Legal Translation: Traps and Tricks of International Contracts

Guide to Understanding the Technical Terms of Written Contracts in English

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About the Authors:

Hello! We are Ruth Gámez and Fernando Cuñado. We are licensed in law and are translators specializing in the legal translation of English. We are also the parents of two children and we live in Valladolid, Spain.

We have been working in legal translation for 14 years and we love our job! For the last six years, we have worked as part of a team for law offices, law firms, and translation agencies. We like teaching and, for this reason, we combine our work as translators with the teaching at the University Pontificia of Comillas and we collaborate with Thomson-Reuters Aranzandi and Cálamo & Clan teaching various online courses.

If you want to know more about our work or contract our services, you can visit our web page, call us, or send us an email. We will be happy to continue the conversation.

Introduction:

The technical terms that appear in written contracts in English are words or expressions that pose important challenges to lawyers and represent one of the principle difficulties of English law.

They have a large importance, as they are intended to have certain effects on the contract and, unlike the difference that occurs with other expressions that denote legalese- like the archaisms or the professional jargon- the Spanish lawyer should know the precise significance of the most important terms. In order to be able to convey to the client the contents of a determined clause, it is necessary to understand it. A bad interpretation could completely change the effects of a contractual stipulation.

When we speak about the technical terminology of the contracts, we refer to those concepts with a special doctrinal meaning that is unknown to those who are not familiar with the concepts. The technical terms of contractual law act as short sentences or shortcuts that the editors of the contracts use to include concepts of prevalence between the participants in that field of the practiced law. Their special meanings and their implications make it so that they should be correctly understood and implemented in the correct context.

We do not intend to give legal advice about English law, law in the United States, nor any other. This is not our job. However, we are conscientious of the difficulties that these concepts pose to the lawyers that speak Spanish and often face contracts written in English. For this reason, we have made this elaborate guide, in order to help you better understand the most important terms and those that you will frequently find in contracts.

We hope that you enjoy it.

We Start With the Simplest Topic:

To start, we are going to study some technical terms that have a direct equivalent- terminologically and conceptually- in the language of Spanish law, making them relatively simple to understand if you know the equivalent concept in our law.

Breach of Contract:

The breach of contract occurs when one of the parties (the breaching party) acts in a way that is contrary to what is stipulated in said contract. Before the breach of one of the parties, the other usually has the right to terminate the contract. The party that was affected by the breach can go to court in order to solicit compensation for the losses suffered. Amongst other things, they can solicit compensation for the damage. We are going to see these concepts in more detail.

Business Day/ Non-business Day:

The terms *business day* and *non-business day* are very common in contracts and serve to compute terms or to pin the start date or extinction of some obligation. For this reason they are especially relevant.

In common language, these expressions can translate as “days of labor” and “days of no labor,” but in the language of law we should avoid said translation, as in law the equivalent is “able-day” and “not-able day.” The labor days are those fixed by the authorities of labor that mark the working days, while the days of “ability” and “non-ability” do not have anything to do with the working day calendar. The expressions “able” and “in-able” are mainly employed in procedural law to mark the effective days for a proceeding. However, they are also used in contract law to refer to the fixed days of a specific period, such as fixed for a concrete end (for example, to perform a banking transaction, to pay a tax, etc.) and they do not need to because it coincides with the working day calendar. It is normal that the defined term appears at the beginning of the contract indicating what “able-day” means and the concrete effects of said contract.

On the other hand, we have the expression *calendar day* or *calendar month* that should be translated as “natural day” or “natural month” and makes reference to all of the days in the period in question, without excluding holidays or weekends.

To the Best of my Knowledge:

This expression also has a direct equivalent in Spanish legal language that is “to my loyalty to know and understand” and serves to guarantee that a determined declaration of a part of the contract is based on the real knowledge of said part in the moment it is made. If it is demonstrated that the party who makes a determined declaration according to the “loyalty to know and understand” knew other distinct things in the declaration, this could have legal consequences for said part.

It is not infrequent to find this term translated as "according to my best knowledge." A literal translation does not reflect the legal implications before being cited and shows, immediately, ignorance on the part of the translator due to the jargon of Spanish law.

Reasonably Prudent Person:

This term proceeds from Roman law and, therefore, is easy to find a similarity in our law. The idea that underlies this is that contracts have to be fulfilled diligently, and in order to have value or size- although a subjective form- the required diligence to the parts of the contract says that they should behave *as a reasonably prudent man*, the equivalent of "with the diligence of a good father." This is the concept that we should employ to translate said expression, since its meaning and its functioning in our law are the same.

As we said at the beginning, the expression is derived from *bonus pater familias* of Roman law and makes reference to the grade of diligence or carefulness that would be employed by a normal person in the fulfillment of their obligations. We can find the expression, among other places, in Article 1903 of the Spanish Civil Code.

Condition Precedent/ Subsequent:

This type of condition has a very clear direct equivalent in our legal system, but it frequently gives place to erroneous interpretations for ignorance of its equivalent.

Condition precedent refers to a condition of whose fulfillment depends on the start of the obligatory and contractual effectiveness. That is to say, the contract, one of the determining provisions of the same, does not start to supply effects until it produces the condition. Our "suspensive condition (or initial)" is their conceptual and terminological equivalent.

Meanwhile, condition subsequent alludes to those conditions whose fulfillment determines the end of the effectiveness or the extinction of the contract or of the determined obligation. The correct translation of this technical term would be "resulting condition (or end)," so the contract remains resolved after its production.

Observe the similarities of the concepts in this comparative table:

Condition Precedent 1) In a contract, an event which must take place before a party in a contract must perform or do their part. 2) In a deed to real property, an event which has to occur before the title (or other right) to the property will actually be in the name (vest) of the party receiving the title.	"Suspensive condition (or initial)" Condition of whose fulfillment depends of the start of the obligatory and contractual effectiveness. That is to say, the contract, one of the determining provisions of the same, does not start to supply effects until it produces the condition.
Condition Subsequent	"Resulting condition (or end)"

1. In a contract, a happening which terminates the duty of a party to perform his or her part 2. In a deed to real property, an event which terminates a person's interest in the property	Those conditions whose fulfillment determines the end of the effectiveness or the extinction of the contract or of the determined obligation

The Topic Becomes a Little More Complicated:

In the Anglo-Saxon contracts you are also going to find other technical terms that correspond with those in our law through various similar concepts, but said concepts are not reflected in concrete terms, as happens in English law. These terms pose some additional problems and obligate us to search for equivalent expressions. We are going to see some of them as we continue.

As Amended:

This expression frequently appears in contracts and in many other legal documents, as it is proper English law. Generally, it is employed when there is mention of a contract or law that has been modified and, therefore, must be addressed as the current version. Like in this example:

> *"… the Purchase Agreement entered into by Company A and Company B on February 3, 2012, as amended on March 29, 2016…"*

In these cases the expression equivalent to "modified/amended in," is the most common translation in legal dictionaries.

But apart from this example in which the expression is used to refer to a specific modification or amendment, most frequently we find the experience without referring to a determined modification. We will know this because it will not indicate the date. As in this example:

> *"Purchase Agreement means the share purchase agreement dates in August 2012 (as amended) between…"*

In this case we know if the contract or law in question has been modified or not. If the editor of the text does not know, he should put this in a footnote, just in case. It wants to tell us that we should have the previsions of said law and contract according to the most current version of the text in a report. If it has been modified, the report should have the modified text.

Most appropriate for translating this expression into Spanish would be using the equivalent expression of Spanish law that has the same meaning and is "in its valid version."

Indemnify (to):

The verb to indemnify, which we frequently find in double form (to indemnify and hold harmless), does not have an equivalent term in Spanish law, but an expression with similar legal meaning and consequences equates to "liberation/ exoneration of responsibility to someone for something." We should not confuse it, in this context, with "compensate" or "compensation."

When it is said that A shall indemnify B what is meant is that A will be liable to B, in other words, that A responds in front of B for something, liberating them of all responsibility for the affair or the obligation in question (normally pay of some quantity).

We see an example that gives an exoneration clause of reasonability in a Spanish contract:

> *"The seller is liable to the buyer of all financial charges that could derive from the buyer in favor of the third with motive of action, claims, or conflicts deriving from the breach of these obligations on the part of the seller."*

Here we see an example of its use in a clause of an English contract and our proposed translation:

The agent shall hold A harmless and shall indemnify them for any damages arising from the representations made in this clause, including among others…	The agent exempts A of all responsibility for the harm and damages derived from the declarations in the present clause, including among others…

The majority of the time when we will translate it, it means to liberate someone of all responsibility. However, in some occasions, it could translate to compensating, such as when we speak of the obligation to pay one of the specifically determined costs to one of the parties as a mode of compensation. In this case:

The agent therefore agrees that the agent will indemnify and keep indemnified B and its affiliates from and against all loss, damage or liability, claims, costs and expenses incurred by B, or B affiliates as a direct or indirect result of any failure by the agent to comply with law, or follow the B procedures, policies, or instructions.	Thus, the agent accesses to indemnify B and his associated entities for all of the losses, damages and responsibilities, claims, costs and expenses incurred by B or his associated entities as a direct or indirect result of breach, on the part of the agent, of the legislation, the procedures, or the policies or instructions of B.

Termination:

As you know, multiple causes exist that could give rise to different forms of extinction of a contract (breach, rescission, resolution, novation, etc.). English law has a specific term for almost all of these, however, we are going to frequently find that the Anglo-Saxon lawyers employ the word *termination* to refer to all or the majority of them.

Termination could appear in a contract fundamentally in two senses: the larger sense is used to refer to any cause of extinction, and a more restrictive sense is used to refer to that in Spanish law known as resolution or rescission. We will know that one or the other will be used, according to its function of the content of the clause. We will be able to assimilate the term to our "resolution" when it is produced for reasons that appear after the signatures of the contract (as the breach of the agreed obligations) or for some planned event in its own contract (like a condition precedent). We will be before a similar case at the "rescission" when the breach of one of the parties causes damages or injury to the other and the law grants the right to rescind the contract.

Besides these clarifications that could serve you to better understand the scope of this technical term, you should understand that it is most likely that the contract is governed by the English law, of any state of the United States or the part of another country, that would not be the application of the expected consequences in our civil law for the rescission or resolution.

Jurisdiction:

The case of *jurisdiction* is similar to that of *termination* since it is a term that corresponds with various technical terms of Spanish law (at least three). For this reason we should pay attention to the contents of the clause where it appears in order to choose correctly.

Jurisdiction is employed to refer to, primarily, three topics:

1. The jurisdictional orders: *jurisdiction* could be referencing what Spanish law calls jurisdictional orders, like in the expression *criminal jurisdiction* that is the same as "jurisdictional penal order."
2. The territorial demarcations: this could also be referring to a determined territorial demarcation, like the *state jurisdiction* or *federal jurisdiction* of the United States.
3. The competency of the courts: finally, the other most common meanings of the term is that it makes a reference to the competencies within the ambit of the courts. Thus, we can find *jurisdiction* in concepts like *original jurisdiction* (competency in the first instance), *appellate jurisdiction* (competency in appeal), *excess of jurisdiction* (incompetency) or *concurrent jurisdiction* (conflict of competency). In this sense, the expression of a *court of competent jurisdiction* simply refers to the "competent court."

In Spain we usually employ the legal term to refer to the affiliated parties of a particular order (civil, penal, or labor jurisdiction). Although, it could be that by the influence of English law, it sometimes employs a place of competency, like in the "declining exception of the jurisdiction" of the criminal prosecution law that, maybe, should be called declining of competency.

In the contracts, we are frequently going to find a clause (that usually appears at the end of the same) named precisely *jurisdiction,* although it can also be called *venue* or *forum.* In said clause the parties agree who will be the competent courts in order to settle the conflicts that could arise between them for causes of the contract in question, in other words, in the case that some of them breach their agreed obligations. It is not uncommon that the same clause includes dispositions about the applicable legislation of the contract in question, so that, in many occasions, it is called *governing law and jurisdiction.*

Including, but Not Limited To:

The term *including*, and the multiple expressions derived from it (*including, but not limited to; including, without limitations)* is one of these cases characteristic of Anglo-Saxon *legalese* that appears in numerous documents. It employs a non-exhaustive enumeration. In other

words, a relation of facts, things, or prohibitions that should not be understood as final or closed, as other similar characteristics could be admitted. In other words, they would be like the species of one genre amplified to allude to a sentence immediately before.

It is usually used frequently to enumerate prohibitions. The editor of the contract wants to prohibit one series of things or determine the type of actions, and between them enumerate the mode of employment, those that are considered most important, but add the phrase *but not limited to,* in order to avoid that the reader would think that only what appears on the list is prohibited. It makes it seem as though there is not going to be anything important left in the inkwell.

For everything previously, we recommend not translating this expression in a literal form ("including, but without limit to") that could result a bit forced, if not employing other equivalent expressions such as the following:

1. Included, without limitation to character
2. Included, without exhaustive character
3. Included, for example (to mode of employment)
4. Included, between others
5. Such as, for example

We look at an example:

Your legal advisor will provide you with services, including, but not limited to…	You legal advisor will provide you services, such as, among others, …

In this same line you can also find the expression *without limiting the generality of the foregoing* that is employed with the same finality of introducing an enumeration that is not closed. On occasion you will find, even, a clause of interpretation of this type that leaves no place for doubt:

> *Whenever the word "include," "includes," or "including" is used in this agreement, it shall be deemed to be followed by the words "without limitation."*

The editor of the prestigious *Black Law's Dictionary,* Brian A. Garner, said this with respect to a past tweet August 20, 2015:

> *"Yes. Every contract should define including as meaning "including but not limited to," Then never use a longer phrase."*

We Arrive at the Most Complex Topic:

To finish, we will see some of the technical terms that pose a problem characteristic of the legal translation from English to Spanish: the lack of equivalence between the judicial systems. We will refer, specifically, to certain technical terms of Anglo-Saxon *Contract Law* that do not have conceptual equivalents or equivalent terminology in Spanish law, that is to say, there is no equivalent term nor concept with the same implications or legal effects that can be drawn upon, so that they pose a very important challenge to translators.

To solve this problem, we have employed different strategies, for example, trying to explain the term. This strategy can be a great help, but we should have present that, although we can be capable of translating its function, we cannot reflect the legal transcendence the same way. Other times, some translators will refer to foot notes on the page. Finally, when we still do not know what to do, we leave the original term in parenthesis and in cursive, giving a track to the reader about the origin of the foreign word and its lack of an equivalent in our legal system.

Damages and other Remedies:

The Anglo-Saxon contracts usually contain certain dispositions relative to the compensations that the parties should pay for a breach of contract. These dispositions entail serious compression difficulties for those that are less familiar with the *Common Law*, that still contain some complex technical terms whose meaning and implications are necessary to know.

Now we are going to examine some complex terms framed in this category examining a typical clause like the following:

> *The Parties acknowledge that damages alone would not be an adequate remember for the breach of any of the provisions of this agreement. Accordingly, without prejudice to any other rights and remedies it may have, the non-breaching party shall be entitled to equitably relief, including injunction and specific performance, as a remedy for any such breach.*

As we have said, the non-breaching party could keep the courts to apply for a remedy or compensation for the loss.

The first term that we find in the clause that you just read is the term *damages*, that is not the plural of damage, but that refers to a "compensation for damage and loss." Thus, the first thing the clause tells us is that we have put as an example that the parties consider that the compensation for damage and loss is not the most adequate form of compensation to the non-breaching party.

The compensation was, at one point in time, the only relief that was given in the courts of *Common Law* to compensate breaches of contracts. The agreed upon compensation in the written contract were some of the most characteristic of Anglo-Saxon contracts. In these parties, pin the amount of the compensation to pay for the breach of contract. Something similar is our penal clause. When the contract does not stipulate any concrete compensation, it is the court that should determine the amount. But, logically, a financial award is not always the best form to

compensate losses suffered by the breach of contract and, with time, they were developing other measurements of compensation.

If we continue advancing in the clause, we find the term *equitable relief* that we could only understand adequately after we have studied the development and the historical evolution of English law. The *equitable remedies* are a set of heterogeneous measurements of compensation-alternatives of the compensation for damage and loss that were developing in order to supply the shortcomings of before. Said measurements are a jurisprudential elaboration of the Equity Court, from which the word "equitable" is derived. The Equity Court arose in England in the 15th century to, amongst other things, supply the rigidity of the applied measurements by the common law courts. Said courts held a great discretional capacity in order to dictate sentences based on their own sense of justice. It is as if they were creating a series of measurements parallel to the damages that were grouped under the name of *equitable remedies.*

We see some of these measurements in the analyzed clause, such as the case of *injunction* and *specific performance.* The first of these (*injunction*) consists of a court mandate that orders one of the parties to do a specific action or to refrain from another action. We can find different translations of the term such as mandate, auto-preventive, legal request, etc. All of these are approximations. The second of these (*specific performance)* consists of an order that obliges one of the parties to comply with the commitments in the contract just as they were stipulated, that is to say, the party is obliged to the strict fulfillment of what was agreed. In Spanish law, there is a similar concept called "forced execution in specific form" that, although a little large, would be the most precise translation. Some dictionaries also translate it as "forced execution" or "material fulfillment."

Waivers:

Under the name of *waivers* in Anglo-Saxon contracts appears certain stipulations that can the parties can make in two distinct senses:

1. Giving up a series of rights that are owned
2. Excusing the other party from the fulfillment of certain obligations

In the first case, it is about certain voluntary waivers of rights and actions that one of the parties is responsible for. We see an example:

…, and any objection to the jurisdiction of the English courts for any reason is waived by the parties	… the parties are giving up to pose whatever exception of lack of competition in relation to the English courts

In the second case, it comes to pass by the fulfillment of an obligation, requirement, or condition, as the equivalent of "to excuse" or "to not requite." We see an example:

The company also reserves the right to waive any or all of the conditions of the offer as set out in this document	Besides, the company reserves the right to not require some or all of the conditions of the offer as described in the present document.

This concept does not have a direct equivalent in our legal system in either of its two meanings. It is important to point out that in Spanish law there is the principle of irrevocability of rights and, as in the legal doctrine as the jurisprudence are very few permissions with the voluntary resignation of rights. It is true that is some cases, as in leasing contracts, it is possible that the leaser gives up some of their prerogatives that confer the law, but it is less frequent and many of them cannot be admitted or be invalidated by the court. In a somewhat distant form they could be equivalent to modification contracts or an exclusion of the contents of the specific legal dispositions but, as we have already said, their application is very restricted and they are not frequent in Spanish contracts.

Warranties, Guarantees and Securities:

The term *warranty* refers, as we just saw, to the guarantees of each contract that essentially results in this. Through these, it guarantees us something in the framework of said contract. Here the Oxford Dictionary of Law defines its:

> "*A warranty is a term or promise in a contract, breach of which will entitle the innocent part to damages but not the treat the contract as discharged by the breach."*

An example of a contractual guarantee is called *warranty of fitness for a specific purpose,* through which a good or service sold is apt for a specific end; or the *warranty of title* includes in all contracts of buying and selling or some of the goods that guarantee that the seller or lessee is the true headline and owner of the goods sold or leased.

We see an example of this below:

> *"The seller has the full right and title of the shares, free from any Security Interest."*

On the other hand, the *guarantees* are personal guarantees, accessories to the contract. They are usually defined as secondary guarantees for which a person assumes the debt or obligation of paying a determined quantity in the same of debtor or principal debtor in the case of breach of this at the end; that is to say, the person that assumes the obligation of paying the sums that arise from the contract if the contractor does not respond. These guarantees demand that there exists a consideration independent of the contract and these should be agreed upon in writing.

And, finally, we have the *securities,* which can also translate as guarantees, but the equivalent to these in Spanish law is known as "real guarantees." These are employed to refer to a guarantee supported by a good or an asset like deposits, liens, encumbrances, pledges, or mortgages granted or made by the debtor in favor of the creditor to guarantee the payment of a debt or the fulfillment of a principal obligation. These guarantees proportion to the creditor a resource in the form of an asset that can be performed in the case of the debtor unable to complete the guaranteed obligations.

In the Anglo-Saxon contracts there are at least two types of real guarantees that deserve a more detailed explanation: *hypothecation* and *security interest.*

With respect to *hypothecation*, the first thing there is to say is we should not confuse it with mortgage. In order to refer to a real estate mortgage, in the sense that we employ this term in Spanish law, the English use the noun *mortgage*. The hypothecation is, however, a special type of pledge. In order to be more precise, it should be noted that two types of hypothecation exist: in the larger sense, we could define it as a legal business accessory in which the debtor delivers to the creditor a certain thing to guarantee the fulfillment of an obligation and that we could assimilate to the pledge; in a more restricted sense, it refers to the legal business through which it constitutes the same right of pledge about a delivered thing that is guaranteed, but without physically delivering the thing. This last case is similar to what we know in Spanish law as "pledge without displacement" or "chattel mortgage."

The concept of *security insurance* is common in Anglo-Saxon contract law. The Dictionary of Terms of the Bank of José Mateo Martínez defines it as "the right of the moneylender to acquire the property of all or part of the offered property as a guarantee of loan payment." For their part, the Black Law's Dictionary defines it as: "*A property interest created by agreement or by operation of law to secure performance of an obligation."* And continues explaining that, despite the Uniform Commercial Code of the United States limiting the constitution of a *security interest* for personal goods, the Bankruptcy Code of the United States defines it as a more comprehensive form than those assessments created by the agreement.

Representations and Warranties:

This technical term gives the name to one of the clauses most characteristic of Anglo-Saxon contracts, very habitually in trading contracts of companies (also named M&A, or contracts of fusions and acquisitions). It could be translated as "declarations and guarantees" or "manifestations and guarantees."

Fruit of the principal of autonomy and of the enormous, expansive force of Common Law, especially in this field, we start to see similar causes in written contracts in our country. Just as Juan Aguayo noted in an interesting book dedicated to this material (*The Manifestations and Guarantees in the Rights of Spanish Contracts),* it is a concept that we have imported from the Anglo-Saxon countries and that is being used more extensively in Spanish contracts negotiated individually.

The Black Law's Dictionary defines the *Representations and Warranties* as declarations of facts- made of words or deeds- whose intention is to persuade someone to act in a certain way, generally, to subscribe to a contract. They are also defined as the manifestations of a fact, or a state of mind. These declarations introduce circumstances and conditions in a contract that can affect their improvement or that can influence the will of one of the parties in order to enter into the contract.

The *Representations and Warranties* have two principal functions. On one hand, they have an informative function. That is to say, they introduce important information in order to get the contract signed. On the other hand, their function is the attribution of responsibility.

The informative function of this clause is articulated across the presentation of relevant information in order to sign the contract, as the manifestation about the title of ownership of the actions or of the assets that are intended to be sold, or the manifestations about the financial statements of the trading company. Besides informing about these aspects, something that the seller usually does, they guarantee that said information is true. Here is where the function of responsibility comes into play, which is the most important. Still the breach of said declarations could give place to action for misrepresentation and includes action for breach of warranty. For these, if you write a letter or a contract or you do not want to oblige to your client in a certain sense, we suggest that you utilize expressions like "the buyer/seller states…" in place of "the seller/buyer represents…"

Best Efforts/ Endeavors:

This technical term does not have an equivalent in our legal language: it translates to *best efforts* in the English of the United States, or *best endeavors* in British English. Because it does not have an equivalent in our legal system, we should return to an explanatory translation. Phrases like "the parties shall use their best efforts to…" usually translates to "the parties will do everything possible in order to…" The concept implies that one party, or both parties, of the contract assume the obligation of carrying out a certain actions. While in our legal system this is not a mere declaration of intentions without force- save a few rare occasions-, in the Anglo-Saxon contracts they could suppose a true obligation, although it will not usually have consequences as grave as in the previous case.

At any rate, we never recommend performing a literal translation of the following expression: "the parties will employ their best forces…"

We see some examples of how we could translate this term:

The parties shall be granted an additional fifteen calendar days to make their best efforts to reach an agreement on…	The parties will provide an additional term of 15 natural days during which they will do whatever is possible to reach an agreement about…
The expert must use his best endeavors to submit his report within thirty calendar says from the date he was appointed	The expert will do all that is possible in order to present his report within thirty natural days following his appointment
The parties shall cooperate and shall use their best efforts to prepare…	The parties will collaborate and will do everything within their power to prepare…

Terms and Conditions:

We will end this guide with the well-known *Terms and Conditions,* a technical term that is quite a bit more complicated than it appears.

If you often work with Anglo-Saxon contracts you will see the expression *Terms and Conditions* an infinite number of times. Quite a bit of confusion exists around the true meaning of this expression. Some lawyers and translators translate it as simply "conditions," others as

"clauses of a contract," and others prefer to respect the English expression with the most literal translation of "terms and conditions." In fact, many of our clients ask us if we translate it just like that.

We go by parts.

Terms:

This word alludes, in a general form, to all of the accords and agreements that have been agreed upon by the parties during the negotiations of a contract. Thus, to arrive at an agreement about the contents of a contract, it is said in English as "to come to terms."

It could translate, therefore, as accords or clauses of a contract. In the Spanish law of contracts (and in the law of many other countries of civil tradition) the use of "terms" to design the clauses or accords of the same has never, or almost never, been done. Due to a heavy English influence, there is a more frequent use of this expression in Castellano: "the terms and conditions of the contract."

The terms that the parties include expressly are written in contracts with the name *express terms.* There are also other terms that could govern this contract although they are not embodied expressly in the same, and are therefore denoted as *implied terms.*

Conditions:

The Anglo-Saxon conditions are the most important clauses of the contract. If any of them are not fulfilled adequately it can give place to a breach of contract with all of its consequences.

It is risky to translate conditions directly as "conditions," because our law of contracts already reserves this expression for true accidental elements of the same- and not essentials, like in the case of Common Law- like the condition precedent or condition subsequent. It is also true that in English law these conditions are named as conditions, as we just saw in the previous sentence, but this is an exception to the rule.

Afterword:

We have arrived at the end of this guide. In it we have analyzed some of the technical terms that appear most frequently in Anglo-Saxon contracts, posing many interpretation problems to lawyers as well as translators. We hope that you enjoyed it and that you learned something new.

You will find a great number of traps that hide these technical terms. We could not pretend to do an exhaustive dissection of each one of these, nor approach all of the possible problems that are presented. We have only wanted to familiarize you with their meaning and illustrate one of the principal difficulties of the translation of contracts, in which we usually cannot repair.

We recommend that you only trust expert translators that know these difficulties well, in order to avoid some grave interpretation errors that could shatter a negotiation. Do not hesitate to contact us if you need a team of expert law translators.