the parties to the contract to do what a contract requires to be done, i.e. as soon as circumstances permit. If the parties entering the contract do not fix a time for performance, the law will infer a reasonable time within which it should be done.</p>
<p><b>REPRESENTATION</b></p>	<p>A statement of fact made by one party in order to induce another party to enter into a contract.</p>
<p><b>TERM</b></p>	<ol style="list-style-type: none"> <li>1. A period of time specified in a contract of a lease, for example five years, during which period the contract or lease is in force.</li> <li>2. A term contained in a contract, a specified condition or proviso other than a Condition.</li> </ol>

<p><b>THIRD PARTIES</b></p>	<p>One other than the principals involved in a transaction, for example an individual or company that may provide dental equipment to the Seller of a dental practice. A further example is the employees and associates engaged at the dental practice.</p>
<p><b>TITLE</b></p>	<p>A term referred to the ownership of real property or personal property, which stands against the right of anyone else to claim the property.</p>
<p><b>WARRANTY</b></p>	<p>Warranties are contractual statements contained in the contract as to the condition of the dental practice business, the assets used in the practice and related matters.</p> <p>If a warranty is found to be inaccurate the buyer is usually entitled to sue for breach of warranty and claim damages. The buyer's rights in relation to breach of warranty are invariably limited in the contract itself for example the contract will contain a defined period within which warranty claims may be brought against the seller.</p> <p>Warranties serve two main purposes:</p> <p>To provide the buyer with a remedy (a claim for breach of warranty) if the statements made about the dental practice business later prove to be incorrect and the value of the business is thereby reduced. Warranties therefore provide a form of retrospective purchase price adjustment.</p> <p>To encourage the seller to disclose known problems to the buyer prior to completion of the sale through Disclosure (see definition above).</p>
<p><b>WITHOUT PREJUDICE</b></p>	<p>A term used to prevent statements made in a genuine attempt to settle an existing dispute, whether made in writing or orally, from being put before the court as evidence of admissions against the interest of the party which made them.</p> <p>They will therefore not cause detriment to the original rights of the parties. However, may be brought to the court's attention on certain issues such as costs.</p>