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Translating and comparing contracts for the sale of goods: Problems and methods

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0. INTRODUCTION

To conclude my academic career, I have chosen a particular variety of English language: legal language and translation. It is a sort of challenge, given the difficulty of this topic: indeed, languages for special purposes are recognized to be particularly complex and, consequently, the translation of documents written in this variety into our mother tongue are challenging too. Dealing with such a specific field permitted to face a knowledge that is completely different from the linguistic world I have known during these academic years. Moreover, as I will show later in this introduction, legal materials present a challenge themselves both linguistically and conceptually. I will illustrate now which are the several phases of the present work.

First of all, the initial step of this work has been the research of material about this particular topic, to better understand what I was dealing with. For this reason, many books and digital documents have been examined. The result of this research has been satisfying: indeed, many materials of different important authors, different periods and countries have allowed a more specific study for the starting references. This topic has not a long history in the linguistic research. Indeed, only after the Second World War, linguists recognised that commercial, technical and scientific texts were part of a particular genre, outlined as “special purposes texts”. But, in this group, legal texts were not included yet: only in the second half of the 20th century, law was included as a field of specialisation, together with the other special purposes texts mentioned before. Law is an inflexible and intransigent science, characterized by its looking for precision, setting therefore limits and boundaries within which the translator can move to create a new text. Legal translation is so strict that the translator indeed must follow precise rules and choose certain words and expressions, having no space for his/her own personal creativity or freedom.

Moreover, another important issue on which linguists discussed for a long period of time is the function of legal texts: the result of this discussion is that this kind of texts are usually informative documents, since their singular aim is to provide information to the readers, either they are involved or not in the situation affected

by the legal text. Later, there will be another trend that will state that the function of legal texts is prescriptive because they prescribe the behaviour that an individual should maintain, otherwise he/she will be punished or be subject to sanctions. Indeed, the peculiarity of legal texts, so, rests in their nature and most of all in the discipline they are born from. However, the main characteristic of the documents written in legal language is that they can be translated correctly only if the translator has a good knowledge not only of linguistic matters but also of the specific subject matter, which, in this case, is law. Actually, the translation process is made of particular procedures and choices that the translator has to manage skilfully and properly, given that this discipline gives the translator hard times (I will illustrate later on the method that has been chosen for the translation of the contracts for the sale of goods). Indeed, it is not easy to translate legal documents: as I will show in the Chapter 1, it is necessary to apply both legal and lingual knowledge to create a good translation, respecting these subjects equally.

Second, after having studied all the material found, I have focused on a possible table of contents for this dissertation, from the introduction to the conclusion. The method followed, especially for the first three chapters, is deductive: starting from a general approach to legal language and translation to the detailed translation of two contracts for the sale of goods, passing through the study of what a contract is and which its elements and structure are.

I will now present every chapter of our dissertation, summarizing contents and concepts. The Chapter 1 is the most general one: I want indeed to introduce readers to the peculiarities of legal language and to translation that, as I have already said, constitute a difficult field of languages for special purposes. This latter concept is very important, so much so that it will be the starting point of this work. The description of what a language for special purposes is permits to explain why it is not only difficult but also challenging studying and then applying it to real documents and not only in theory. What a language for special purposes will be then clear through an exhaustive definition, which underlines how this variety of a natural language is limited to a restricted group of people that works on a specific field and really needs this variety to communicate about a certain technical topic. Legal language is made of a different, complex terminology and,

in addition, morphology and syntax have some distinctive features too. A language for special purposes cannot be considered an ordinary language because the contents that it expresses are so technical that not everyone can understand them. For this reason, when dealing with a language for special purposes, it is necessary to have a good knowledge about the topic it will discuss. Legal language is divided in two parts: on the one hand, there is language and, on the other hand, there is law; to obtain the legal language, it is necessary to rejoin these two parts because they are not the same one without the other because they are absolutely complementary. Legal language indeed could not exist without law, and of course neither without the main rules of language. I will then try to explain what makes legal translation different from the other special purposes translations and which is the approach that a legal translator should have to face such a complex discipline, outlining a possible figure of legal translator.

The chapter goes on with the analysis of the main grammatical features of legal language. The presence of Latin and French words and expressions highlights how much these languages influenced the development of English language in time; there are also a number of linguistic features, such as binomials, fixed formulas, compound pronouns and adverbs that are very frequent in legal documents (and in the contracts that will be translated too). Moreover, a focus on punctuation is made to show that it is often insufficient; its absence indeed makes legal texts quite ambiguous and even more complicate to understand; common words can assume different meanings when they are in a legal documents, so translators must pay attention to every word and expression they find during the translation process. Instead for what concerns verbs, contracts make large use of the modal verb "shall" with three different functions (authorization, obligation and condition) and of the passive voice of the verbs, either because the agent of the verb phrase is not important or because it is more important to underline the verb than the agent itself.

Before moving to the second part of the chapter, I shall compare different legal systems: more specifically, there will be an analysis of the differences between Common Law and Civil Law, given that often dealing with different legal systems

makes translations even harder; it is very important to consider them in order to obtain a good target translation.

In the second part of the Chapter 1, after the linguistic analysis of the English legal language and the legal systems' comparison, the attention will be moved to legal translation. It is definitely a cultural-bound translation: every country has its legal system, rules, sources and the translators must take into consideration all these aspects that are fundamental to create a similar text into the target language. This special language is not only a matter of terminology, but it involves much more than this: it is not a process of transcoding from the source language to the target one. Instead, it is necessary to find equivalent term in the target legal language with comparable functions in the different legal systems. Translating legal documents means comparing different legal cultures and it is fundamental that the translator is aware about how terminology expresses particular categories, concepts, institutions, methods and procedures of a certain legal system, in order to translate everything properly. 'Equivalent term' has just been mentioned because the concept of equivalence is very important in legal translation: it reveals to be, in my opinion, the right strategy to use for the translation of legal texts. Translators indeed must give importance to the most relevant contents without translating the text literally: so, the aim of a translator is to find an equivalent term both linguistically and conceptually to produce a text that will sound "natural" to target readers. Moreover, the role of the translator is very important too: unfortunately, the fact that legal translation requires knowledge in two different subjects, language and law, poses a problem of priority. Is there a discipline that has more importance on the other? Should the translator be a specialist in law or a linguist? The answer is that this duality complicates this issue but the only solution seems to be the involvement of different figures with qualifications in these opposite fields. It is definitely very difficult to find a person who has perfect knowledge of both these disciplines, for that reason collaboration between more sides may take to a good result. It is an important problem: when the legal source text to be translated belongs to a certain legal system and the target language in which create the translation belongs to a different legal system, the translator will have to deal with two

divergent legal systems and probably it will not be possible to find the same concepts, words or expressions. But the translator will have to overcome these difficulties and find solutions for every problem he/she may find, creating a new legal text in the target language that has the same source contents, concepts, purposes and desired effects on the legal point of view.

In the Chapter 2, the focus will be on contracts. In the first part, the definition of this particular genre of legal texts will be given through the assembly of the several descriptions that have been found about the term “contract”. Briefly, a contract is a legally binding agreement between two parties; what differentiates this concept from a simple agreement is that the contract is enforceable by law. The acceptance of the parties to the contract (*consensus ad idem*) gives rise to specific rights and obligations and, if they are not complied, there will be specific legal consequences. It will be important to present the contents of a contract: the offer that an offeror makes to the offeree, the acceptance of this offer and the terms that regulate the contract, establishing rights and obligations of the parties involved. There are different types of terms and they can be conditions or warranties: the main difference is the importance that they have in a contract (conditions are essential terms instead warranties are non-essential terms). Indeed, in the case of breach of the contract, the consequences will be different and they will depend on the kind of terms breached. If a party breaks a warranty, the other party can claim damages but not terminate the contract. But, if the term broken is a condition, the innocent party can decide to terminate the contract or to only claim for damages, deciding to treat the condition as a warranty.

Then, the attention will be given to the structure of a contract for the sale of goods, which is the specific kind of contract that will be translated in the Chapter 3. Every contract begins with a formal opening where there will be general information about the contract and about the parties involved in the document. After this *commencement*, there is a recital where background information are given and the purpose of the contract stated. The most important section is the central one, the operative part: it is the longest section and it has legal effects; it includes all the terms agreed by the parties that create different sections according to their subject matter. The first operative clause is the definitions clause, after there

could be a condition(s) precedent clause, then the next part is the other operative provisions in which there are rights and obligations of the parties, including conditions and warranties and finally the boilerplate (clauses) contains the final clauses of the contract. At the end of the contract, there are different parts that conclude the document: closing formulas, possible appendices and a signature section where the parties involved sign the document as evidence of their agreement.

In the second part of the chapter, the various types of discharge of the contract will be discussed: they can be by performance, by agreement, by frustration or by breach of contract. The first kind of discharge is the most “natural” one, in the sense that all the terms and conditions are completely fulfilled by the parties that carry out the obligations agreed in the contract; the discharge by agreement means that the parties involved agree to extinguish the remaining obligations. The third happens when there is an impossibility to perform the contract, given a sudden change of circumstances, or when there is a change of law that would make illegal the performance of the contract or even when an occurrence prevents the main purpose to be achieved. The last one is the most serious because it takes place when a party fails to perform his obligations or even indicates that his intention is not to perform them.

This fourth breach of contract provides for proper remedies: they are called “remedies for the breach of contract”. They can consist of financial compensation (damages), *quantum meruit* (a remedy applied by law that establishes a reasonable amount to be paid when there is not an enforceable agreement), specific performance, injunction, suspension of the performance or rectification.

The last part of the Chapter 2 is dedicated to vitiating factors that make contracts void or voidable. Sometimes indeed, even if the contract seems to work perfectly, there can be some hidden defects that can invalidate the entire contract: they are called “vitiating factors”. On the one hand, a void contract is an agreement that has no legal effect and does not bind the parties. On the other hand, a “voidable” contract is a valid document when entered into but one party may have the option to subsequently terminate it. These vitiating factors can be duress and undue

influence: they are similar and they arise when one party is not willingly free to enter into the contract; when violence or other forms of pressure have forced a party to do that, the contract becomes void or voidable. Another vitiating factor is mistake and it is applied in various cases that will be listed in the chapter. Moreover, misrepresentation is a voluntary false representation made to induce the innocent party to enter into the contract; in this case too, there are several kinds of misrepresentation (innocent, negligent and fraudulent). For this vitiating factor, there are specific remedies that are equity, common law and legislation.

The Chapter 3 will constitute the cornerstone of this dissertation: it will contain the translation of two different contracts for the sale of goods, one valid in England and one from United States. My attempt is to translate all the terms: the first part of both the contracts is easier because it introduces simple general terms but, gradually, the difficulty of the clauses grows. Nonetheless, I will try to translate them, recognising that things get always more complicated.

In the Chapter 4, the last one, my work will proceed with the analysis of different topics concerning the translation just concluded. First of all, the peculiarities of legal language will be applied in context: in the Chapter 1, as I have said before, the main features of this language for special purposes will be taken into consideration and instead, in the Chapter 4, the concrete examples of them will be given in the translated contracts. Again, all the peculiarities of legal English, such as the Latin and French influence on the development of legal English, the abundant presence of fixed formulas (which, in our opinion, is the main feature in these contracts), compound adverbs and pronouns (here/there+preposition) and the three different uses of the modal verb “shall” will be presented with proper examples.

Then, translation problems will be analysed: they can be found during the translation process and then there will be a proposal of which can be, in my opinion, the possible solutions. This section is split in two parts, separating the English and American problems. In both these contracts for the sale of goods, the problems encountered are the same: they deal with the technical and specific lexicon that characterises a language for special purposes (in this case legal

language), particular syntactic structures and difficult words or expressions whose meaning is immediately clear but hard to translate into Italian.

The last paragraph of this chapter will be dedicated to the comparison of these two contracts and, again, it will be divided into two: in the first part, there will be an introduction of the American legal system and a comparison with the English Common Law, since in the Chapter 1 there is an explanation of only the English one. In the second part, instead, there will be differences and similarities between these two contracts, analysing which of these clauses are similar and which are completely different.

These are the contents of this dissertation: it has took a long period to work on it, given the difficulty of the topic. No language for special purposes is easy but law is even more difficult, since the consequences that it implies with its documents are significant.

As I have already said, the method adopted is the deductive one: this procedure indeed starts with a general view of this important issue towards a specific focus on contracts and on the translation of them.

On the other hand, for what concerns the translation of the contracts, another method has been followed, made of different steps that will be described now. First of all, the entire source documents are thoroughly read, as usual, in order to understand what it will be translated. Then, when realized that in these contracts there are similar clauses, identical fixed formulas and expressions, the second step will be the creation of a sort of personal glossary: it will contain a list of “approved terms” to ensure the consistency of these documents, so that the translation of similar parts will correspond and be the same. Moreover, this tool will be very useful because it makes immediate the research of the repeated terms and expressions to find the equivalents to use. After this glossary development, the next step will be the main process of all this work: translation. At this stage, indeed, everything is ready for the translation of the contracts for the sale of goods that have been chosen. This is the real challenge: it has been necessary to reinforce the competence already possessed with the hard study of the materials found, to read many Italian contracts for the sale of goods to

understand what they could sound like and to focus on different legal systems in order to understand how much they can influence also the translation of a document. Of course, it is absolutely necessary to review the translation over and over again: even if the translator has a good qualification, he/she is human and some mistakes can always occur; it is very important to read many times the work produced to find out if there are things that do not work properly. Moreover, the review of the translation is fundamental also because there are so many elements that have to be taken into consideration while translating that it would be very difficult to obtain a very good translation immediately: there are many aspects that have to be considered, of grammatical nature (lexicon, morphology, syntax), typography but, above all, the choice of every single word. When things seem more or less to work, an ultimate reading to the translation completed can convince the translator that this is the best version that he/she could have done of that particular text. This is the approach to the translation, which is the centre of the whole work.

Without any doubt, all the materials studied have been very important and stimulating for the writing of the next chapters. This work stands in the middle of two fundamental science: language and law; the fact that I will try to face this second subject, examining in depth this huge and difficult world, constitutes the real challenge of this work.

This is the introduction of what is our project for this dissertation: it is an interesting travel, metaphorically speaking, through legal language.

CHAPTER ONE: LEGAL LANGUAGE AND TRANSLATION

“Operare con la lingua del diritto permette al traduttore di assumere il più nobile dei suoi ruoli: il ruolo di intermediatore culturale.” (Viezzi 1994:4)

Legal language and translation are a challenge. In this first chapter, I will justify this statement: I will take into consideration the peculiarities and the difficulties of legal language, which is a particular kind of language, a jargon, but it has so many features (from a specific juridical lexicon to a strict morpho-syntax) that it constitutes a language itself. In the second part of this first chapter, I will focus on legal translation, which has been defined a translation of an “extraordinary complexity” (Viezzi 1994:4): it has to examine many aspects (linguistically and conceptually speaking) that I will list and explain later. But, among all these particular characteristics, the legal system of the source text and that of the target one is the first and the most important element to consider in order to translate legal texts properly. For that reason, there will be a paragraph entirely dedicated to the difference between Civil Law and Common Law, the two main legal systems worldwide.

I shall explain now in greater detail what I have just only mentioned.

1.1. LEGAL LANGUAGE: a language for special purposes

Every language has many varieties and each one depends on the specific field of use: they are called ‘languages for special purposes’. But what are they? One of the most complete and exhaustive definition comes from Michele Cortelazzo (1994: 8), who says:

“Per lingua speciale si intende una varietà funzionale di una lingua naturale, dipendente da un settore di conoscenze o da una sfera di attività specialistici, utilizzata, nella sua interezza, da un gruppo di parlanti più ristretto della totalità dei parlanti la lingua di cui quella speciale è una varietà, per soddisfare i bisogni comunicativi (in primo luogo quelli referenziali) di quel settore specialistico; la lingua speciale è costituita a livello lessicale da una serie di corrispondenze aggiuntive rispetto a quelle generali e comuni della lingua e a quello morfosintattico da un insieme di selezioni, ricorrenti con regolarità, all’interno dell’inventario di forme disponibili nella lingua.”

Therefore, as I said before, a language for special purposes is a variety of a natural language, used by a restricted number of people because its subject is not ordinary but specific, technical and appropriate to fulfil the communication about a certain special topic. The texts written in this LSP are addressed to specialists although, in some cases (and it happens with legal texts too), the receiver could be anyone, also a 'lay' person, a common citizen who has no knowledge about the topic the text deals with.

The most peculiar aspect of legal language, exactly like all the other languages for special purposes, is that it lies right between language and the subject considered (in this case law). This LSP is 'divided in two': language and law are the two subjects that constitute it but, as we will see now, none of these two halves could exist without the other; they are complementary and reciprocally necessary. On the one hand, common translators cannot think that their linguistic knowledge will overcome the lack in legal theory or be enough to complete a legal translation. It is necessary for translators who want to deal with legal translation to acquire more than the essential basics of law in order to understand completely every element of what they are going to translate and in order to produce an adequate translation too, from both a conceptual and a linguistic point of view. On the other hand, a specialist in law cannot improvise as translator, given that legal language has specific features that are peculiar of this variety and that characterizes it. That is why "legal materials present a challenge both linguistically and conceptually" (Riley 2008:39): indeed, it is not enough to focus only on terminology and on specific morpho-syntactic structures but it is necessary to possess an adequate knowledge of legal concepts and contexts to collocate in them the complex work that legal translators have to do. Legal translation is thus a relation between two different subjects, language and law, and the skill of the translator lies in going back and forth between these two subjects, creating a final result that is representative of the two cultures and two languages taken into consideration. I shall outline this in the following paragraphs but first I shall focus on the peculiarities and difficulties of legal language.

1.2. PECULIARITIES OF LEGAL LANGUAGE

Two important languages influenced legal English: Latin and French. For many centuries, these were the languages used in England together with English, which, however, was only a secondary and merely oral language. On the one hand, for what concerns Latin, it spread only when St Augustine went to England in 579 AD as a missionary to convert people to Christianity; it soon became the language of the scholars and of the Church. On the other hand, after the Norman invasion in 1066, French became the other important language in England, especially in the administrative field. Only in the late 17th century, English began to grow in importance and to dominate both oral and written communication. However, the ancient presence of those two languages is still evident in legal English: a large number of words and expressions have their origin in those centuries; these two languages influenced it a lot and there are hundreds of French and Latin expressions, such as 'force majeure' or 'consensus ad idem', which are clear examples of this linguistic influence. Translators do not always translate them into the target language, sometimes they leave them in the Latin or French original form, depending on the target-language tradition and system; in some other cases, target-language calques make simpler and clearer the expression itself.

Many other features make legal English a particular 'jargon', in addition to the adoption of Latin and French archaic terms and expressions (as we have just seen); we will now analyse them in detail.

Very often, legal English uses a string of two synonym terms (that linguists call 'binomials' or 'doublets') to convey a single concept, creating an effect of redundancy; they were originally used to make concepts clearer and complete. Sometimes they are mixed language doublets, such as 'terms and conditions' (made of a term coming from the English tradition and a term of French etymology) or 'will and testament' (English origin term with a Latin origin one); otherwise, they can be English-only doublets, such as 'able and willing' or 'have and hold'. For what concerns this peculiarity, translators can decide whether

translating the entire expression with a single word (choosing the solution of simplification) or finding a similar one in their own mother tongue.

Another important characteristic of this language for special purposes is the frequent presence of formulas: they can be made of the repetition of words or fixed structures; this aspect makes sentences longer and complicated, given that the number of coordinated and subordinated sentences increase a lot in this kind of texts. There is a problem arising: unfortunately, in legal English punctuation is often insufficient; generally, in case of complex sentences, it helps to understand a period clearly. In the past, there was a commonplace according to which lawyers thought that law was made only by words and concepts, so that punctuation was not that necessary: it was considered only a secondary and accessory element; with this conviction, they did not make full use of it but legal language and concepts were even more difficult to manage. This problem has partly been solved in time but punctuation is still not thorough.

Moreover, common words can assume different meanings when dealing with legal English: legal language borrows general terms and their meaning changes or becomes more specific depending on the context in which we find them. Sometimes, some of these general terms, put in a legal context, become so technical and precise that they cannot even be replaced by anything else. Indeed, working with a language with special purposes means dealing with technicity and sometimes it is even more difficult because it looks like ordinary language but it is not: it is a sort of linguistic disguise, given that even technical terms are often the same terms that we find in common language but with different meaning. Let us take, for example, the term 'consideration', which is very different when used in general or in legal English. In the first case, it means 'meditation', 'reflection' and 'careful thought'; instead, when we find this word in a legal context, it will mean something completely different and more complicate, it is a typical legal concept: 'anything given or promised or forborne by one party in exchange for the promise or undertaking of another'. Therefore, we have to pay attention to every single case in which we find a 'general' term in a legal context and to analyse it accurately in order to understand the real meaning intended by the author of the source text. The main reason is that legal texts often can fall into

the hands of non-experts, common citizens, who are not able to recognize if a certain word has the general, known meaning or a specific, particular one. It is the duty of translators to make every confusing passage or term explicit because, clearly for the important function legal texts have, everything must be very evident.

In addition, there are other typical elements of this specific field of English language. A widespread use of archaic and compound pronouns and adverbs consists in many expressions such as 'the aforesaid' (which means 'the one mentioned before'), 'hence' (that is not only 'for this reason' but also 'from now on') or 'thereof' ('of the thing just mentioned'). Moreover, legal language makes large use of the modal verb 'shall' to express obligation, authorization and conditions, together with the proper indicators of condition and hypothesis; these kinds of sentences are often mixed: this means that a condition can be made of positive and negative possibilities put together.

The verbal voice is very often passive because it is more significant to underline the action and its consequences than its agent; for that reason, sentences may have no specific subject.

A particular, unusual structure of sentences that follows the Latin and French word order shows again the influence that these languages had on this variety; for example, in an insurance contract, we could read 'a proposal to effect with the Society an assurance'. In general modern English this sentence sounds very strange, it would rather be 'a proposal to effect an assurance with the Society'.

Lastly, a high nominalization represents the preference to use non-finite clauses and verb-less clauses.

1.3. DIFFICULTIES OF LEGAL LANGUAGE

"Legal writing is typically ritualistic and archaic, being subject to very strict stylistic conventions in terms of register and diction as well as highly codified genre structures. There are heavy constraints at all levels, from the macro-structure of texts, to paragraphs, sentences and phrases, with systematic resorts to standardised forms, often archaic and uncommon in ordinary text

practice, stock phrases, rigid collocations and specialised cohesive devices for anaphoric and cataphoric as well as homophoric and intertextual reference.” (Garzone 2000:3)

For all these reasons, as I have explained in the previous paragraph, legal language is articulated and complex and its peculiarities represent at the same time its difficulties.

However, grammatical features do not represent the main complication of this linguistic variety: the difference of legal systems between the source and the target text constitutes the hardest obstacle to overcome. Legal language is definitely cultural-bound and this means that it is strictly connected to the context in which a legal text is born and acts. Therefore, it is fundamental to focus on the legal system that produces a certain text: only in this way, it will be possible to understand completely all its aspects:

“Ogni testo giuridico, ogni termine giuridico dev’essere letto, compreso e interpretato nell’ambito del macro-contesto giuridico rappresentato dall’insieme delle regole giuridiche di una data società.” (Viezzi 1994:15)

I shall now analyse the two legal systems in question: Common Law and Civil Law.

1.4. COMMON LAW AND CIVIL LAW

Common Law and Civil Law represent the two main legal traditions worldwide: they are two different systems that have distinct origins and divergent modalities of action.

Common Law “is a legal system based on judicial precedent arising from cases rather than law based on codes or other forms of legal enactments.” (Gubby 2004:16) It has its roots in the medieval time and it is in force in a number of countries all over the world, because of the expansion of the Commonwealth in the past centuries: first of all in Great Britain, but also in the US and Canada, South Africa, Australia, New Zealand and many more. It has not a written formal Constitution but it works only through a system of rules for which English legal system has two different sources: legislation and judicial precedent. On the one

hand, legislation is the act of making law through new rules issued by an adequate authority, the legislator. On the other hand, judicial precedent is that process through which authorities make decisions depending on precedent case law; it means that judges make their decisions referring to something similar already happened that constitutes, thus, the judicial precedent. From the first decision in a certain process, they establish a determined rule that will be valid for the next similar cases: this is also called 'doctrine of binding precedent'.

“In the common law countries the judicial decisions of superior courts, i.e., the statement of law made in the *rationes decidendi* of such decisions, are also recognized as a source of law. Case law, as it is called, developed as a distinct authoritative source by virtue of the rule of precedent, which obliges judges to observe the decisions made by their colleagues of higher courts.” (Sarcevic 1997:12)

Instead, when we mention Civil Law, we refer to a codified legal system that has its roots in the Roman law and that is based on written rules organized in codes (penal code, civil code, code of the administrative procedure, etc.) and in a formal written Constitution.

There is one main difference between these two legal systems: in Civil Law, decisions are based on legislation and on codified laws, so the role of judges is not that important because they will only apply the appropriate rule; instead, in Common Law, judges have a key role: they have to study deeply the case in order to adapt their decision to a juridical precedent. To use a metaphor, we may say that it is a sort of opposition between 'abstraction' and 'concreteness'. Common Law is more concrete because it takes every single case and analyses it in order to find the appropriate precedent. This is an inductive legal method: judges start their process analysing a given case, searching then for a similar previous case (binding judicial precedent) to which they will refer for their decision. On the other hand, Civil Law is more abstract because judges simply apply fixed rules (with a wide application) to the given case and their decisions are based on a codified system, following a deductive method.

Within English Common Law, there are two distinction to make: the first is between Common Law and Equity, the second between Common Law and Statute Law. I shall explain them shortly. (Viezzi 1994:15) Both in the first and in

the second opposition, Common Law is seen as the law constituted by decisions made by ordinary courts; instead, Equity is a jurisdiction regulated by the Lord Chancellor in cases in which he might remedy a decision made by a judge, “tempering the excessive rigour of the common law with a series of distinct principles based on natural justice.” (Alcatraz, Hughes 2002:50) Moreover, if there is any conflict, Equity will prevail on Common Law. In the second opposition, Statute Law is considered another important source of English law and it differs from Common Law because it is a legislative law, meaning that it is made of written rules voted by the Parliament, known as ‘Acts of Parliament’.

Returning to the first main opposition between Common and Civil Law, we may say that this important difference makes legal translations complex: to deal with divergent legal systems means that some concepts or terms can be misleading or even non-existent in the correspondent legal system. To find out more about this kind of problems, let us focus specifically on legal translation.

1.5. LEGAL TRANSLATION

“When translating legal terminology, you should look for an equivalent term in your legal system with comparable functions in the different legal systems; we try to compare two different legal cultures, we need to be sensitive to how terminology expresses particular categories, concepts, institutions, methods and procedures of a certain legal system.” (Riley 2008:50)

Which can be the problems that translators have to face in legal translation? As I said before, every law has its roots in its own culture so it is definitely cultural-bound; for that reason, translators have always to bear in mind this aspect in order to find a right correspondent of every single term and every single concept of the source text in an appropriate manner in order to create a good target text through translation. Every nation or region has its own *apparatus* of rules, terminology, sources and principles and all these aspects constitute its legal system. We may say, then, that every legal system is profoundly linked to the socio-cultural system of the same nation. Legal translation is a special purposes translation and, although languages and legal systems might be different, its goal is to maintain the meaning of the source text, and the target text may lead to the

same results in practice. Indeed, when working on a legal translation, this main aim has to be achieved giving priority to the content more than to the form. Translators have wondered for a long time over the function of the translation, which seems to be the main criterion to decide the best translation strategy to apply.

Until the second half of 20th century, experts did not even include legal texts among the special purposes texts so the focus on legal documents began very late. In the first decades of interest, linguists thought that the function of legal texts was only informative: they stated that this kind of text was limited to the presentation of information to general readers. However, later deeper studies showed that this was not the only nature and function of legal texts; it is better to say that the function of legal texts may vary according to its content and typology. I agree with Sarcevic's point of view: their main function is prescriptive (or regulatory) because legal texts usually prescribe the behaviour that an individual should maintain because otherwise he/she will be punished or be subject to sanction. Prescriptive texts suggest determined behaviours and, if law is not respected, people can be punished for what they do; for that reason, it is very important for a translator to be sure that he/she rendered clearly and completely the concept meant by the author of the source text or by the legislator when drafting the legal text in question.

The function of a legal text depends only on the context that produced it; its function cannot be found inside the text itself because it has to be considered only as part of a specific communicative situation. For that reason, the same text can be prescriptive for an individual that will be affected by it but it can be informative too for all the other part of the population that will come into contact with it. Indeed, the fact that legal texts are prescriptive means that they are strictly binding in contents and fixed in form: they are inflexible and they have many implications in different aspects, such as culture, society, language and methodological nature.

Given that legal texts have a specific function to maintain and to transfer also in the target text, we may say that legal translators become text producers rather

than bare translators because their work is not limited to a simple linguistic transposition of a text from one language to another but it implies much more. Indeed we are demonstrating that legal translation has a huge variety of the juridical contexts (different cultures and societies which produce legal texts) and a great amount of legal texts that are themselves object of translation. Translators indeed must pay continuous attention to the technical language of law to use and to the right legal system of context, both of the source and of the target text. In this way, the result will not be an ordinary text written in the target general language with legal concepts inside. Surely, the target text will be more complicated than this: it will be written in the target legal language, using terms and concepts that belong to the target legal system and it will produce legal effects. “Legal translation stands at the crossroad of three areas of inquiry – legal theory, language theory and translation theory” (Harvey 2002:182), so translators have to pay attention to all these subjects in order to transfer the meaning and translate the message itself as accurate as possible.

1.6. TRANSLATION STRATEGIES

Legal translators must dedicate themselves fully to their role because the binding nature of legal documents requests a huge attention even to details. They have to give importance to every word they find during the process of translation, analysing the context that bore the text itself and thinking of what will be the meaning in the target text, because their production will have to be clear in terms of words, but also for the ideas expressed.

To recapitulate, as Gémar maintains (2006:79), legal translation has to pay particular attention to: the legal nature of the text (law, contract, treaty, etc.); the contents of the legal text itself; the impact that notions contained in the legal text will have on the receiver; its function and its destination. The accuracy of the translation will depend on the way the translator could manage these aspects and found solutions for the possible problems encountered.

Let us focus now on the right strategy of translation for what concerns legal texts.

We cannot compare legal translation with the translation of other literary genres because they are completely different in form and contents. Legal translation distinguishes itself for the uniqueness of interpretation and meaning and for the binding and strict connection to the context in which the source text was produced - an essential element to take into consideration. Every aspect of the source text must be analysed studying the context because every specific term and concept can assume a peculiar meaning, as I said before.

This distinctive feature explains why the basic unit of legal translation is not the single word but the text seen as the whole of sentences, terms and concepts. For that reason, literal translation is not the adequate strategy to deal with a legal text because translators cannot guess the right meaning of terms if taken by themselves: their sense will be clear and can be established only considering them in their context.

But literal translation is not the only translation strategy to avoid: legal translators cannot use neither freedom nor fantasy, which are tools that translators usually make use of in other literary genres; translators must not deform the source text as they want. Instead, they should follow the principle of 'fidelity' to the source text because it implies that they cannot change the text: using this method, they have the possibility to avoid bad or improper free choices.

However, the most important concept to follow for translators is 'equivalence': this is the right strategy to adopt for translators when they find themselves in difficulty while translating. How can be equivalence put into practice? Translators perfectly know that languages are different one from the other: for that reason, it is quite impossible to achieve a maximum level of equivalence between them on a lexical, semantic and stylistic level. They act thus giving more importance to the most relevant contents, always trying to find equivalent terms or expressions to what they think it is difficult to translate, not only literally but also conceptually.

We can define equivalence as a tool that relate two different texts, despite their diversity on language and structure, however it makes possible to achieve a good result. Following the criterion of equivalence, I may say that the translation consists of three phases. The first step (and probably the most important)

corresponds to the analysis and the interpretation of the source text. A deep analysis from a linguistic and a conceptual point of view is fundamental to be sure of what the author of the source text meant during its drafting. Only when linguistic structures, lexicon, legal concepts and the context of the source text are clear, the translator can proceed with its work, focusing on the second phase of the translation process, which consists of the drafting of the target text through “linguistically equivalent terms.” (Alcatraz, Hughes 2002:23) The last stage of this process of translation is

“the proviso that, other things being equal, the criterion of ‘naturalness’ of target-language expression is to preside over any other in attaining equivalence referred to in stage (2), ‘naturalness’ being understood to mean avoidance of strain or the forcing of sense or syntax.” (Alcatraz, Hughes 2002:23)

Translators have to observe this ‘equivalence’ not only in terms of the linguistic aspect of the text but also (and especially) in terms of legal content, in order to produce a target text that will be clear and ‘natural’ to the final reader. Indeed, legal translation is made of the grammatical, morphological, syntactic, lexical aspects that are linguistic and of the content and the interpretation, which are strictly linked to the law itself.

The right solution in order to solve these kinds of translation problems is thus to find the proper adjustments both linguistically and conceptually, not focusing on a translation word-by-word because its meaning does not concern only single words but the whole text. Concentrating only on the translation of technical terms is not enough:

“The selection of the best, or the most appropriate, or the most natural or effective term will always depend also on other factors, such as context, traditional usage, genre and even subgenre.” (Alcatraz, Hughes 2002:178)

As I said before, it is necessary not to consider only language or only law separately: legal translation is a mix of these two complementary elements and it cannot exist without one or the other.

Thus, we have discovered that law is about interpretation, which is a consequence of comprehension. Judges can be quite sure to interpret a given legal text correctly but translators cannot be that prepared. When they are in difficulty, in front of conceptual choices to make in order to produce a good translation, there should be an expert in law that gives them the right interpretation of the source text passage they are in trouble with and that suggests them which is the best solution in that specific case. Indeed, interpreting law is not the first aim of a translator, instead it is precisely the judge's job. It is very difficult to translate a text that we do not understand well and the comprehension cannot be limited to the word-to-word reality but should have the entire legal text as its reference. A legal translator is first only a translator, who is in possess of translation competence and proficiency. With translation proficiency I intend many qualities that a translator should have: a high skill in translating, a satisfactory knowledge of the specific subject studied, a good translation strategy and a continuous consideration of the context. On the other hand, other people could think that an expert in law could be the best person to cope with legal translations, without taking into consideration that he/she would not have the linguistic competence to face a translation.

The best compromise, then, would be a competent person both on linguistics and law, but this kind of education is very hard to achieve. To solve this problem, translation experts thought that something simpler could be the solution: collaboration. Indeed, a translator will never have the same preparation in legal knowledge as a judge can have and, on the other hand, a legal expert cannot feel ready to face a legal translation because, as we have seen in the previous paragraphs, this literary genre has many features to respect. So, cooperation seems to be the best solution in order to produce a faithful and accurate text to the original, being sure of giving the right interpretation with a correct structure and form. The interaction between these two different professional figures must be encouraged especially when a translation concerns, like in our case, two different languages and two different legal systems: the collaboration of the translator with a comparative lawyer would be even better for the good result of the project.

The legal translator lies right in the middle between the drafting of the text and who has to make it valid, between language and legal system, between the source and the target text. For this reason, at the beginning of this chapter we defined the translator as an intercultural mediator: he/she is not simply a translator of texts but a text producer, an expert in socio-cultural issues, a person who tries also to reach a good knowledge in another field that is not his/her own main competence.

The role of translator reveals to be very important and, given that law is a difficult and complicated subject, they decided to grab on to literal translation, thinking that it would have reduced the margin of error. As I said before, also the principle of fidelity has always been fundamental for translators, in order not to violate the source text, following and reproducing its style, syntax and terminology, giving no space to creativity and freedom. I may say that a little exception is the case in which translators work on a legal text with an informative purpose because they feel less bound by the power of the text itself, since it has no legal effects; for this reason, they try to apply personal little modifications (and not complete change to it).

Translators find themselves in a dangerous and difficult position, because they are constantly under the pressure of two opposed forces: one get them close to the source original text, asking them to respect it in order to avoid imprecisions, misunderstandings and bad interpretations; instead, the other force asks them to give an interpretation to the source text, focusing on the understanding of it in order to transfer the message correctly. These two forces implicitly support two different translation strategies: the first gives importance to a literal approach, focusing on single words more than on context and on the text as a whole; the second prefers functional equivalence, which I told before to be the best translation solution for two reasons: this strategy indeed respects the function of the legal text and looks for equivalent terms and expressions of the source text in order to make the target one sound very natural to the receiver. It is very important to maintain the original intended meaning wanted by the author and to reformulate it in the target language.

So, the translator must focus both on form and on content at the same time and this requires a considerable effort and concentration, especially for the binding constraints that legal texts have. Given the complex nature of legal language, translators must be precise and manage all the details and difficulties that they may find throughout the whole text. As I said before, recreating an identical version of the original source text is quite impossible because it is a fact that different languages cannot have precise and similar linguistic correspondences. At this point, I perfectly know that legal translation is not only a matter of language: also for what concerns meaning, it is anyway impossible to reproduce identically the source text because some concepts may have not an equal correspondent in the target language and legal system.

To conclude this chapter, I can say that two fundamental things are clear. The first is that the role of the translator is more complex than we usually think because the work to do to translate a legal text is long and complex. The second is that nothing can be neglected in this specific kind of translation because every detail is important, and functional equivalence results to be, for a variety of explained reasons, the best translation strategy for what concerns legal texts.

These concepts apply to any legal texts and so it will be valid also for contracts, which are the focus of this work and which I will analyse and translate in the next chapters.

“Different approach to contract law means that some principles, taken for granted, in Civil Law systems, do not exist or only exist in an underdeveloped form in English Common Law. For example, when Dutch courts interpret contracts, they take into account not just a linguistic analysis of the contract, but also other factors such as the reasonable expectations of the parties given the nature of the contract and what would be fair and reasonable.” (Gubby 2004:165)

Dealing with contracts too, the function of this specific kind of legal text is mainly prescriptive: when writing a contract, the parties establish determined rules in order to produce legal effects.

CHAPTER TWO: CONTRACTS

After an introductory chapter about the peculiarity of legal language, the complexity of legal translation and the multiple role of translators when they have to deal with it, I shall focus now on a particular subset of legal texts: contracts. As we know, law produces different kinds of documents, and contracts are only one of this much bigger genre.

In this chapter, I am going to explain what a contract is, describing and analysing its structure and its possible contents. I shall focus on the 'sale of goods' contract, being this the typology that I will take into consideration, translate and analyse in the following chapters. Finally, I shall explain the reasons and the modalities of the discharge of a contract and of the vitiating factors that make a contract void or voidable.

2.1. WHAT IS A CONTRACT?

First of all, I shall illustrate what we mean with the term 'contract'.

Looking up this word in a dictionary, the first result that we obtain is "A written or spoken agreement, especially one concerning employment, sales, or tenancy that is intended to be enforceable by law." This is the simplest but the most effective definition of what a contract is; but there are many other definitions to accumulate more information about it, with a step-by-step approach.

We can find a similar, reduced description in Riley's *Legal English and the Common Law* (2012:291), which states: "A contract is a legally binding agreement between two or more parties." In this case too, the term 'agreement' is mentioned, that is an hypernym of 'contract'. The legally binding nature of contracts is also mentioned, introducing the fact that two or more people are involved in its drafting.

Another definition that we can find in a specific textbook dealing with law is: "A contract is an agreement which the courts will enforce; it may be oral or written and the parties have rights and obligations which arise from their agreement."

(Chartrand, Millar, Wiltshire 2003:5) Here the emphasis is on the presence of rights and obligations that the parties have to respect in order to accomplish the contract, as well as on the legal enforcement by the courts.

But things can get more complicated when we find new concepts in a longer and more complex definition:

“A contract is a legally binding agreement between two parties, an agreement enforceable at law. It is the binding effect underlying contract which leads to the purpose of the law of contract: to provide remedy for breaches of enforceable agreements. [...] An essential feature of a legally enforceable contract is a *promise* by A to B to do or forbear from doing certain acts in which the *offer of a promise* becomes a *promise by acceptance*. This type of agreement is usually spoken of as *consensus ad idem* (agreement as to the same thing) because it requires the common consent of the parties in order to have a binding effect, and similarly gives rise to rights and obligations between the parties.” (Tessuto 2009:19)

As I have seen in the previous definitions, here too there is a reference to the agreement, which can be written or spoken, and which concerns a specific issue. One of its peculiarities is that it is enforceable by law: this means that it is regulated by determined conditions and, if they are not complied, there will be specific legal consequences. Moreover, an important concept is that of ‘promise’, and the related offer and acceptance for it.

The first thing to consider is that “the basic principles of contract law in the USA, in UK and in those countries formerly under British colonial influence derive from English common law.” (Haigh 2004:151) This is an important issue to take into consideration as it constitutes our background context to proceed with the study of the contract as a legal typology of document and then with its translation.

There are many distinctive features when we speak of contracts: first of all, a contract is something more than a written or spoken agreement because it is enforceable by law. It involves two or more people that will be legally bound from the moment of the acceptance by B to a valid offer of A, the offeror; otherwise, if

B does not accept the terms established, there will be a rejection of the original contract, proceeding with the creation of a possible new counter-offer.

So, two or more parties give rise to the contract when they all accept rights and obligations defined by the contract itself. Moreover, a contract will provide also remedies in the case of breach of these enforceable agreements. There is another important element that has not been mentioned yet: consideration.

“The common law ‘contract’, which is founded upon ‘consideration’, reflects an agreement but also an exchange [...]. Furthermore, we observe that contract may correspond to ‘promise founded upon reliance’ rather than to ‘agreement’ or ‘exchange’.” (Sacco 2005:15)

We could simply define consideration as the totality of reciprocal promises that are made by the parties to a contract but I will go back to this important concept later on.

Now I shall focus in particular on the main elements that constitute a contract, including those just mentioned.

2.2. CONTENTS OF A CONTRACT

Let us start from the fundamental requisites of a contract: the contracting parties; without them, there would be no agreement. There can be two types of legal parties: natural persons or juristic persons. They are defined both ‘legal persons’ but they have a divergent nature: juristic persons are “entities possessing legal personalities: in common law systems, they are called *corporations*” (Riley 2012:296); indeed corporations can be part of a contract as well as individuals. Corporations are defined as ‘A legal person created by Royal Charter, Act of Parliament, international treaty, registration under a statutory procedure, e.g. under the Companies Acts (the commonest type). A corporation is a distinct legal entity, separate from such persons as may be members of it, and having legal rights and duties and perpetual succession. It may enter into contracts, own property, employ people and be liable for torts and crimes.’

This is a satisfactory definition of what a corporation is. As we have just read, corporations can be created in a number of ways but they act exactly like what

we define a natural person. There are two types of corporations: a *corporation sole* is made of only one component, instead a *corporation aggregate* is made of a number of elements.

After the definition of all the parties of a contract, every contractual relationship begins with the offer by the offeror to the offeree (the party to whom the offer is made); this offer can be accepted or rejected. It is thus a definite promise to accept legally binding obligations without further negotiations; there must be commitment from both the parties with serious intention. The initial draft offer should contain the names of the parties involved, the subject matter, the consideration and the time and place for performance. If the offeree does not accept the offer, it means that there will be a counter-offer. Instead, if the offer is accepted, the offeree has to approve all the terms and conditions of the contract and not only a part of it, otherwise it will not be valid.

The acceptance of the offer is a “voluntary act by the offeree who shows assent to the terms specified by the offeror.” (Chartrand, Millar, Wiltshire 2003:16) A free acceptance corresponds implicitly to the sharing of the intention to create legal relations, which is again another vital requirement to put in place an enforceable contract.

According to the principle of the ‘privity of contract’, only those who take part to the contract have legal rights and duties in respect of it. It is necessary that parties have legal capacity, which is their competence to enter into a contract, understanding what they are agreeing to; both natural persons and corporations must own this contractual capacity.

The contract must concern legal rights and obligations, so illegal action cannot be part of a contract: law must approve every section of it.

Now let us focus again on a very important concept mentioned before: consideration.

“[...] an agreement must be supported by consideration. Put simply, consideration describes what is actually given or accepted by the parties in return for a *promise*; the price for which the promise of the other is bought. As an element which transforms the agreement into a bargain, consideration may be or include: the provision of goods;

and/or the provision of services; an/or the payment of money.”
(Tessuto 2009:20)

Consideration is a fundamental requirement of a contract because it has the power to transform a simple agreement into a bargain. It is not something that only the offeree gives to the offeror: both parties must give it for a contract to be legally binding. It is something promised or done in return for the promise of the other party, it is necessary to support the contract, and it has to be valuable. It does not have to be necessarily money, it may be also a simple exchange of goods.

I shall move on now from the main requirements of a contract to the terms that constitute it. Every contract is subject to a number of terms contained in the agreement itself: actually, these terms regulate the whole contract. There are completely differentiated natures for them: terms can be conditions or warranties and they can be implied or express terms. Every contract is made of all these elements and they establish the rights and the obligations of each party involved in the agreement.

On the one hand, we could define a condition as a major term that has a fundamental role in the contract: for the importance it has, it is called also ‘essential term’. On the other hand, there are warranties, which are minor terms (also called ‘non-essential terms’). Moreover, sometimes terms can be implied, in the sense that it is not that necessary to explain them: they are not explicitly agreed by parties because they are not concretely part of the contract; they are usually legislative rules that apply to the contract itself.

Sometimes the distinction between conditions and warranties is not very clear and definite in the contract, because it does not matter very much for the contract itself. This difference becomes important in the case of breach of contract: the judge will determine if a term is a condition or a warranty, depending on the context of the entire agreement, since the remedy depends on the type of term that has been broken. I shall explain later what a breach of contract is, but I shall introduce this topic analysing the different legal cases.

First, if the party in breach has broken a warranty (non-essential term), the other party may claim damages and there is no possibility for the contract to be discharged. Second, if the party in breach has broken a condition (essential term), it is called 'fundamental breach of contract'. In this second case, there are two different possibilities: the innocent party can decide to be discharged from any further obligations listed in the contract, exercising the right to terminate the contract; otherwise, they can claim for damages, deciding to treat the condition as a mere warranty and taking the contract as still valid. Third, for what concerns implied terms, if the breach results in a court case, the court itself will interpret the contract in order to understand which the intentions of the parties were while making the contracts.

Of course, all these theoretical concepts about contracts are valid also for the specific kind of contract that I will translate later, that is sale of goods.

"A contract for the sale of goods will contain a number of terms relating to the supply and delivery of the goods, some of which are essential to the contract and some of which are to be included in the contract and their subsequent classification as to their importance to the contract. [...] The first step is to distinguish which statements and promises made in the course of negotiations can be construed and going to form a contract." (Corradini 2000:154)

Usually, terms and conditions of a contract for the sale of goods concern the description of goods, the orders that customers can make, the price of the products and the terms of payment, the delivery, risk and property, warranties and liability, indemnity, insolvency of buyer, export terms and general notions. (Corradini 2000:204) I shall return to these topics later, with the translation of the contract and its analysis.

2.3. THE STRUCTURE OF A 'SALE OF GOODS' CONTRACT

Commercial contracts, including the sale of goods ones, are written maintaining more or less the same fixed structure. This type of contract is made of different sections and each of them has a name and a specific role in the entire document.

Every contract for the sale of goods begins with a *commencement*, a formal opening that includes the general information about the contract itself. It specifies the nature of the agreement and gives the full names and the addresses of the parties involved in the contract.

The second part of the contract corresponds to *recitals*. This is a non-operative part of the contract (it means that it usually does not have legal effects), a preamble that provides background information and that states also the purposes for which the agreement has been made; moreover, it may also contain possible facts which may influence the court in the interpretation of the contract if necessary.

The *operative part* follows the recitals: it can be considered the heart of the document, its most complex and long section. It includes all the terms agreed by the parties that consequently create their rights and duties. These provisions are organized in a sequence of clauses, divided according to their subject matter. The first operative clause is usually the *definitions clause*, which contains the rules with which the parties (and potentially the court) interpret properly the defining terms of the agreement. Then, there could be a *condition(s) precedent* clause: the presence of this particular clause would imply that a specific condition have to be fulfilled before the agreement, otherwise the contract will not become valid. We could entitle the following section *other operative provisions* and its role is to determine the rights and obligations of the parties; these clauses include representations and warranties, pre-contractual statements or promises by one to the other party that a given statement or a set of facts is true. The last section of this main part of the commercial contract is the *boilerplate (clauses)*: these are the final clauses of the contract. There are standard boilerplate clauses and it is the drafter's duty to understand which will be the appropriate clauses to include, according to the type of contract and to its contents. Examples of this kind of clauses can concern *amendment* (means by which parties can make changes to the contract), *entire agreement* (it limits the parties' rights and duties to the contract itself), *law and jurisdiction* (it specifies the law of the country that governs the contract) and many more.

I am moving to the final part of the contract, which includes three different parts. The first of these is the *closing formula* that is a fixed, conventional ritual to close, indeed, the operative clauses part. We could find a sentence like “AS WITNESS the hands of the duly authorised representatives of the parties to the Agreement the day and year first before written.” (Riley 2012:327)

After a closing formula similar to that we have just read, we will find *schedules*, which contain detailed information, fundamental to the contract; we might find also the *appendices*, which, otherwise, can be put after the end of the contract.

At the very end of the contract, we will find a *signature section*, where all the parties involved in the contract are required to sign the document as evidence of their agreement to its terms.

2.4. DISCHARGE OF A CONTRACT

When we talk about the discharge of a contract, we mean that the contract is brought to an end for different reasons that we will see. The direct consequence of the discharge of a contract is that the parties involved are not under the contractual rights and obligations anymore, even if the obligations under the contract remain incomplete. A contract may be discharged in one of the following ways that I shall list and explain now.

2.4.1. DISCHARGE BY PERFORMANCE

With ‘discharge of performance’, we mean that all the parties perform the contract completely and definitively, carrying out all their contractual obligations; so I may say that it the simplest and the most ‘natural’ end of a contract. To be valid, the performance must be total, otherwise there cannot be this kind of discharge and the parties will not be discharged by their contractual obligations.

However, there are two exceptions to complete performance that are applied where there has been substantial performance or where the contract is divisible. I shall now analyse these two cases.

On the one hand, substantial performance means that the parties have fulfilled many obligations but some minor aspects have been left aside and these aspects must indeed be so minor that it would be inequitable not to allow the party in default to recover any of the contractual payment. The innocent party can then claim damages for those aspects that the defaulting party has not fulfilled. On the other hand, 'divisible contract' means that the legal agreement can be divided into different parts and that it is possible for the party in default to recover payment for that specific part of the contractual obligations that he has carried out.

2.4.2. DISCHARGE BY AGREEMENT

'Discharge by agreement' means that the parties involved in the contract agree to extinguish remaining obligations. Indeed, the agreement between the parties can create a valid contract but, at the same time, these parties can agree to terminate the contract and to feel discharged by their contractual obligations. This kind of discharge of contract can occur in multiple situations.

First of all, there may be a shared, voluntary rescission of the contract by all the parties involved. Second, if the parties do not agree anymore with the terms and conditions set before, they can decide to find other compromises creating a new contract; this case is called 'novation'. Third, the parties could agree in the original contract that, given a certain situation or after a fixed period of time, it would automatically end. Moreover, if neither party has performed any obligation of the contract, each party can agree to release the other from their obligations under the contract itself; this is a bilateral discharge where both parties exchange promises not to enforce the original contract.

The situation becomes even more complex when there has been a performance or partial performance by only one of the parties. There can be discharge if the party who has not performed either draws up a deed or provides fresh

consideration. Unilateral discharge requires accord (to the agreement to discharge) and satisfaction (to the consideration needed). This rule also applies if the parties wish to vary the terms of their agreement.

2.4.3. DISCHARGE BY FRUSTRATION

Suddenly, the circumstances beyond the control of the parties may change and these new situations can create three different legal cases. The first is when something makes impossible to achieve the main object of the contract as circumstances have dramatically and radically changed since the signing of the contract (impossibility of performance). The second is when a change in law would make the performance of the contract illegal (illegality). Third, an occurrence could prevent the main purpose from being achieved (failure of the main purpose). In all of these three cases, no one can establish an innocent and a defecting party: everyone is indiscriminately released from their contractual obligations.

So, when after the formation of the contract something happens beyond what was contemplated by the parties, then the contract is said to be frustrated; the contractual obligations become impossible to carry out and the contract may become also futile. The doctrine of frustration does not apply where a change in circumstances has simply made the contract more difficult to perform. For frustration to apply, there must be a radical change of circumstances so that contract has become fundamentally different from the original undertaking, not just more difficult to perform. If frustration is self-induced, it will be breach of contract rather than frustration.

2.4.4. DISCHARGE BY BREACH OF CONTRACT

In the case in which there is a breach of contract, it means that one of the parties involved in the contract has not fulfilled completely their obligations of the contract or it even refuses to carry them out. This means that a party fails to perform

his/her obligations (it is the case of fundamental breach) or indicates that his/her intention is not to perform them (this occurrence is called 'anticipatory breach' or 'repudiation').

In these two circumstances, the innocent party has the right to treat the contract as discharged. On the one hand, in the first case, the defaulting party does not explicitly repudiate his obligations but breaches one of the most fundamental term of the contract: this is the case in which a condition has been breached. On the other hand, in the second instance, the defaulting party has stated that it will not perform his/her contractual obligations, repudiating the entire contract.

An agreement to give each other notice of default is quite a common commercial practice in common law jurisdiction.

2.5. REMEDIES FOR THE BREACH OF CONTRACT

In the case of breach of contract, there are several different remedies available to the innocent party. At common law, the innocent party can claim damages and, if the other party has repudiated the contract or if the breach is of fundamental kind, it can treat the contract as discharged, applying also for an equitable remedy where this would be appropriate. Equitable remedies are various and discretionary.

2.5.1 DAMAGES

In contract law, damages are a legal remedy for breach of contract. This term, when used in legal English, means 'financial compensation': they will compensate the innocent party for any loss suffered by the breach of contract. The main aim of damages is to put the injured party in the position it would have been in if the contract had been performed regularly. So, the innocent party will be compensated for those losses that have actually been caused by the failure of the other party to carry out his obligations. A claimant has the right to claim for an expectation loss, a loss that the claimant expected to receive. In general, the

claim is made for unliquidated damages, as the quantification of damages is a matter for the discretion of the court.

Sometimes the contract offers a clause that specifies how much the defaulting party must pay to the innocent one in case of breach of contract. There are two different kinds of clauses.

The first type of clause is called 'liquidated damages clause'. Usually, parties should try to value in advance what their losses would be in case of breach of contract. If the damages are not assessed in advance, there will be a court that will estimate the proper amount. If the court is convinced that the clause is a genuine pre-estimate of loss, the court will enforce the clause. If the amount assessed by the parties is accepted as liquidated damages, this sum will be awarded, whether the actual loss is greater or smaller.

The second type of clause is 'penalty clause'. This is applied when the innocent party decides to punish the other party for breach of contract and wants it to pay a penalty for not fulfilling the obligations imposed by the contract itself. They are not enforceable in courts; the claimant may only recover his actual loss. The court will only intervene to construe a penalty clause if the stipulated sum is much greater than any likely loss.

However, it is requested that the claimant mitigates loss, trying to limit the amount of loss. In the case in which a seller has had his goods improperly rejected by the other party, he must try to sell them for the best price available elsewhere. He must not sit on the breach.

2.5.2. QUANTUM MERUIT

The Latin expression *quantum meruit* means 'as much as he deserves'. In other words, this kind of remedy corresponds to the measure of damages of a contract that is modified by the implied agreement of the parties. It determines the amount to be paid for services when no contract exists or when there is doubt as to the amount due for the work performed but done under circumstances when payment

could be expected. The law establishes that a reasonable amount has to be paid, even if there is not a specific legally binding agreement between the parties involved. If a person sues for payment for services in such circumstances the judge or jury will calculate the amount due based on time and usual rate of pay or the customary charge, based on *quantum meruit* by implying a contract existed.

Sometimes there are contracts that determine their rights and obligations before performing the service and *quantum meruit* acts right when there is not an enforceable agreement. The claim can be made where the other party accepts voluntarily a partial performance or where one party has been prevented by other from completing performance.

2.5.3 SPECIFIC PERFORMANCE

With 'specific performance', we mean the order of a court to make a party perform what is stated in the contract. We could define it also is a specialized remedy used by courts when no other remedy (such as money) will adequately compensate the other party. In English common law, an innocent party does not have the legal right to demand that the other party performs his obligations. Usually, it completes a previously established transaction, given that this is the most effective remedy in protecting the expectation interest of the innocent party to a contract. This is used in special cases, it is ordered if damages are not a sufficient remedy; to justify it, the subject-matter of the contract must be unique and consequently not readily available elsewhere. The role of the court is to supervise the performance and it must be equitable to grant the order. Very often, special performance is applied when it is not a merely matter of money or where the true amount of damages is unclear.

Initially, specific performance was not considered a remedy but often damages were not an adequate remedy: for this reason, the court of equity decided to develop this specific performance to be applicable in appropriate circumstances.

2.5.4 INJUNCTION

Another equitable remedy is injunction: the court may issue orders that prohibits a party from acting in a particular way or directs it to take some action. This kind of remedy is quite similar to the specific performance but the main difference is that specific performance orders a party to do something; instead, an injunction prohibits a party to do something.

On the one hand, permanent injunctions are issued by a court at the end of a trial and as a part of the judgment order. On the other hand, temporary injunction are enforceable immediately but for a limited period of time. There can be also preliminary injunction that are also enforceable immediately but usually during the duration of trial until a more permanent order can be secured.

2.5.5. SUSPENSION OF PERFORMANCE

In civil law, the right of the innocent party to suspend performance where the other party is in default is very common. The principle of *exceptio non adimpleti contractus* (a Latin expression that means 'exception of a non-performed contract') generally applies: it represents the suspension of performance in the event of breach. On the other hand, in common law, there is no general principle allowing suspension of performance by an innocent party, so the suspension of performance will become breach of contract. The suspension by the innocent party is permissible only in determined circumstances, for example, when the parties have provided for it in the contract, or where terms are considered to be interdependent. Although law systems differ, as I have just said, civil law often recognises the *exceptio non adimpleti contractus* which allows the innocent party to suspend the performance of the contract without terminating the contract.

2.5.6. RECTIFICATION

The equitable remedy of rectification provides a change in a written document, agreed by the parties. This remedy needs the intervention of a court that will

express what the contract should have said when the parties created it. It is used when a written document does not reflect the actual agreement that the parties have reached; the court could rectify the contract, which is to substitute the original text with some changes to give effect to the parties' true intentions.

Being an equitable remedy, this means that the application of rectification is possible only in special circumstances. This remedy is usually prohibitory, in the sense that it forbids a party to do something but, in some cases, it can be also mandatory, that is it can command a person, instead, to do something.

2.6. VITIATING FACTORS: VOID AND VOIDABLE CONTRACTS

So far, I have presented a contract with its main elements, its structure, the discharge of it and the possible remedies. But we will discover now that there is something else that could undermine a contract: vitiating factors. Sometimes, a contract that seems to work perfectly may hide defects that will emerge only subsequently. These defects may be so serious that the contract is set aside: indeed, a vitiating factor alone can invalidate an entire contract, making it void and voidable. Let us explain these things one at a time.

A void contract is a contract that has no legal effect: it can be illegitimate and unenforceable from the moment it is created. For these reasons, it means that it creates no legal obligations and does not bind the parties. The general rule here is that the parties must be returned to the positions they were in before entering the contract ('pre-contractual positions'). Moreover, this kind of contract acts also with restitution: if one party has justifiably received money or goods from the other, he is under the obligation to restore it to the rightful owner so that he will not be unjustly enriched ('unjust enrichment').

On the other hand, we define 'voidable a contract that is valid when entered into but where one party may have the option to subsequently set the contract aside. In this case, it is possible to apply the remedy of rescission (the setting aside of a voidable contract), the effect of which again being to return the parties to their pre-contractual positions and to treat the contract as if it had never existed.

The fundamental difference between these two types of contracts is that a void contract is not legally valid or binding at any point in its existence, while a voidable contract can be legal and enforceable depending on how the contract defect is handled.

Thus, the main vitiating circumstances that make a contract void or voidable are duress and undue influence, mistake and misrepresentation. I will see now one at a time in detail.

2.6.1. DURESS AND UNDUE INFLUENCE

These two vitiating factors are similar: they both arise where parties are not willingly free to decide to enter into the contract; in these cases, physical force or other forms of pressure have forced a party, so that the contract becomes void or voidable.

Duress is a kind of pressure that can be actual or physical, which forces the injured party to accept the contract set out by the person pressing, without freedom of choice. It is not that clear in English law whether in this case the contract will be void or voidable.

Instead, undue influence refers to an improper pressure (rather than violence) or influence that a party, again, uses to force the innocent party to enter into a contract made of rights and obligations decided by the pressing party. In this case, the contract becomes voidable, given that it will be recognized an abuse of a privileged position of one of the parties.

2.6.2. MISTAKE

Mistake is not always a vitiating factor in a contract: only when the mistake is of fact, it may undermine the validity of the binding agreement, making it void or voidable. There are various types of mistake recognized by law.

First, when parties are at cross-purposes and they cannot achieve an agreement, this is a mistake as to the subject matter, which precludes the *consensum ad idem* of the parties and which makes the contract void.

Second, it can also happen that the mistake can concern the existence itself of the subject matter: this arises when the subject matter of the contract does not exist no more before the contract is entered into. This makes the contract void and it is known as 'mutual mistake' because both parties are mistaken, they all believe something that is wrong or not true; there can also be a misunderstanding between them.

Third, there may be a mistake as to the identity of the person contracted with. In this case, one party thinks he is dealing with a person but is in fact dealing with a different one. If the innocent party can show that the identity of the other party was crucial to the transaction, the contract is void.

Last, a person is bound by the terms of a written document that they have signed, even if they have not read or understood it. However, *non est factum* is an exception to this rule: to benefit of this right, the signed document must be fundamentally different from the one the signatory believed himself to be signing.

2.6.3. MISREPRESENTATION

A misrepresentation is a false representation that is made with the intention to induce the innocent party to enter into the contract. The person making the misrepresentation is called representor (or misrepresentor) and the person to whom it is made is the representee (or misrepresentee).

So, a misrepresentation is a statement of fact that must have been formulated during contractual negotiations or at the time of the creation of the contract. Misrepresentation makes the contract voidable and it is only operative if its intention is an inducement to enter into the contract.

The law recognises three types of misrepresentation together with the equitable remedies that the misrepresentee may invoke against the misrepresenter according to the type of misrepresentation.

2.6.3.1. INNOCENT MISREPRESENTATION

The kind of misrepresentation here is innocent because the maker of the statement had valid reasons to believe that what he was stating was true. So, in this case, also the representor (the person to whom the misrepresentation is made) reasonably thinks that the statement made is true; the representee can rescind the contract (by the modality of rescission).

2.6.3.2. NEGLIGENT MISREPRESENTATION

The representor, while contracting, unreasonably believes that the statement is true, for his carelessness. Moreover, the representee cannot prove that he had reasonable grounds for believing that the statement was true. For this reason, the representee can rescind the contract and claim damages.

2.6.3.3. FRAUDULENT MISREPRESENTATION

This is the most serious kind of misrepresentation: the representor indeed makes the statement consciously knowing that it is false or being reckless as to whether it was true. In this case too, the representee can rescind the contract and claim damages.

2.6.4. REMEDIES FOR MISREPRESENTATION

For what concerns this kind of vitiating factor, there are different remedies to which the representee can claim: not only common law, but also legislation and

equity offer the innocent party a proper remedy; in some instances, this will depend on the type of misrepresentation.

2.6.4.1. EQUITY

In equity, every case of misrepresentation is valid for an innocent party to claim the rescission of the contract. Rescission, indeed, is a remedy by the representee to show that he does not want to be bound to the contract, being then the contract terminated *ab initio*. This remedy is discretionary and it will not be granted where it would be inequitable to do so. The parties return to their initial position, as the contract had never been created, and a party who is in breach of contract cannot rescind it.

In equity, rescission may be accompanied by an indemnity, which is to cover the necessary costs of obligations created by the contract. Indemnity simply puts the parties back in the pre-contractual position, so that the innocent party is neither better off nor worse off than before.

2.6.4.2. COMMON LAW

If the representee was induced to enter into a contract by a fraudulent or negligent misrepresentation (and not by innocent misrepresentation), the representee may sue for damages in the tort of deceit for a fraudulent misrepresentation and in the tort of negligence for a negligent misrepresentation.

2.6.4.3. LEGISLATION

According to legislative statute, damages can be claimed for innocent and negligent misrepresentation. For what concerns the first case, the innocent party can claim damages instead of rescission; in the second instance, damages can be claimed in addition to rescission of the contract or in lieu of rescission itself.

CHAPTER THREE: TRANSLATION OF CONTRACTS

ENGLISH STANDARD TERMS AND CONDITIONS FOR SALE OF GOODS

<http://www.ridgeway-components.co.uk/standard-terms-and-conditions-for-sale-of-goods/>

1. Definizioni

Le seguenti parole avranno, nel presente documento, il seguente significato:

1.1 Per “Acquirente” si intende l’organizzazione o la persona che acquista i Beni dal Venditore;

1.2 Per “Condizioni” si intendono i termini e le condizioni di vendita indicati nel presente documento ed ogni termine o condizione speciale stipulati per iscritto dal Venditore;

1.3 Per “Data di consegna” si intende la data stabilita dal Venditore per la consegna dei Beni;

1.4 Per “Beni” si intendono gli articoli che il Venditore dovrà fornire all’Acquirente;

1.5 Per “Diritti di Proprietà Intellettuale” si intendono tutti i brevetti, i modelli registrati e non registrati, il copyright, i marchi, il know-how e tutte le altre forme di proprietà intellettuale riconosciute ovunque nel mondo;

1.6 Per “Prezzo” si intende il prezzo dei Beni riportato nel listino fornito dal Venditore, periodicamente modificato, o un altro prezzo eventualmente concordato dalle parti per iscritto, più il trasporto, l’imballaggio, l’assicurazione o altre tasse o interessi che possono essere quotati dal Venditore o che possono essere applicati conformemente alle presenti condizioni;

1.7 Per “Venditore” si intende la Ridgeway Components Limited, Unit 5, Prosperity Way, Middlewich, Cheshire, CW10 0GD.

2. Disposizioni generali

2.1 Le presenti condizioni sono valide per tutti i contratti per la vendita di Beni dal Venditore all'Acquirente, a esclusione di tutti gli altri termini e condizioni, compresi eventuali termini o condizioni che l'Acquirente potrebbe cercare di applicare a qualsiasi ordine di acquisto, conferma d'ordine o altro documento simile.

2.2 Tutti gli ordini di Beni verranno considerati dall'Acquirente una proposta per l'acquisto di Beni ai sensi delle presenti Condizioni.

2.3 La presa in consegna dei Beni può considerarsi prova certa dell'accettazione da parte dell'Acquirente delle presenti Condizioni.

2.4 Qualsiasi modifica delle presenti Condizioni (inclusi termini e condizioni speciali concordati dalle parti, a titolo indicativo eventuali sconti) non sarà applicabile, salvo disposizione contraria convenuta per iscritto dal Venditore.

2.5 Qualsiasi consiglio, raccomandazione o dichiarazione da parte del Venditore, dei suoi dipendenti o agenti all'Acquirente, ai suoi dipendenti o agenti in merito a conservazione, funzionamento o utilizzo dei Beni o altro che non sia confermato per iscritto dal Venditore è posto in essere dall'Acquirente a suo esclusivo rischio e pericolo; perciò il Venditore non è responsabile di eventuali conseguenze di detti consigli, raccomandazioni o dichiarazioni ove gli stessi non siano stati confermati per iscritto.

2.6 Le disposizioni delle presenti Condizioni lasciano impregiudicati i diritti di qualsiasi Acquirente che agisca come consumatore.

3. Prezzi e Pagamento

3.1 Il Pagamento del Prezzo è rigorosamente effettuato al momento dell'ordine, salvo l'istituzione di un conto di credito con il Venditore, nel qual caso il Pagamento del Prezzo è fissato a 30 giorni dalla data di fattura.

3.2 Il Venditore ha il diritto di applicare interessi su fatture scadute: dalla data di scadenza per il pagamento, gli interessi maturano giorno per giorno fino alla data del pagamento con un tasso annuo del 2% di volta in volta indicato dalla Banca d'Inghilterra.

3.3 Il Venditore si riserva il diritto di concedere, rifiutare, limitare, cancellare o alterare le condizioni creditizie a propria discrezione in qualsiasi momento.

3.4 Se il Pagamento del Prezzo o parte di esso non verrà effettuato entro la data di scadenza, il Venditore avrà il diritto di:

3.4.1 imporre il pagamento prima della consegna per qualsiasi Bene non consegnato in precedenza;

3.4.2 rifiutarsi di effettuare la consegna di un qualsiasi Bene non consegnato, prescritto o meno dal contratto, senza con ciò incorrere in alcuna responsabilità dell'Acquirente per la mancata consegna o per eventuali ritardi nella consegna;

3.4.3 trattenere qualsiasi pagamento effettuato dall'Acquirente per tali Beni (o Beni forniti in relazione a qualsiasi altro contratto) secondo quanto riterrà opportuno;

3.4.4 recedere dal contratto.

4. Descrizione

Ogni descrizione dei Beni o riferita ad essi è fatta con il solo scopo di identificazione, e l'utilizzo di tale descrizione non dovrà costituire una vendita tramite descrizione. Per evitare ogni dubbio, l'Acquirente dichiara che questo non dipende in nessun modo da alcuna descrizione in fase di sottoscrizione del contratto.

5. Campione

Nel caso in cui un campione dei Beni venga mostrato e verificato dall'Acquirente, le parti accettano a tal proposito che tale campione sia dunque mostrato e verificato con il solo scopo di permettere all'Acquirente stesso di giudicarne la qualità, ma non da costituire una vendita tramite campione.

6. Consegna

6.1 Salvo diverso accordo scritto, la consegna dei Beni avverrà all'indirizzo indicato dall'Acquirente alla data specificata dal Venditore. L'Acquirente potrà adottare tutte le disposizioni necessarie per prendere in consegna i Beni ogni volta che essi sono presentati per la consegna.

6.2 La data di consegna indicata dal Venditore è soltanto stimata. La data di consegna non sarà di estrema importanza per il contratto e, anche se verrà fatto ogni ragionevole sforzo per rispettare tali date, la conformità ad esse non è garantita; l'Acquirente non avrà diritto di risarcimento o di annullamento dell'ordine per nessuna ragione nel caso in cui non vengano soddisfatte le date di consegna stabilite.

6.3 Qualora il Venditore non riesca a consegnare i Beni per cause indipendenti dalla sua volontà, il Venditore avrà il diritto di immagazzinare i beni fino alla data in cui la consegna verrà effettuata e l'Acquirente sarà responsabile di ogni spesa relativa a tale deposito.

6.4 Nel caso in cui l'Acquirente rifiuti la consegna dei Beni nel giorno della consegna o entro 3 giorni dalla comunicazione che i Beni sono pronti per essere spediti, prima o dopo la data di consegna, il Venditore si riserva il diritto di fatturare i Beni all'Acquirente e, pertanto, di addebitargli il prezzo. Inoltre, l'Acquirente dovrà pagare ragionevoli spese di magazzino o di demurrage, come opportuno in tali circostanze, finché i Beni non saranno spediti all'Acquirente o smerciati altrove.

6.5 Il Venditore avrà il diritto di consegnare i Beni a rate e, in questo caso, ogni consegna costituirà un contratto a sé e la mancata consegna da parte del Venditore in una sola volta o ripartita in più rate conformemente alle presenti Condizioni o ogni pretesa dell'Acquirente riguardo a una o più rate non darà il diritto all'Acquirente di considerare rescisso qualsiasi altro contratto connesso.

6.6 Nel momento in cui l'Acquirente richiede che la consegna dei Beni sia ripartita in più rate, questa modifica esige l'approvazione scritta del Venditore e non sarà possibile se non con un preavviso scritto fornito e accettato almeno 3 mesi prima. Ogni consegna costituirà un contratto a sé e il mancato Pagamento del Prezzo da parte dell'Acquirente rispetto a ciascuna rata di consegna darà al Venditore il diritto di considerare rescisso qualsiasi altro contratto connesso, oltre a qualsiasi altro diritto del Venditore in conformità con le presenti Condizioni.

6.7 Sebbene il Venditore abbia ritardato la consegna o non sia riuscito a consegnare immediatamente i Beni (o una parte di essi), l'Acquirente sarà tenuto ad accettare la consegna e a pagare i Beni integralmente, a condizione che la consegna sia fatta in qualsiasi momento entro 3 mesi dalla data di consegna.

7. Accettazione

7.1 Il Venditore è distributore dei beni e l'Acquirente è l'unico responsabile per dettagliare le specifiche dei Beni, per accertare l'utilizzo al quale sono destinati e per determinare la loro capacità di funzionamento al fine predisposto.

7.2 L'Acquirente è tenuto a controllare i Beni al momento della consegna e si riterrà che li abbia accettati 14 giorni dopo la consegna. Di conseguenza, nessun reclamo per eventuali difetti, danni o qualità saranno presi in considerazione (senza pregiudizio alcuno per altri diritti del Venditore ai sensi delle presenti Condizioni), a meno che il Venditore non riceva un avviso scritto entro 14 giorni dalla consegna, accompagnato da prove evidenti. Dopo l'accettazione, l'Acquirente non avrà più il diritto di rifiutare i Beni che non sono conformi al contratto.

7.3 L'Acquirente non dovrà rimuovere o comunque alterare i marchi o i numeri dei Beni.

7.4 L'Acquirente dovrà accettare la consegna dei Beni sebbene la quantità consegnata sia maggiore o minore rispetto alla quantità acquistata, purché una tale discrepanza non superi il 5%, e il Prezzo dovrà essere adeguato in maniera proporzionale alla discrepanza stessa.

8. Rischi e Titolarità

8.1 Il rischio di danneggiamento o perdita dei Beni è trasferito all'Acquirente nel caso in cui i Beni vengano consegnati presso i locali del Venditore, nel momento in cui il Venditore avvisa l'Acquirente che i Beni sono disponibili per il ritiro, o nel caso in cui i Beni siano consegnati in un altro luogo diverso dai locali del Venditore al momento della consegna.

8.2 Nonostante la consegna ed il trasferimento del rischio dei Beni all'Acquirente o qualsivoglia altra disposizione delle presenti Condizioni, la proprietà dei Beni non sarà trasferita all'Acquirente finché il Venditore non avrà ricevuto il pagamento integrale, in contanti o in fondi disponibili, del Prezzo dei Beni e di qualsiasi altro Bene venduto secondo accordi dal Venditore all'Acquirente per il quale è quindi dovuto il pagamento.

8.3 Fino al momento in cui la proprietà dei Beni non sarà trasferita all'Acquirente, l'Acquirente conserverà i Beni in qualità di agente fiduciario e depositario del Venditore, e manterrà i Beni divisi da quelli dell'Acquirente e di terze parti, conservati, protetti, assicurati e identificati come proprietà del Venditore.

8.4 Fino al pagamento del Prezzo, l'Acquirente ha il diritto di rivendere o di utilizzare i Beni nel normale svolgimento della sua attività, ma dovrà contabilizzare al Venditore i proventi della vendita o meno dei Beni, materiali o immateriali, inclusi i proventi di assicurazione; inoltre, deve mantenere tutti i proventi di cassa separati da qualsiasi somma o da qualsiasi proprietà dell'Acquirente e di terzi e, nel caso di proventi tangibili, adeguatamente conservati, protetti e assicurati.

8.5 Fino al momento in cui la proprietà dei Beni non passerà all'Acquirente (purché i Beni siano ancora esistenti e non siano stati rivenduti), il Venditore ha il diritto di richiedere in qualsiasi momento all'Acquirente di cedere i Beni al Venditore e, se l'Acquirente non lo fa, il Venditore potrà entrare immediatamente in tutti i locali dell'Acquirente e di terzi nei quali i Beni sono conservati, e riappropriarsi dei Beni stessi.

8.6 L'Acquirente non ha il diritto di garantire o di addebitare a titolo di garanzia per indebitamento nessun Bene, che rimane proprietà del Venditore; ma, se l'Acquirente lo farà, tutte le somme che l'Acquirente deve pagare al Venditore diventeranno immediatamente esigibili e pagabili (senza pregiudizio alcuno per altri diritti e rimedi del Venditore ai sensi delle presenti Condizioni).

8.7 Il Venditore avrà il diritto di recuperare il Prezzo sebbene la proprietà di qualsiasi bene non sia ancora stata trasferita dal Venditore.

9. Insolvenza dell'Acquirente

9.1 Se l'Acquirente non adempirà il pagamento dei Beni ai sensi del contratto di vendita o commetterà una qualsiasi altra violazione del presente contratto di vendita, o qualora una proprietà o Bene dell'Acquirente sia sottoposto a sequestro od esecuzione forzata, o qualora l'Acquirente offra di fare un concordato con i propri creditori o commetta un qualsiasi atto fallimentare o qualora venga presentata un'istanza fallimentare contro l'Acquirente, o qualora l'Acquirente non sia in grado di far fronte ai propri debiti in scadenza o se l'Acquirente è una S.r.l. (società a responsabilità limitata) e viene presentata un'istanza qualsiasi di messa in liquidazione dell'Acquirente (che non abbia lo scopo di fusione o ricostruzione), qualora venga nominato un curatore fallimentare o amministrativo, un amministratore o un manager rispetto a tutte le attività o beni dell'Acquirente o parte di essi, o qualora l'Acquirente subisca un analogo procedimento ai sensi del diritto di un paese straniero, o qualora un'altra tale questione in base a quanto disposto da questa clausola venga appresa

ragionevolmente dal Venditore, tutte le somme in sospeso in relazione ai Beni diventeranno immediatamente esigibili.

9.2 Il Venditore, nelle circostanze indicate nella clausola 9.1, potrà anche, a sua totale discrezione, e senza pregiudizio alcuno per altri diritti che ha, esercitare i suoi diritti ai sensi della clausola 8 sopra.

10. Garanzia

10.1 Qualora si dovesse riscontrare che i Beni sono difettosi, il Venditore dovrà sostituire i Beni difettosi gratuitamente entro il periodo di garanzia offerto dal produttore, se ragionevole dalla data di consegna, secondo le seguenti condizioni;

10.1.1 l'Acquirente deve immediatamente avvisare per iscritto il Venditore non appena si manifestano i difetti;

10.1.2 il difetto deve essere causato da errori di progettazione, di materiali o di lavorazione;

10.2 Qualora il Venditore lo richieda, ogni Bene da riparare o da sostituire dovrà essergli rimandato al Venditore a spese dell'Acquirente.

10.3 Qualora i Beni siano stati prodotti e forniti al Venditore da terzi, ogni garanzia concessa al Venditore rispetto ai Beni passerà all'Acquirente, che non potrà disporre di alcun rimedio contro il Venditore.

10.4 Il Venditore ha il diritto di rimborsare, a sua totale discrezione, il Prezzo dei Beni difettosi nel caso in cui il Prezzo sia già stato pagato.

10.5 I rimedi contenuti in questa Clausola sono senza pregiudizio e soggetti alle altre Condizioni accluse al presente documento, incluse, a titolo indicativo, le condizioni 11 e 12.

11. Responsabilità

11.1 Nessuna responsabilità di alcuna natura sarà incorsa o assunta dal Venditore nei confronti di qualsiasi dichiarazione fatta dal Venditore, o per suo conto, all'Acquirente o a qualsiasi parte che agisce per suo conto, prima della formazione del presente contratto, nel momento in cui tali dichiarazioni sono state fatte o fornite in relazione a:

11.1.1 la corrispondenza dei Beni con qualsiasi descrizione o campione;

11.1.2 la qualità dei Beni; o

11.1.3 l'idoneità dei Beni per qualsiasi scopo.

11.2 Nessuna responsabilità di alcuna natura sarà assunta dal Venditore all'Acquirente in rispetto a qualsiasi termine espresso nel presente contratto, dove tale termine si riferisce in qualsiasi modo a:

11.2.1 la corrispondenza dei Beni con qualsiasi descrizione;

11.2.2 la qualità dei Beni; o

11.2.3 l'idoneità dei Beni per qualsiasi scopo.

11.3 Salvo nel caso in cui l'Acquirente agisca come consumatore, tutte le garanzie, condizioni o termini riguardanti l'idoneità allo scopo, la qualità e la condizione dei Beni, sia impliciti che espliciti per statuto o diritto consuetudinario o altro, sono con il presente atto esclusi dal contratto nei limiti consentiti dalla legge.

11.4 Per evitare ogni dubbio, il Venditore non accetterà nessuna richiesta di risarcimento per perdite consequenziali o finanziarie di nessun tipo, a prescindere dalla causa.

12. Limitazione di Responsabilità

12.1 Qualora un qualunque tribunale o giudice arbitrale stabiliscano che una qualsiasi parte della Clausola 11 non è, per una qualsivoglia ragione, applicabile,

il Venditore sarà responsabile per ogni perdita o danno subito dall'Acquirente ma per un importo non superiore al Prezzo.

12.2 Nessuna disposizione contenuta nelle presenti Condizioni dovrà essere interpretata in modo da escludere o limitare la responsabilità del Venditore per morte o lesioni personali a causa della negligenza del Venditore o di quella dei suoi dipendenti o collaboratori.

13. Diritti di Proprietà Intellettuale

13.1 Qualora un Bene da noi fornito contenga uno o più programmi per computer e/o relativa documentazione, il copyright che non è posseduto da terzi, tutti i diritti e le responsabilità associate all'utilizzo e/o alla riproduzione di essi saranno soggetti ai termini della licenza applicabile per l'utente finale, ad esclusione di tutte le altre responsabilità e obblighi da parte nostra.

13.2 L'Acquirente ci terrà esenti da qualsiasi responsabilità per la violazione dei diritti di proprietà intellettuale di terzi che derivano dal nostro rispetto per i requisiti specifici dell'Acquirente riguardanti la progettazione o la specifica dei Beni o derivanti dall'utilizzo dei Beni in combinazione con altri prodotti.

13.3 Qualora tutti i Beni o il loro utilizzo (secondo quanto previsto dalle clausole precedenti) costituiscano una violazione di un qualsiasi diritto di proprietà intellettuale e l'utilizzo sia in tal modo impedito, il Venditore, a propria discrezione e spese, procurerà all'Acquirente il diritto di continuare ad utilizzare i Beni o sostituirà questi con un prodotto che non incorra in violazioni, o modificherà i Beni in modo da renderli tali da non incorrere in violazioni, o potrà scegliere di riprendere possesso dei Beni e rimborsare il Prezzo. Fatto salvo quanto sopra, il Venditore non verrà in alcun modo ritenuto responsabile per eventuali perdite, danni o richieste, diretti o indiretti, che derivano da una qualsiasi violazione del diritto di proprietà intellettuale dei Beni.

13.4 Tutti i Diritti di Proprietà Intellettuale che derivano o che si presentano come risultato dell'esecuzione di qualsiasi contratto, fino a questo momento non ancora maturata, diventano assoluta proprietà del Venditore e l'Acquirente dovrà fare

ragionevolmente tutto il necessario per garantire che tali diritti rimangano di proprietà del Venditore tramite l'esecuzione di strumenti giuridici adeguati o tramite la creazione di accordi con terzi.

13.5 Tutti gli ordini sono elaborati in conformità agli elementi del sistema qualità ISO 9002, tuttavia i Beni potrebbero non provenire da una fonte di qualità garantita, a meno che non vi sia un asterisco (*) sulle voci pertinenti.

14. Forza Maggiore

Il Venditore non sarà ritenuto responsabile di eventuali ritardi o del mancato adempimento dei propri obblighi qualora tale ritardo o inadempienza siano causati da circostanze indipendenti dalla volontà della parte interessata, inclusi, a titolo indicativo, cause di forza maggiore, scioperi, serrate, incidenti, guerre, incendi, guasti delle attrezzature o dei macchinari, carenza o non disponibilità di materia prima proveniente da una fonte naturale; il Venditore ha il diritto di estendere ragionevolmente i propri obblighi. Qualora il ritardo dovesse persistere per un tale periodo di tempo che il Venditore non ritenga ragionevole, potrà, senza alcuna responsabilità da parte sua, recedere dal contratto o da qualsiasi parte di esso.

15. Rapporto tra le parti

Niente di ciò che è contenuto nelle presenti Condizioni dovrà essere interpretato in modo da stabilire o implicare una partnership o un'impresa comune tra le parti e nessuna disposizione delle presenti Condizioni potrà essere considerata da una delle parti come rappresentante dell'altra.

16. Appalto e Subfornitura

Il contratto tra l'Acquirente e il Venditore per la vendita dei Beni non dev'essere ceduto o trasferito, né l'esecuzione di un qualsiasi obbligo subappaltato, in entrambi i casi dall'Acquirente, senza il previo consenso scritto del Venditore.

17. Rinuncia

Nel caso in cui una delle parti non dovesse rispettare in qualsiasi momento o per un qualche periodo una o più Condizioni del presente documento, ciò non comporta la rinuncia ad esse o al diritto di rispettare in un secondo momento tutte le Condizioni del presente Accordo.

18. Clausola salvatoria

Nel caso in cui un termine o una disposizione delle presenti Condizioni vengano considerati da una qualsiasi corte di competenza per una qualsiasi ragione non validi, illegali o inapplicabili, tale disposizione dovrà essere eliminata e le rimanenti continueranno ad essere valide e perfettamente vincolanti tra le parti, come se le presenti Condizioni fossero state concordate con la disposizione eliminata non valida, illegale o inapplicabile.

19. Clausola di non compensazione

L'Acquirente non potrà rifiutare il pagamento di alcuna fattura o di altre somme dovute al Venditore in relazione ad un diritto di compensazione o di contropotesa che l'Acquirente può o sostiene di avere per una qualsiasi ragione.

20. Contratto Intero

Le presenti Condizioni, qualsiasi documento che le integri o inserite in essi, costituiscono il contratto intero e l'intesa tra le parti.

21. Legge applicabile e Giurisdizione

Questo Accordo sarà regolato e interpretato in conformità con la legge inglese e, con la presente, le parti si sottomettono all'esclusiva giurisdizione delle corti inglesi.

22. Legge applicabile e Giurisdizione

Questo Accordo sarà regolato e interpretato in conformità con la legge inglese e, con la presente, le parti si sottomettono all'esclusiva giurisdizione delle corti inglesi.

AMERICAN STANDARD TERMS AND CONDITIONS OF SALE

http://www.usmicroproducts.com/terms_of_sale

1. Definizioni

Secondo l'uso fatto nel presente documento, il termine "Venditore" si riferisce a "US Micro Products, Inc". Secondo l'uso fatto nel presente documento, il termine "Acquirente" si riferisce al cliente indicato sulla prima pagina del presente documento. Secondo l'uso fatto nel presente documento, i termini "bene/beni" e "servizi" si riferiscono ai prodotti, servizi e/o la descrizione di lavoro presenti sulla prima pagina del presente documento. Secondo l'uso fatto nel presente documento, il termine "contratto" si riferisce ai termini, alle condizioni e alle garanzie contenuti nel presente documento.

2. Accettazione

Il presente documento dev'essere accettato per iscritto dall'Acquirente. Qualora, per qualsiasi motivo, l'Acquirente non dovesse accettarlo per iscritto, ogni comportamento da parte dell'Acquirente che riconosca l'esistenza di un contratto riguardo all'oggetto del contratto stesso costituirà un'accettazione del presente documento e di tutti i suoi termini e condizioni da parte dell'Acquirente. Qualsiasi termine del contratto del Venditore proposto nell'accettazione dell'Acquirente che aggiunge condizioni, differisce da quelle qui presenti o è in contrasto con esse non è approvato con il presente documento. Qualora il presente documento sia stato rilasciato dal Venditore in risposta ad un'offerta, e qualora uno dei termini acclusi al presente contratto integri qualsiasi altra condizione di tale offerta o differisca da essa, l'emissione del presente documento da parte del Venditore costituirà un'accettazione di tale offerta soggetta alle condizioni espresse che l'Acquirente accetta, e quest'ultimo verrà considerato consenziente, salvo diverso avviso per iscritto al Venditore entro 10 giorni dalla ricezione del presente documento.

3. Prezzi

Sebbene sia prassi del Venditore avvisare di eventuali variazioni il prima possibile, i prezzi sono soggetti a cambiamenti senza preavviso e le modifiche dei prezzi del Venditore saranno in vigore nel momento in cui viene piazzato l'ordine. Salvo diversa specifica del Venditore, i prezzi sono intesi per il quantitativo indicato e non includono imposte, né costi di trasporto, assicurazione, imballaggi speciali o marchiatura. Il Venditore potrebbe aumentare i prezzi di ogni bene o servizio non fornito nel caso in cui si incorra in aumenti dei costi delle forniture, delle materie prime, del lavoro o dei servizi o un qualsiasi aumento del costo che derivi da cause indipendenti dalla sua volontà.

4. Pagamento

(a) Il pagamento dovrà essere effettuato secondo le modalità accordate: carta di credito, bonifico bancario o assegno.

(b) Gli assegni verranno accettati per la riscossione e la data di riscossione coinciderà con quella di pagamento. Ogni assegno ricevuto da parte dell'Acquirente verrà usato dal Venditore contro ogni obbligo dovuto dall'Acquirente al Venditore secondo il presente o qualsiasi altro contratto, indipendentemente da qualsiasi dichiarazione che si riferisca a tale assegno, senza assolvere l'Acquirente da responsabilità per eventuali somme aggiuntive dovute al Venditore; l'accettazione da parte del Venditore di tale assegno non costituirà una rinuncia del diritto del Venditore di procedere con la riscossione del saldo residuo.

(c) l'Acquirente accetta di pagare l'intero ammontare netto di ciascuna fattura emessa dal Venditore ai sensi dei termini di ogni tale fattura senza compensazioni o deduzioni.

5. Termini

(a) I termini di pagamento standard esigono il pagamento anticipato rispetto alla prestazione per tutti i nuovi clienti. Nel caso in cui il Venditore conceda credito all'Acquirente, le seguenti condizioni supplementari, per essere applicate, dovranno essere subito accettati. L'applicazione di dette condizioni potrebbe richiedere fino a 30 giorni, necessari per elaborare la richiesta di nuove condizione soggette all'approvazione del Venditore.

(b) L'Acquirente accetta di mantenere attivo il conto e di pagare ogni fattura entro i termini stabiliti dalla data di fatturazione. L'Acquirente accetta di mettere anticipatamente a disposizione fondi qualora il conto dovesse avere esborsi ingenti che superano il limite di credito fissato. L'importo del credito concesso all'Acquirente è soggetto a verifiche periodiche e ogni decisione di aumentare, ridurre o revocare detta somma sarà ad esclusiva discrezione del Venditore.

(c) Il Venditore si riserva il diritto di chiedere il pagamento anticipato o in contanti alla consegna o di modificare altrimenti i termini di credito prima o dopo l'invio di uno o di tutti i beni specificati nel presente documento qualora, per qualsiasi ragione, il credito dell'Acquirente dovesse essere o diventare opinabile. Qualora il Venditore creda, in buona fede, che la possibilità dell'Acquirente di effettuare il pagamento richiesto dal presente contratto sia o possa essere compromessa, potrà porre fine al contratto o a qualsiasi eventuale residuo di esso, senza incorrere in alcuna responsabilità. L'Acquirente rimarrà responsabile del pagamento di qualsiasi bene già spedito.

(d) Nel caso in cui l'Acquirente non sia in grado di mantenere attivo il conto, tutti gli importi dovuti diventeranno immediatamente esigibili e pagabili. L'Acquirente sarà inoltre debitore al Venditore delle spese di riscossione, incluse le spese legali che questi possa ragionevolmente sostenere qualora non vengano rispettate le condizioni di pagamento. Alle suddette fatture non saldate entro la scadenza verrà imposta una mora per pagamento ritardato pari 1,5% per mese calcolata su tutte le somme non versate dalla data di scadenza della fattura alla data di pagamento.

(e) Qualora rimangano dei debiti insoluti per 30 giorni dopo la richiesta di pagamento, il Venditore, oltre a qualsiasi altro diritto derivante da altri accordi e/o della legge applicabile, può esercitare uno o tutti i diritti di garanzia assicurativa e richiedere che l'Acquirente si rivolga al Servizio Riscossione Crediti dell'azienda.

6. Imposte

Salvo diverso accordo scritto, l'Acquirente sarà responsabile per il pagamento di tutte le imposte a livello federale, statale e locale sulle vendite, l'utilizzo e il consumo e di tutte le altre imposte e oneri insorgenti in relazione al presente contratto.

7. Spedizione

Tutte le spedizioni saranno effettuate franco fabbrica, salvo diversa disposizione indicata nel presente contratto. In mancanza di istruzioni specifiche, il Venditore sceglierà lo spedizioniere. La proprietà dei beni verrà trasferita all'Acquirente nel momento in cui il Venditore affiderà la consegna allo spedizioniere; da quell'istante, l'Acquirente sarà responsabile dei beni. Il trasporto dal luogo franco fabbrica convenuto nel presente contratto, la movimentazione e l'assicurazione sono a spese dell'Acquirente. I beni trattenuti o conservati per l'Acquirente saranno a rischio e a spese dell'Acquirente stesso. I reclami nei confronti del Venditore per eventuali consegne di quantitativi inferiori all'ordine dovranno essere effettuati entro 10 giorni dall'arrivo del carico.

8. Consegna

Tutte le date di consegna sono approssimative. Il Venditore farà del suo meglio per evadere gli ordini rispettando le date di consegna indicate.

La consegna potrebbe essere effettuata a rate. La mancata o ritardata spedizione o consegna da parte del Venditore di tutti, di una parte o quota di beni o di servizi in base al presente contratto non inficerà quella di alcuna altra parte di essi.

9. Controllo

Se l'Acquirente non avvisa il Venditore entro 10 giorni di calendario dalla data di spedizione di qualsiasi bene o servizio che detti beni o servizi sono stati respinti, questi si considereranno accettati. Affinché risulti valido, l'avviso di rifiuto dovrà specificare la ragione o le ragioni per cui i beni o servizi siano stati respinti.

10. La garanzia limitata del Venditore e la limitazione di responsabilità

(a) Il Venditore garantisce che, all'atto della spedizione, i beni industriali e i servizi forniti e venduti in base al presente contratto sono privi di difetti di materiale o di manodopera e che sono conformi alle specifiche tecniche del Venditore oppure, se del caso, ad altre specifiche accettate per iscritto dal Venditore.

(b) Qualora si presentasse un difetto entro il periodo di garanzia, l'Acquirente dovrà avvisare immediatamente il Venditore. Il Venditore accetta, a propria discrezione, di riparare, sostituire o accreditare un importo pari al prezzo contrattuale dell'unità di qualsiasi bene o servizio che, entro un anno dalla data di spedizione o prestazione da parte del Venditore, previo collaudo ed esame, si rivelerà difettoso secondo la presente garanzia. Nessuna riparazione o sostituzione estenderà il periodo di garanzia. Nessun bene verrà accettato per il rimborso o per la sostituzione senza l'autorizzazione scritta del Venditore con un numero di autorizzazione alla restituzione (Return Authorization Number, RMA). In merito a tale autorizzazione e conformemente alle istruzioni del Venditore, i beni saranno resi con costi di spedizione prepagati dal Venditore secondo lo standard dell'azienda_salvo diversa autorizzazione.

(c) La garanzia non si estende a nessun bene prodotto dal Venditore che sia stato soggetto a uso errato, negligenza, incidente, installazione errata, riparazione non autorizzata o modifica.

(d) QUESTA GARANZIA SI ESTENDE AL SOLO ACQUIRENTE E NON E' TRASFERIBILE A SUCCESSIVI ACQUIRENTI O UTILIZZATORI DI BENI. **QUESTA GARANZIA È CONCESSA IN SOSTITUZIONE DI TUTTE LE ALTRE GARANZIE, IMPLICITE O ESPLICITE, INCLUSE GARANZIE IMPLICITE DI COMMERCIALIZZABILITÀ O IDONEITÀ PER SCOPI PARTICOLARI O UTILIZZO O ALTRO.** IN NESSUN CASO LA TOTALE RESPONSABILITÀ DEL VENDITORE NEI CONFRONTI DELL'ACQUIRENTE DOVRA' SUPERARE IL PREZZO DEI BENI O DEL SERVIZIO. I rimedi dell'Acquirente saranno limitati a quelli previsti nel presente contratto ad esclusione di tutti gli altri rimedi inclusi, a titolo indicativo, quelli per danni incidentali, speciali, indiretti o consequenziali. Nessun accordo che modifichi o estenda la garanzia e i rimedi suddetti o questa limitazione, sarà vincolante per il Venditore se non perverrà in forma scritta, firmata da un funzionario del Venditore debitamente autorizzato.

11. Indennità di brevetto

(a) Il Venditore dovrà condurre, a sue spese, l'intera difesa di eventuali reclami, pretese o azioni che affermino, senza ulteriore combinazione, che l'uso o la rivendita da parte dell'Acquirente dei beni consegnati ai sensi del presente contratto viola direttamente un qualsiasi brevetto o copyright statunitense, ma solo a condizione che:

(i) Il Venditore riceva tempestivo avviso scritto di tale reclamo, pretesa o azione e abbia la piena possibilità e autorità di assumere la difesa individualmente, anche per quanto riguarda la composizione della vertenza, i ricorsi e tutte le informazioni disponibili all'Acquirente per tale difesa;

(ii) i suddetti prodotti sono realizzati in base alle specifiche o al progetto forniti dal Venditore o, se è coinvolto il brevetto di un processo, il processo di produzione è consigliato per iscritto dal Venditore; e

(iii) ogni reclamo, pretesa o azione venga avanzata contro l'Acquirente. A condizione che tutte le precedenti condizioni siano soddisfatte, il Venditore dovrà, a sue spese, trovare una soluzione al reclamo, pretesa o azione suddetti o dovrà pagare tutti i danni, esclusi i danni speciali o conseguenti e i costi, e, se alla fine viene ingiunto l'utilizzo o la rivendita di tali beni, il Venditore potrà, a sua discrezione, (1) assicurare all'Acquirente il diritto di utilizzare o di rivendere i beni, (2) sostituirli con prodotti equivalenti conformi, (3) modificarli affinché diventino conformi pur essendo equivalenti, o (4) riprendersi i beni e rimborsare il prezzo d'acquisto (con una ragionevole trattenuta per l'uso, il danno o l'obsolescenza).

(b) LE SUDDETTE CLAUSOLE ESPRIMONO L'OBBLIGO ESCLUSIVO DEL VENDITORE IN PRESENZA DI RECLAMI PER VIOLAZIONE DEI DIRITTI DI PROPRIETÀ DI QUALSIASI ALTRO TIPO, E SOSTITUISCE TUTTE LE ALTRE GARANZIE, IMPLICITE O ESPLICITE.

(c) Qualora un qualsiasi reclamo, pretesa o azione di violazione di un qualche brevetto, copyright, segreto commerciale o altro diritto di proprietà intellettuale sia basato su una progettazione o su una specifica fornite dall'Acquirente o realizzazione di un processo non consigliato per iscritto dal Venditore, o ancora sull'utilizzo o la vendita dei prodotti consegnati in base al presente contratto insieme ad altri beni non consegnati dal Venditore, l'Acquirente sarà tenuto ad indennizzare e a mantenere esente da responsabilità il Venditore.

12. Diritti di proprietà

Salvo diverse disposizioni per iscritto, la progettazione, lo sviluppo e la produzione di un bene o di un servizio da parte del Venditore per l'Acquirente

non produrrà un lavoro fatto su commissione e non darà all'Acquirente nessun brevetto, copyright o altro interesse di diritto di proprietà intellettuale dei beni, o di una parte di essi. Tali diritti spettano esclusivamente al Venditore. Salvo diverso accordo scritto, gli utensili, le attrezzature, la strumentazione di controllo, i modelli, le serie, gli stampi, il software e la tecnologia di produzione, le informazioni proprietarie del Venditore, prodotte o meno, ottenute o sviluppate dal Venditore per l'adempimento del presente contratto, rimarranno unicamente di proprietà del Venditore; il pagamento da parte dell'Acquirente di qualsiasi costo o spesa in relazione a qualsiasi dei precedenti (inclusi gli oneri non ricorrenti) non garantiscono all'Acquirente nessun interesse proprietario.

13. Modifiche

Salvo diverse disposizioni per iscritto, il Venditore si riserva il diritto di modificare le specifiche dei beni ordinati dall'Acquirente nel presente documento, a condizione che le modifiche non riguardino forma, adattamento e funzionalità.

14. Ritardi giustificabili

Oltre a qualsiasi giustificazione fornita dalla legge applicabile, al Venditore non verrà imputata alcuna responsabilità di ritardo, mancata consegna o mancata prestazione di un suo qualsiasi obbligo accluso al presente documento che emerga da un evento indipendente dalla sua volontà, prevedibile o meno da nessuna delle parti, inclusi, a titolo indicativo, ritardi dei fornitori, anomalie della manodopera o sciopero, guerre, incendi, incidenti, condizioni climatiche avverse, impossibilità di assicurare il trasporto, atti o regolamenti governativi, impossibilità di ottenere i materiali, carenza di materiali o altre cause o eventi indipendenti dalla volontà del Venditore, più o meno simili a quelli elencati sopra.

15. Ordini

(a) Ogni ordine di beni o servizi è soggetto all'accettazione per iscritto da parte del Venditore.

(b) Modifiche dell'ordine – L'Acquirente è responsabile dei costi di ogni modifica dei beni, servizi, piani di consegna o specifiche richiesti dall'Acquirente e accordate col Venditore, inclusi, a titolo indicativo, spese di annullamento o di carico di magazzino, costi d'ingegneria non ricorrenti e altre spese, costi di utensili e attrezzature, costi di ricertificazione, rielaborazione, spreco e costi delle operazioni di smontaggio.

(c) Ordini Speciali – Tutti i beni prodotti particolarmente per l'Acquirente e tutti i prodotti speciali, che non sono normalmente venduti dal Venditore, inclusi tutti i materiali e le forniture speciali necessarie ad eseguire il lavoro specificato, non sono annullabili né restituibili.

16. Interruzione

Salvo quanto diversamente concordato per iscritto, l'Acquirente non avrà il diritto di interrompere o di riprogrammare tutte o parte delle rate dei beni o dei servizi coperti dal presente contratto senza il consenso scritto del Venditore.

17. Inadempimento dell'Acquirente

Il pagamento, come richiesto dai termini del presente contratto, deve essere effettuato entro la scadenza, indipendentemente da qualsiasi pretesa dell'Acquirente. Il mancato pagamento del prezzo d'acquisto alla scadenza o qualsiasi altra mancanza di adempimento del contratto da parte dell'Acquirente, darà al Venditore il diritto illimitato, senza alcuna responsabilità, di prendere possesso dei beni, con o senza preavviso, e di avere accesso a tutti i rimedi dell'Assicurato in base all'Uniform Commercial Code dello Stato del Texas. Inoltre, il Venditore, a propria scelta, dando preavviso scritto all'Acquirente, può cancellare parte di qualsiasi ordine non consegnata e/o richiedere all'Acquirente

il pagamento immediato di tutte le fatture insolute. Tutti i diritti e i rimedi del Venditore sono cumulativi e potranno essere esercitati in successione o contemporaneamente senza comprometterne gli interessi di garanzia.

L'Acquirente accetta di pagare ragionevoli spese legali e processuali sostenute dal Venditore nell'esercizio di un qualsiasi proprio diritto o rimedio in caso di inadempienza per l'importo previsto dalla legge. Quanto sopra è a titolo indicativo e non costituisce la rinuncia di un qualsiasi altro diritto o rimedio disponibile al Venditore ai sensi della legge.

18. Limitazione della responsabilità del Venditore

L'Acquirente non sarà responsabile, e in nessun caso il Venditore sarà responsabile nei confronti dell'Acquirente, di danni indiretti, speciali, accidentali o consequenziali di qualsiasi natura, inclusi, a titolo indicativo, perdita di profitto, perdita d'uso, spese promozionali o di produzione, spese generali, danni alla reputazione, perdita di clienti derivanti dalla mancata consegna dei beni o dei servizi da parte del Venditore, o dall'uso corretto o meno o dall'incapacità di utilizzare i beni o i servizi.

In nessun caso la responsabilità del Venditore o il rimborso dell'Acquirente dovranno superare il prezzo d'acquisto dei beni o servizi oggetto del reclamo a prescindere dalla natura del reclamo, sia per violazione del contratto, violazione della garanzia, negligenza, responsabilità, false dichiarazioni o altri illeciti.

19. Limitazione sulle azioni

Nessuna azione, a prescindere dalla sua tipologia e derivante dal presente contratto, potrà essere intrapresa dalle parti oltre un anno dopo il fatto che dà titolo all'azione stessa, o, nel caso di mancato pagamento, non oltre due anni dalla data dell'ultimo pagamento.

20. Legge applicabile

Il presente contratto sarà regolato e interpretato in conformità con le leggi dello Stato del Texas, a esclusione delle norme relative ai conflitti di leggi. Le parti accettano che la “United Nations Convention on Contracts for the International Sale of Goods” non verrà applicata nel presente accordo e che la sua applicazione è dunque espressamente esclusa.

21. Disposizioni generali

(a) Il presente contratto contiene l'intero accordo tra le parti e sostituisce ogni accordo o comunicazione, precedente o contemporanea, orale o scritta, tra le parti riguardo la materia in esso trattata.

(b) Il presente contratto non potrà essere ceduto, modificato o revocato senza il preventivo consenso scritto del Venditore, e ogni tentativo di cederlo, modificarlo o revocarlo senza tale consenso sarà assolutamente nullo.

(c) Nessun ritardo od omissione dell'esercitazione di un diritto, potere o rimedio maturato dal Venditore riguardo ad una violazione o inadempimento da parte dell'Acquirente in virtù di tale contratto comprometterà un tale diritto, potere o rimedio del Venditore, o sarà interpretato come una rinuncia a tali violazioni o inadempimenti, o a violazioni o inadempimenti simili che si presenteranno in un momento successivo. Ogni rinuncia dovrà essere effettuata per iscritto.

(d) Nessun emendamento o modifica delle disposizioni del presente contratto saranno valide e vincolanti per il Venditore se non avverranno per iscritto e saranno firmate da un legale rappresentante del Venditore.

CHAPTER FOUR: ANALYSIS AND COMPARISON OF CONTRACTS TRANSLATIONS

After the translation of two contracts for the sale of goods, I will analyse and compare them in three different steps.

In the first part of this chapter, I will consider these two translations together, focusing again on the main peculiarities of legal language. But this time will be different: I will look at the specific linguistic elements with their applications directly in their textual context and not only in theory, as I did in the Chapter 1. Through this analysis, I will take into consideration many examples of this specific language for special purposes in context.

Then, in the second part, the analysis will continue with the detailed study of the most difficult passages of the translations and the main problems that I have faced during this process.

Instead, in the third and last part of the chapter, I will move on to the comparison of the two contracts translated. I will devote a paragraph to the American legal system that I have not introduced yet and then I will point out similarities and differences of these documents, taking clauses singularly and comparing the English and the American versions of them.

4.1. PECULIARITIES OF LEGAL LANGUAGE IN CONTEXT

The first peculiarity that I have presented in the Chapter 1 is the influence of Latin and French in legal English. It is particularly evident in the translated contracts: I have found four expressions and a noun that derive from these languages. Let us see them below, with the translations that have been proposed:

‘demurrage’: demurrage

‘force majeure’: forza maggiore

‘in lieu of’: invece di

‘per annum’: ogni anno

‘pro rata’: in maniera proporzionale

These expressions show that the ancient influence still has its evident consequences. On one hand, the French noun ‘demurrage’, which I will analyse in detail in its context, remains ‘demurrage’ in the Italian translation. In the first chapter, indeed, I specified that there are cases in which a foreign expression or noun sometimes is not translated because it is transferred in the target language as it is and this is the case of this noun that is used with the same meaning in English and in Italian. Another French expression that I have found in the translation is ‘force majeure’: it is made of a feminine noun (‘force’) and its adjective (‘majeure’) and it is referred to a particular clause of the English contract. Instead, two English prepositions (‘in’ and ‘of’) and a masculine French noun (‘lieu’) create the expression ‘in lieu of’, which replaces the English less formal ‘instead of’; it is a mixed expression with English and French elements: the original French equivalent expression would be ‘au lieu de’.

On the other hand, the Latin expressions ‘per annum’ and ‘pro rata’ are both made of a preposition (‘per’ and ‘pro’) followed by a noun: ‘annum’ is the accusative case of the masculine noun ‘annus’; instead, ‘rata’ is the ablative case of the adjective ‘ratus’ that usually goes with the feminine noun ‘pars’ (that is implicit here) in the expression ‘pro rata parte’.

But let us go on with the other linguistic peculiarities of legal English in context. The second one that I will analyse are doublets or binomials. As I said before, they are usually compound expressions of synonym terms that convey a single concept. For example, I have translated ‘events and circumstances’ as a single word ‘circostanze’. Moreover, I have even found an expression made of three terms, ‘embody, include or contain’ that we have translated simply with a single verb ‘contenere’, given that it was referring to a program and its documentation.

The most frequent and evident characteristic of legal language in these contracts is the presence of fixed formulas: they are repeated several times in these documents; moreover, sometimes they present some variations for the same expression. Let us list them, together with their Italian correspondents provided in my translation:

- 'at its own expense': a proprie spese;
- 'at its sole/in its absolute discretion': a propria discrezione;
- 'become due and payable': diventare esigibile e pagabili;
- 'for reasons (causes/events/circumstances) beyond its control/outside its reasonable control': per cause indipendenti dalla propria volontà;
- 'for the avoidance of any doubt': per evitare ogni dubbio;
- 'including, without limitation/but not limited to': incluso, a titolo indicativo;
- 'nothing contained in these Conditions': nessuna disposizione contenuta nelle presenti Condizioni;
- 'terminate the contract': recedere dal contratto;
- 'the term 'x', as used herein shall refer to': il termine 'x', secondo l'uso fatto nel presente documento;
- '(to be) in accordance with': essere conforme a/in conformità con;
- 'unless agreed in writing': salvo stabilito per iscritto;
- 'unless otherwise agreed/specified in writing': salvo diverso accordo scritto;
- 'when due': entro la scadenza/alla scadenza;
- 'without incurring any liability': senza incorrere in alcuna responsabilità;
- 'without prejudice to any other right(s) or remedy': senza pregiudizio alcuno per altri diritti o rimedi.

Another issue that has emerged in the first chapter is the insufficient presence of punctuation. Indeed, when writing, it is a good habit to make regular (and possibly correct) use of punctuation: it can help readers understand better the different parts of a period, especially when it is long and complex. During the translation process, I have had to face some situations in which the sentence, in my opinion, was ambiguous and not very clear because of the lack of punctuation. In particular, I have found a very long sentence in the English contract that says:

“9.1 If the Buyer fails to make payment for the Goods in accordance with the contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer’s property or the Goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator administrative receiver or manager shall be appointed over the whole or any part of the Buyer’s business or assets or if the Buyer shall suffer any analogous proceedings under foreign law or if any such matter as provided for in this clause is reasonably apprehended by the Seller all sums outstanding in respect of the Goods shall become payable immediately.”

Syntactically speaking, it is a conditional clause: the apodosis “all sums outstanding in respect of the Goods shall become payable immediately” indicates the consequence of all the rest of the clause, which constitutes a very long protasis made of seven ‘if clause’.

A shorter example is:

“3.2 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due interest to accrue from day to day until the date of payment at a rate of 2% per annum above the base rate of the Bank of England from time to time.”

In this case too, I am dealing with a sentence that provides generous information of different nature (economic, temporal,...) but there is not a punctuation mark that distinguishes the several parts of the sentence. Indeed, we soon realize that the syntactic style of legal English is very particular: this sentence is made as a concatenation of information so that it is not necessary to put a comma.

Another clause in which, in my opinion, made it necessary to add a comma before translating is:

“6.2 [...] Time for delivery shall not be of the essence of the contract and while every reasonable effort will be made to comply with such dates compliance is not guaranteed and the Buyer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery date stated.”

In this case, I would have put at least two commas in order to separate the subordinate “while every reasonable effort will be made to comply with such

dates” from the rest of the sentence. There is another optional comma that could be put right after “compliance is not guaranteed” in order to separate in a more evident and stronger way the first and the second part of the whole sentence, accentuating the role exercised by the present conjunction ‘and’.

The following characteristic is the abundant presence of compound pronouns and adverbs. I have noticed that, in these two contracts, there are compound elements made by ‘here’ or ‘there’ plus a preposition (such as after, by, from, in, of, to, under, upon). In the documents that I have translated, there are many examples that repeat many times. Let us present them with their correspondent translation:

‘hereby’: con la presente

‘herein’: accluso al presente documento

‘hereof’: a ciò relativo/di cui al presente contratto

‘hereto’: a tal proposito

‘hereunder’: in base al presente contratto

‘thereafter’: in un momento successivo

‘thereby’: in tal modo

‘therefrom’: da ciò

‘therein’: in ciò

‘thereof’: di esso

‘thereupon’: da quell’istante/immediatamente dopo

Moreover, as I said in the first chapter, legal English makes large use of the passive voice of verbs, whether the agent is explicit or implicit. Let us see some examples. In the American contract we read:

“Any check received from Buyer may be applied by Seller against any obligation owing by Buyer to Seller.”

In this case, the agent follows the passive voice of the verb 'be applied': here the subject of the passive voice is "any check received from Buyer" and it is in the first position of the sentence so that it gains more relevance. But let us take another example, from the English contract, in which the situation is different:

"6.6 Where the Buyer requires delivery of the Goods by instalments, rescheduling requires the Seller's written agreement and will not be possible unless at least 3 month's written notice is provided and so agreed."

In this case the verb phrase "is provided and so agreed" has not an explicit agent; here, we may say that the agent of the action is absent, or better, it is implicit; in this case it will be the context that will help us understand who the implicit agent is. There are a number of similar examples, such as 'be bound' in the English clause

"6.7 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 3 months of the delivery date"

or the verbs "are accepted" and "be deemed" in the American clause

"4(b) Checks are accepted subject to collection and the date of collection shall be deemed the date of payment [...]."

and so on. I may say then that, when I find a passive voice, there is a reason for its use: the contract indeed wants to give particular relevance to a specific constituent, positioning it at the beginning of the sentence or deleting the other surrounding elements (such as, for example, the explicit agent of the verb).

Another feature that is recurring in these texts is the use of the modal verb 'shall' that precedes many verbs both in the English and the American contracts for the sale of goods. In the first chapter I said that the modal verb 'shall' expresses obligation, authorisation or even condition, in the case in which it wants to express a conditional clause: we may find 'shall' in the apodosis and we recognise this case because, in the same sentence, there is also a protasis introduced by a proper conditional indicator (such as 'if'). Let us see some examples of these three different uses of 'shall'.

For what concerns obligation, my example is taken from the American contract:
translated

“10(d) [...] In no event *shall* Seller’s total liability to Buyer *exceed* the purchase price of the goods or service.”

“In nessun caso la totale responsabilità del Venditore nei confronti dell’Acquirente *dovrà superare* il prezzo dei beni o del servizio.”

In this case, the inevitable and necessary obligation is expressed by the modal ‘shall’, translated with the Italian modal verb ‘dovere’, which expresses obligation too.

Let us move on to a different use of ‘shall’: authorisation. I will analyse two examples. The first one is taken from the English contract:

“The Buyer *shall make* all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.”

I translated this clause

“L’Acquirente *potrà adottare* tutte le disposizioni necessarie per prendere in consegna i Beni ogni volta che essi sono presentati per la consegna.”

That “shall make” contains an implicit authorisation about the things that the subject can do. The same happens with the following extract from the American contract:

“5(b) The amount of credit extended to the Buyer is subject to periodic review and any decision to increase, decrease or revoke the amount of credit granted to the Buyer *shall be* at the sole discretion of the Seller.”

This clause becomes:

“L’importo del credito concesso all’Acquirente è soggetto a verifiche periodiche e ogni decisione di aumentare, ridurre o revocare detta somma sarà ad esclusiva discrezione del Venditore.”

The only possibility of choice of the subject transforms this “shall be” in a sort of authorisation.

However, the most common use of the modal verb 'shall' is in conditional sentences: as I have seen before, this kind of clause includes an apodosis and a protasis. When the protasis begins with a proper conditional indicator (such as 'if'), in a contract the modal verb 'shall' is likely to be found in the apodosis. Let us see two examples. In the English document we find:

"6.3 *If* the Seller is unable to deliver the Goods for reasons beyond its control, then the Seller *shall be entitled* to place the Goods in storage until such time as delivery may be effected and the Buyer *shall be liable* for any expense associated with such storage."

The translation proposed is

"*Qualora* il Venditore non riesca a consegnare i Beni per cause indipendenti dalla sua volontà, il Venditore *avrà il diritto* di immagazzinare i beni fino alla data in cui la consegna verrà effettuata e l'Acquirente *sarà responsabile* di ogni spesa relativa a tale deposito."

A similar example, taken from the American text, is:

"2. *If* for any reason Buyer should fail to accept in writing, any conduct by Buyer which recognizes the existence of a contract pertaining to the subject matter hereof *shall constitute* an acceptance by Buyer of this document and all of its terms and conditions."

This clause has been translated with

"*Qualora*, per qualsiasi motivo, l'Acquirente non dovesse accettarlo per iscritto, ogni comportamento da parte dell'Acquirente che riconosca l'esistenza di un contratto riguardo all'oggetto del contratto stesso *costituirà* un'accettazione del presente documento e di tutti i suoi termini e condizioni da parte dell'Acquirente."

These are the three main functions of this modal verb. However, as we know, in grammar there are often many exceptions of a single rule: this is also the case of this specific verb. Indeed, the functions presented can be combined and create mixed functions. For example, I have recognized that, in the English contract, the sentence

"3.4 *If* payment of the Price or any part thereof is not made by the due date, the Seller *shall be entitled* to: [...]."

is evidently a conditional clause, given the presence of the conjunction 'if' but there is something else to say about that. In my opinion, in fact, 'shall' does not only express the consequence of the 'if clause' but also authorisation to do the

things listed after. Again, another example of mixed functions comes from the American document in the following clause:

“10 (b) *If* any defect within this warranty appears, Buyer *shall notify* Seller immediately.”

Here I notice the evident conditional function, as before, for the presence of the conjunction ‘if’ at the beginning of the clause but, moreover, there is obligation in “shall notify”: for this reason, I have translated that verb phrase with “dovrà avvisare”, using the Italian verb ‘dovere’, which again expresses obligation.

4.2. TRANSLATION PROBLEMS

Every translation may pose some problems but it is the translator’s task to solve them in the best possible manner. Indeed, when I face a difficulty in the text I am translating, it is necessary to go even deeper than I do with the rest of the document. This process must be accurate in order to reach a good result in the target language. Let us analyse now the main problems that I have found in these documents and show what my translation solutions are.

4.2.1. ENGLISH STANDARD TERMS AND CONDITIONS

FOR SALE OF GOODS

The translation problems faced in the English contract concerns mainly technical and specific lexicon, particular syntactic structures and expressions that seem not to have an Italian equivalent. Let us take them into consideration one at a time.

The first problem encountered is a too general subject of an English clause that requests a change in the Italian translation in order to assume a reasonable meaning. This subject is “nothing” in clause 2.6:

“Nothing in these Conditions shall affect the statutory rights of any Buyer dealing as a consumer.”

“Nothing” here means “nessuna disposizione” but, if we want to put the negation to the meaning of the verb making it negative (“lasciare impregiudicati”), we will say:

“Le disposizioni delle presenti Condizioni lasciano impregiudicati i diritti di qualsiasi Acquirente che agisca come consumatore.”

So, the negative sense of the subject moves to the form of the verb, in particular through the prefix ‘im-’ of the past participle “impregiudicati”.

The second issue is a lexical question regarding the third clause of the contract, the one dedicated to prices. The terminology to which I paid particular attention includes expressions such as “cash with order” and “credit account” in clause 3.1. Initially, I thought that “cash with order” could be related to “ricevuta bancaria” (‘cash order’ in English), given that I was dealing with the prices clause. Looking up this expression in a business dictionary, I have soon realized that it means something very different from what I expected. “Cash with order” (CWO) means “terms of sale showing the payment has to be made in cash when the order is placed”. Moreover, the second term on which I was not that sure is ‘credit account’. In the same business dictionary, I have found the following definition: “an account which a customer has with a shop which allows him or her to buy goods and pay for them later”. The meaning of these two expressions were clear, so I proceeded with the translation of this first part of clause 3:

“3.1 Il Pagamento del Prezzo è rigorosamente effettuato al momento dell’ordine, salvo un’istituzione di conto di credito con il Venditore, nel qual caso il Pagamento del Prezzo è fissato a 30 giorni dalla data di fattura.”

The second point of the third clause gives a large amount of information: for that reason, I decided that I had to make some order because otherwise the sentence would have been confusing. In order to achieve this result, I have put a colon to separate two different parts of the same clause; moreover, I have decided to change also the order of two elements “above the base rate of the Bank of England” and “from time to time” because it definitely sounds better in Italian. So, my translation of this clause is:

“Il Venditore ha il diritto di applicare interessi su fatture scadute: dalla data di scadenza per il pagamento, gli interessi maturano giorno per

giorno fino alla data del pagamento con un tasso annuo del 2% di volta in volta indicato dalla Banca d'Inghilterra.”

The third problem is about a specific expression that I have found twice in the contract, in two consecutive clauses: they are “sale by description” and “sale by sample”. Their meaning has been clear to us from the very beginning but it has been hard to find an equivalent expression for the Italian translation. “Sale by description” means “a sale that is made without the buyer seeing the goods and having only a description of them from the seller”; the same applies for “sale by sample”: the buyer will only have the possibility to see the sample of the requested product. Given this exhaustive explanation, I have decided to translate these two expressions with “vendita tramite descrizione” and “vendita tramite campione”.

“6.4 [...]In addition the Buyer shall then pay reasonable storage charges or demurrage as appropriate in the circumstances until the Goods are either despatched to the Buyer or disposed of elsewhere.”

In this clause, the term ‘demurrage’ has created some problems because, once looked up in the dictionary, I didn’t know what ‘controstallia’ means. So I looked up its meaning in the Italian dictionary and I have found out that it is a term used in a particular field, in maritime law, to indicate “Risarcimento in denaro che il noleggiatore deve pagare all'armatore per i danni derivati da tale ritardo”. Given that this contract does not deal with maritime law, I have decided to leave “demurrage” that is however used in Italian to talk about this concept without referring to the maritime law. So the translation proposed will be:

“Inoltre, l’Acquirente dovrà pagare ragionevoli spese di magazzinaggio o di demurrage, come opportuno in tali circostanze, finché i Beni non saranno spediti all’Acquirente o smerciati altrove.”

Another issue on which I have paid attention has been “deliver the Goods by instalments” of clause 6.5; again the meaning was immediately clear but the Italian equivalent “consegnare i Beni a rate” did not convince us very much. So, I searched on the Internet some synonyms for this expression, without good alternative results. On the other hand, instead, I have found out that ‘a rate’ is used in this sense so this reinforced the motivation of the initial choice. The term “instalments” in the same clause

“failure by the Seller to deliver any one or more of the instalments [...] or any claim by the Buyer in respect of any one or more instalments [...]”

will be translated again with “rate”.

Let us go on with probably the most problematic clause that I have found in these two documents. It is the “Insolvency of Buyer” clause, 9.1. I have already mentioned this clause in this chapter because of the lack of punctuation that made the comprehension difficult. Moreover, the sequence of condition clauses, the length and the complexity of contents make this clause very complicated. There are no problems of lexicon here, rather, with the syntactic structures of the several parts of the clause is quite easy to get lost in the translation. The method that I have used is to understand what the text was communicating to us, put some punctuation to separate all the sections of this long clause and, at the end, translate every part of it.

The last two main translation problems of this contract concern the title of two clauses, 18. Severability and 19. No set off. On one hand, I found that Severability means “the capability of being separated”, so in Italian it would become ‘separabilità’. The initial idea was to translate the title of this clause with “Clausola di separabilità” but I wanted to be sure, so I checked that it was really its proper name in the Italian law. However, I found out that the same clause had a different name in Italian, which is “Clausola salvatoria”. Both in English and in Italian, this clause shows that, although some contractual dispositions might be deemed illegal, they would not invalidate the rest of the contract. On the other hand, the “no set-off” clause has been the last problem to solve in this first contract. Searching ‘no set-off clause’ on the internet, the result focused on “set-off” clause, the opposite kind. So, given that the translation of ‘set-off clause’ was ‘clausola di compensazione’, I decided to maintain this definition, adding the negation ‘non’ before ‘compensazione’, obtaining “clausola di non compensazione”.

4.2.2. AMERICAN STANDARD TERMS AND CONDITIONS

OF SALE

I shall move on now to the main problems faced in the American contract translated in chapter three. In this contract too, I have found problems that are quite similar to those found in the English contract. In other words, they deal indeed with the legal lexicon that is specific of this language for special purposes, the complex syntax of certain clauses and some expressions whose meaning is immediately clear but sometimes it is hard to find an equivalent for the Italian translation. As I did before, I shall analyse these cases one by one.

In this contract too, some problems arise when we deal with prices and payment: indeed, those clauses seem to be intricate and more complex than the others. The first issue concerns the payment options: in the contract we find

“4(a). Payment to be made according to agreed upon terms: credit card, wire transfer, or check.”

I did not have any problems understanding what credit card and check are but I did not know what a wire transfer is. The literal meaning of wire and transfer taken singularly does not have much sense, so I searched the whole expression on the Internet, where I discovered that it means “bonifico bancario”. The final translation proposed of this clause is

“Il pagamento dovrà essere effettuato secondo le modalità accordate: carta di credito, bonifico bancario o assegno.”

with a special mention to the form “to be made” that expresses obligation.

The term ‘account’ create another lexical problem: I already know that it has a number of different meanings; it is present in two consecutive clauses and I had some doubts about the proper meaning of this term in the given context. First, I have found it in clause

“5(a) Standard payment terms require receipt of cash in advance of performance for all new accounts.”

The main Italian meanings of ‘account’, taking into consideration the legal and economic fields, are ‘conto’ and ‘cliente’. Following the context in which we find

this term, which is a payment that someone makes to someone else, I have chosen the animate noun 'cliente'. But soon in the contract (in the following clause) I have found again the word 'account' with the other meaning. Specifically, it goes together with 'current' creating the expression "account current". I immediately thought to "conto corrente" but I know that it is 'current account' in English. I checked the meaning of "account current", finding "A type of account that is ongoing between two or more entities. Can also be referred to as a report summarizing the performance of each individual insurance agent in an agency". This definition coincides with the meaning of what I know about a "conto corrente"; moreover, I discovered that it is possible to find also the inverted version "current account" with the same meaning: both these versions are accepted, even though "current account" is more common.

In a subparagraph of the same clause (5c), I find another payment option, 'C.O.D.' and it has been necessary for us to search what this acronym stands for. Typing 'C.O.D. payment' on Google, the results are the same: C.O.D. stands for 'cash on delivery', which means "Cash on delivery (COD) is a type of transaction in which the recipient makes payment for a good at the time of delivery. If the purchaser does not make payment when the good is delivered, then the good is returned to the seller". The literal translation into Italian would be 'pagamento alla consegna' but this is the paraphrase of a specific concept, "contrassegno", which is exactly the payment made at the moment of the delivery.

The next particular expression that I had never heard before is "ExWorks". From the context, I understood that it was a specific kind of delivery but it was necessary to deepen the meaning of this concept in order to find a correct equivalent expression for the Italian translation. This rule places minimum responsibility on the seller, who merely has to make the goods available, suitably packaged, at the specified place, usually the seller's factory or depot. Indeed, after "Ex Works", it is compulsory to indicate the specific place for this process. So, the translation of clause 7 is:

"Tutte le spedizioni saranno effettuate franco fabbrica, salvo diversa disposizione indicata nel presente contratto."

meaning the Seller's one.

In Clause 8 of the American contract, I find also the same problem that I have found in the English one: it offers delivery in instalments. I have used the research done for the other document to translate

“Delivery may be made in instalments”

“La consegna potrebbe essere effettuata a rate.”

Moreover, we must point out a difference in the spelling of the same word in these two different texts: in the English contract we find ‘instalments’ (with only one ‘l’), instead in the American one ‘installment’ is written with double ‘l’.

Both in the English and in the American contracts, I have found the term ‘specification’ that is usually translated with ‘specificazione’ but, in the contexts in which this term is, this would mean nothing. In these cases, the proper meanings of ‘specification(s)’ is ‘specifiche’ with an optional adjective ‘tecniche’, intending the detailed information about a given product. For example, in the translation of clause 10 (a) we will read:

“[...] i beni industriali e i servizi forniti e venduti in base al presente contratto sono privi di difetti di materiale o di manodopera e che sono conformi alle specifiche tecniche del Venditore oppure, se del caso, ad altre specifiche accettate per iscritto dal Venditore.”

Moreover, at the end of clause 11, there is a quite unclear parenthesis: its content is

“less reasonable allowance for use, damage and obsolescence”

Very often, we find these three nouns together, as a fixed expression: it maintains its literal meaning also in Italian, “uso, danno e obsolescenza”. The problem here was to understand what the first part of the parenthesis meant. ‘Reasonable’ is an adjective that I have found several times in these documents and it has always been translated with ‘ragionevole’. I knew the meaning of ‘allowance’ as the noun of the verb ‘to allow’, so something to deal with a possible concession; but it has another hidden meaning, which is ‘indennità’ that suits perfectly in a formal and legal context like this. Furthermore, initially I mistakenly thought that ‘less’ was used as an adverb but, in the final translation, I have used it as an adjective of the noun ‘allowance’, obtaining

“con una ragionevole trattenuta per l’uso, il danno o l’obsolescenza.”

I found another lexical problem in clause 11 (c):

“[...] Buyer shall indemnify and hold Seller harmless therefrom.”

The meaning of the two verbs of this sentence, especially the second one, were not clear. ‘Indemnify’ perfectly corresponds in meaning with the previous noun analysed ‘allowance’, given that they are both in different subparagraph of the same clause. But what does “hold Seller harmless” mean? I had never heard this expression before and it was quite difficult to guess its meaning. Looking up the adjective ‘harmless’ in the dictionary, the results are ‘innocuo’ and ‘inoffensivo’. So, ‘tenere innocuo/inoffensivo’ does not make sense in this legal context, so we gave another possible meaning to the adjective, ‘esente’. For this reason, the translation of this sentence is

“l’Acquirente sarà tenuto ad indennizzare e a mantenere esente da responsabilità il Venditore.”

The last main problem found in the American contract is the expression “work made for hire”. It was unknown to us: I knew that ‘hire’ is ‘noleggio’ but, in my opinion, ‘un lavoro fatto per il noleggio’ did not make sense in this context. But again, with a good research, starting from the word ‘hire’, I saw that this expression is often used in English to indicate a work for commission, which in Italian becomes “lavoro su commissione”. So, the translation of part of clause 12 will be

“Salvo diverse disposizioni per iscritto, la progettazione, lo sviluppo e la produzione di un bene o di un servizio da parte del Venditore per l’Acquirente non produrrà un lavoro fatto su commissione [...]”

4.3. COMPARISON OF CONTRACTS

I shall devote the first part of this paragraph to a brief introduction to the American legislation. In the Chapter 1, I presented the English Common Law and I said that it is a legal system based on judicial precedents, without a significant written Constitution. Moreover, I said that it is in force in a large number of countries all over the world because of the expansion of the Commonwealth. Certainly,

English Common Law has influenced the legislations of those countries but it is necessary to specify also that, on the other hand, every country has developed its own legal system over time, which often diverge from the colonial one. This happened also for United States: indeed England and the United States have many legal differences. But let us take into consideration this issue in general: a great difference is that England has not a written constitution, whereas in United States there is a valid written Constitution. Moreover, other distinctions concern the form of government: in England, there is a parliamentary law system, instead of the American federal and presidential government.

Even when we deal with contract law, the situation is almost the same: there are many similarities due to the influence of the English Common Law, but there are also differences. The most important difference relates to the enforcement of contracts by third parties: in American contract law, they can benefit from the contract; on the other hand, English law generally excludes such rights. Another issue concerns the written evidence of ordinary contract, which has been repealed in England but is still valid and required in the United States.

Since United States is made of a number of countries, it is necessary to specify also that each one is then regulated by its own legislation. Something that emerges also from the contracts translated is the presence of “good faith” in the performance and enforcement of contracts. It is mentioned in the American contract: usually it is not present in contracts regulated by Common Law, it is more probable to find it in the Civil Law systems. Indeed English law has not a general implied duty of good faith. Under English law, it is possible to test the ambiguity of a clause trying to understand what would the clause reasonably mean to a person with all the background facts available to the parties at the date they entered into the contract. On the other hand, in civil law jurisdictions, the aim is to ascertain the good faith intention of the parties taking into account all appropriate facts and circumstances, customs and practices; in such instances, parole evidence is acceptable for such purposes. The US system seems to prefer a more civil law approach with regard to interpreting what the good faith intentions of the parties are, although that in line with the English law system, no parole evidence is admissible.

For what concerns unilateral mistake, it operates differently under US and English law. In the first case, the mistaken party can avoid the contract if enforcement would be unconscionable and the innocent party did not know or have reason to know of the mistake. In the second case, the contract would be void only if the party that is not mistaken knew of the other party's mistake and the mistake relates to a fundamental part of the offer.

I will move on from the comparison of these legal systems to other aspects that characterise contracts. For example, terminology and style make their difference in a document and it happens for translated contracts too. Indeed, both these contracts are characterized by the presence of recurring fixed formulas, specific expressions, rigorous and formal lexicon, elements that I tried to transfer in an equivalent way in the Italian translation. So, the choice of proper words in an American and in an English law contract is similar and very important. I have not found many words written in a different way, except for 'instalment'/'installment' that I mentioned in the previous paragraph. Instead, a difference that I have noticed is the lack of the definite article before nouns as 'Seller' or 'Buyer' in the American contract, whereas they precede those nouns in the English document.

Moreover, American clauses are slightly longer than the English ones because American contracts tend to be less ambiguous and more specific and long-winded.

However, comparing these two contracts, it is immediately evident that there are many corresponding clauses: but will their contents be similar too? Let us see some examples.

The first clause of both these documents is 'Definition': the English clause specifies more terms than the American one. The first document explains the meaning of buyer, conditions, delivery date, goods, intellectual property rights, price and seller; on the other hand, the second documents explains only the most important concept of a contract: seller, buyer, goods and services and contract itself.

A general clause is placed in two different positions with some divergent contents too: in the English contract, it is the second clause of the document, instead, in the American one, it occupies the end of the contract. They have some points in common, for example the request of a writing agreement in case of modification or variation of the contract's clauses; however, I have noticed that the English version of the general clause embraces different subjects, such as the application of terms and conditions, orders and delivery, the ephemeral importance of Seller's advices if they are not written and so on.

Price and payment constitutes an only clause in the English contract, whereas in the American one there are two distinct clauses, 'Prices' and 'Payment' and they are much longer than the English clause. All these three explain the modalities of payment agreed, the terms for them, the consequences after the due date, the changes that can be applied on prices and what both the Seller and the Buyer agree with these clauses.

Moreover, the contents of the English long clause about delivery splits in two different American clauses, 'Shipment' and 'Delivery'. These clauses illustrates the modalities of shipment and deliver agreed, the possibility of delivery in instalments, the consequences of delay or failure of delivery and the approximate date for delivery. The American contract contains also concepts dealing with "risk and title" (and their passage from the Seller to the Buyer), to which the English contract dedicates an entire and separate clause.

Three English clauses become two in the American document: I am talking about terms that deal with warranty, liability and limitation of liability and, on the other hand, with Seller's limited warranty and limitation of liabilities and again limitation on Seller's liability. Although they have a different partition, their contents are more or less the same: they analyse the case in which the goods sold by the Seller to the Buyer are defective, which is the process to follow to change them and what happens if there is a third party involved.

Furthermore, we can find a clause dedicated to the intellectual property rights in both the documents translated: in both these cases, the intellectual rights remain absolute property of the Seller. Moreover, in the English text, there is a

specification about the possible infringement of one of these rights and the potential consequences.

Then, the 14th English and American clause has different names but the same contents: it is called “force majeure” in the English contract and “excusable delays” in the American one. In this clause, the contract specifies that the Seller will have no liability for delays or failures of delivery caused by events beyond its control (and there are, in both the contracts, a list of examples of particular circumstances). In the English contract there is, however, an addition as compared to the American document: it consists in the possibility for the Seller to terminate the contract, which is not specified in the second text.

The English “entire agreement” clause, “These Conditions and any documents incorporating them or incorporated by them constitute the entire agreement and understanding between the parties” is more or less the same clause of the first of the American “General”: “This contract contains the entire agreement between the parties and supersedes any prior or contemporaneous oral or written agreements or communications between them relating the subject matter thereof”.

Finally, both these documents contain a “Governing law” clause that specifies which are the jurisdictions that rule the contracts; in the first case the law of England, in the second the State of Texas.

However there are both English and American clauses that do not find correspondence in the other contract and I will see them now, starting with the English ones.

In the English contract, there are two clauses that explain that “sale by description” or a “sale by sample” are not possible and there is not a correspondent clause in the American text about these kinds of sale. They are the clauses “Description” and “Sample”.

Moreover, as we have seen, there is not an American clause completely dedicated to risk and title, as the English one. The latter is indeed very long, specific and accurate because it takes into consideration all the cases, every

passage and consequence of the passing of risk and property from the Seller to the Buyer. As I said before, the American clause just mentions this issue in the “Shipment” clause, without being much specific about it.

Another long clause is the “Insolvency of the Buyer” clause, of which I have spoken a lot in this chapter for different reasons. There is a list of all the possible conditions that can verify for the Buyer and that will make the sums immediately payable as a consequence of one of the specific behaviours listed in the first long part of the clause.

The relationship of the parties, the assignment and sub-contracting, the waiver, the severability of a part of the contract and the “no set-off” clause have no correspondent clauses in the American contract. These clauses are short and focuses on specific questions.

For what concerns the American document too, there are other clauses that have no equivalent in the English contract. Let us see, for example, the long clause “Terms” that refers to the payment methods. Its contents are contained in the “Price and payment” English clause but they are not so specific, the American clause seems to go deeper on this question. Or, again, the American contract dedicates an entire short clause to taxes, which are defined as an absolute responsibility of the Buyer.

Another clause of the American agreement that has not an equivalent in the English clause is “Inspection”: it specifies that the Buyer has ten days to reject goods but it is absolutely necessary that also reasons for their rejection. This clause partly correspond to the English “Acceptance” clause but it is not perfectly identical.

Finally, another American clause has no correspondence in the English contract: the “Limitation on actions” clause.

“No action, regardless of form, arising out of this contract may be brought by either party more than one year after the cause of action arose, or in the case of non-payment, not more than two years from the date of last payment.”

So, I have seen how similar and different can be an English and an American contract for the sale of goods, starting with a brief analysis of the American legal system. I discovered that what I thought would be quite similar has turned out to be different, both with reference to the legal systems and to the contracts themselves.

5. CONCLUSION

At the end of this work, it is proper to summarize what it has been done and, above all, the results achieved. The main aim of this work has been to show several concepts: first of all what a language for special purposes is, then the description of a contract and its elements, going towards the translation of two contracts and their comparison. The fundamental characteristic of this work is that it stands in the middle between law and language, between two different legal systems and languages. So, I may say that it is an attempt to show that legal language and translation is not impossible as it is supposed to be but, however, it definitely poses many problems. I will recall now briefly the main topic dealt in this dissertation.

This work has begun with the analysis legal language with its peculiarities and difficulties; before moving to legal translation, I have devoted a parenthesis about the two main legal systems valid more or less all over the world, Common Law and Civil Law. This topic has got its importance because, when translating a legal document from the source language to the target one, it is very probable that this process will involve two different legal systems. Then, I have moved to legal translation theory, where the role of the translator has emerged as a great problem to solve. We could say that he/she is an intermediary between the source and the target texts, the source and the target languages and, above all, the source and the target legal systems. The translator becomes more than a text producer: he has to make so many choices that he/she will have much responsibility, given that the target legal document will produce legal effects. But it has also been shown that the figure of the translator is not enough when dealing with legal language and, for that reason, it would be better to engage also an expert in law. Another important topic has been the strategies to adopt in order to overcome the possible difficulties that a translator could find: "equivalence" seems to be the best solution. This method, indeed, relates the source and the target text and tries to find equivalent expressions and meanings for all the possible problems encountered.

In the second chapter, the focus is on contracts, especially on contracts for the sale of goods, studying its main elements, its structure and all the implications of this kind of texts.

Finally, after having dealt with many theoretical aspects in general, we have arrived to the central part of the matter, which is the translation of an English and an American contract for the sale of goods. This has been the hardest part of this work because it was time to apply what I had just only mentioned. It has been fundamental to find compromises in many situations, when there seemed not to be a proper solution to the difficulties that I was finding.

Concluded this important section of the work, we have focused on a deep analysis of the translations just completed. The most difficult clauses to translate and the hardest linguistic problems to solve have been taken into consideration, together with a short parenthesis about the American legal system, which was supposed to look like the English Common Law that influenced it but it has revealed not to be look like this.

After all these explanations on theoretical and practical matters and the translation of the contracts, I could say that it has been an interesting work from different perspectives. First of all, focusing on legal English makes people more aware also of our Italian language. Indeed, it has been really necessary to take into consideration also Italian legal language to create credible target texts through translation; there are so many fixed formulas and specific expressions that exactly correspond to the Italian language for special purposes that it has been very useful to learn them. On the other hand, some other expressions have been very difficult to find and to translate, for this reason much work has been necessary, learning to solve this kind of difficult problems. Second, it has been very important to deal with law because it opens minds towards a new world with which I had never dealt. It has been very challenging focusing only on this specific legal language: dealing with legal English for the study of this dissertation has permitted to learn deeply its shades and its peculiarities, but also the difficulties that it may present not only to a foreign languages student but also to an English

native speaker. As I have stated during these chapters, a legal language presents enormous difficulties per se and it becomes even more complex when it has to deal also with a different target language. Third, this work presents a new point of view from our linguistic side about this particular topic that has not a long history in linguistics. My work then is quite innovative, given the attempt to present the translations of two contracts that come from distant countries (United Kingdom and United States of America), which at the beginning seem similar but, at the end, are also very different. Their comparison helps reflecting on the importance of legal systems in translation and of every word contained in these documents.

Therefore, we may conclude that the translation process of legal texts, especially of two contracts for the sale of goods (as in this case), requires a lot of work. Above all, it is necessary to acquire skills about the textual typology, the specific lexicon, morphology and syntax of both the source language and of the target language, in addition to a good interpretation level that has always to be active, especially when I first read the given texts and then also during the translation process.

After having translated the contracts, the translator has to verify that the information, the contents and the forms too of the target text are equivalent to the source ones. In some way, a translator must find right solutions for every problems he/she faces and we may say that this is exactly his/her main task: indeed, there cannot be something left behind because the translator does not know how to translate that.

Our main consideration is that it has been challenging to create a comparison between our linguistic knowledge and law, which represented a new world. This work has begun with a quotation: "Operare con la lingua del diritto permette al traduttore di assumere il più nobile dei suoi ruoli: il ruolo di intermediatore culturale" (Viezzi 1994:4). Now, at the end of this work, what it has been meant with this sentence is even clearer than when it was put it at the beginning of the first chapter. As I have seen during these chapters, the role of the translator is significant for the success of a good translation. The translator has indeed a

multiple role: as we read in this quotation, we could define this figure as a cultural intermediary. In Latin, the preposition “inter” stands for “between” and indicates connection, relation and reciprocity; these are the main features of a translator: he/she indeed connects different cultures and realities through language. For this reason, I have said many times that the legal translator has not a simple role: he/she must deal with choices that do not concern only language; his/her choices also concern culture and society, giving this figure such a high responsibility that a simple translator usually does not have. And this is exactly what I have tried to do in this work: I have taken into consideration the English legal reality (not only under the linguistic profile but also studying its system) and we have done the same with the Italian correspondents. Only later, when it was time to translate the contracts, I have put them in relation to obtain the target documents, an attempt to create good Italian documents.

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7. APPENDICES

ENGLISH STANDARD TERMS AND CONDITIONS FOR SALE OF GOODS

<http://www.ridgeway-components.co.uk/standard-terms-and-conditions-for-sale-of-goods/>

1. Definitions

In this document the following words shall have the following meanings:

- 1.1 “Buyer” means the organisation or person who buys Goods from the Seller;
- 1.2 “Conditions” means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;
- 1.3 “Delivery date” means the date specified by the Seller when the Goods are to be delivered;
- 1.4 “Goods” means the articles to be supplied to the Buyer by the Seller;
- 1.5 “Intellectual Property Rights” means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.6 “Price” means the price set out in the list of prices of the Goods maintained by the Seller as amended from time to time or such other price as the parties may agree in writing plus such carriage, packing, insurance or other charges or interest on such as may be quoted by the Seller or as may apply in accordance with these conditions;
- 1.7 “Seller” means Ridgeway Components Limited, Unit 5, Prosperity Way, Middlewich, Cheshire, CW10 0GD.

2. General

- 2.1 These conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including

any terms or conditions which the Buyer may seek to apply under any purchase order, order confirmation or similar document.

2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.

2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties including without limitation as to discounts) shall be inapplicable unless agreed in writing by the Seller.

2.5 Any advice, recommendation or representation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods or otherwise which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and, accordingly, the Seller shall not be liable for any such advice, recommendation or representation which is not so confirmed.

2.6 Nothing in these Conditions shall effect the statutory rights of any Buyer dealing as a consumer.

3. Price and Payment

3.1 Payment of the Price is strictly cash with order unless a credit account has been established with the Seller in which event payment of the Price is due 30 days following the date of invoice.

3.2 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due interest to accrue from day to day until the date of payment at a rate of 2% per annum above the base rate of the Bank of England from time to time.

3.3 The Seller reserves the right to grant, refuse restrict, cancel or alter credit terms at its sole discretion at any time.

3.4 If payment of the Price or any part thereof is not made by the due date, the Seller shall be entitled to:

3.4.1 require payment in advance of delivery in relation to any Goods not previously delivered;

3.4.2 refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;

3.4.3 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract) as the Seller may think fit;

3.4.4 terminate the contract.

4. Description

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

5. Sample

Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is so shown and inspected for the sole purpose of enabling the Buyer to judge for itself the quality of the bulk, and not so far as to constitute a sale by sample.

6. Delivery

6.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on the date specified by the Seller. The

Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

6.2 The date of delivery specified by the Seller is an estimate only. Time for delivery shall not be of the essence of the contract and while every reasonable effort will be made to comply with such dates compliance is not guaranteed and the Buyer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery date stated.

6.3 If the Seller is unable to deliver the Goods for reasons beyond its control, then the Seller shall be entitled to place the Goods in storage until such time as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.

6.4 If the Buyer fails to accept delivery of Goods on the delivery date or within 3 days of notification that they are ready for despatch whether prior to or after the delivery date the Seller reserves the right to invoice the Goods to the Buyer and charge him therefore. In addition the Buyer shall then pay reasonable storage charges or demurrage as appropriate in the circumstances until the Goods are either despatched to the Buyer or disposed of elsewhere.

6.5 The Seller shall be entitled to deliver the Goods by instalments and where the Goods are so delivered, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat any other related contract as repudiated.

6.6 Where the Buyer requires delivery of the Goods by instalments, rescheduling requires the Seller's written agreement and will not be possible unless at least 3 month's written notice is provided and so agreed. Each delivery shall constitute a separate contract and failure by the Buyer to pay the Price in respect of any instalment shall entitle the Seller to treat any other related contract as repudiated in addition to any other rights of the Seller pursuant to these Conditions.

6.7 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 3 months of the delivery date.

7. Acceptance

7.1 The Seller is a distributor of goods and the Buyer is exclusively responsible for detailing the specification of the Goods, for ascertaining the use to which they will be put and for determining their ability to function for that purpose.

7.2 The Buyer is required to test Goods upon delivery and shall be deemed to have accepted the Goods 14 days after delivery to the Buyer. Accordingly, no claim for defect, damage or quality will be entertained (without prejudice to the Seller's other rights pursuant to these Conditions) unless written notice together with all supporting evidence is received by the Seller within 14 days of delivery. After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

7.3 The Buyer shall not remove or otherwise interfere with the marks or numbers on the Goods.

7.4 The Buyer shall accept delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that any such discrepancy shall not exceed 5%, the Price to be adjusted pro-rata to the discrepancy.

8. Risk and Title

8.1 Risk of damage or loss of the Goods shall pass to the Buyer in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection, or in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price of the Goods and of all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.

8.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

8.4 Until payment of the Price the Buyer shall be entitled to resell or use the Goods in the course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

8.5 Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or of any third party where the Goods are stored and repossess the Goods.

8.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8.7 The Seller shall be entitled to recover the Price notwithstanding that property in any of the Goods has not passed from the Seller.

9. Insolvency of Buyer

9.1 If the Buyer fails to make payment for the Goods in accordance with the contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's property or the Goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law or if any such matter as provided for in this clause is reasonably apprehended by the Seller all sums outstanding in respect of the Goods shall become payable immediately.

9.2 The Seller may in the circumstances set out in clause 9.1 above also in its absolute discretion, and without prejudice to any other rights which it may have, exercise any of its rights pursuant to clause 8 above.

10. Warranty

10.1 Where the Goods are found to be defective, the Seller shall, replace defective Goods free of charge within the manufacturer's warranty period if acceptable from the date of delivery, subject to the following conditions;

10.1.1. the Buyer notifying the Seller in writing immediately upon the defect becoming apparent;

10.1.2. the defect being due to faulty design, materials or workmanship;

10.2 Any Goods to be repaired or replaced shall be returned to the Seller at the Buyer's expense, if so requested by the Seller.

10.3 Where the Goods have been manufactured and supplied to the Seller by a third party, any warranty granted to the Seller in respect of the Goods shall be passed on to the Buyer and the Buyer shall have no other remedy against the Seller

10.4 The Seller shall be entitled in its absolute discretion to refund the Price of the defective Goods in the event that the Price has already been paid.

10.5 The remedies contained in this Clause are without prejudice and subject to the other Conditions herein, including, but without limitation, to conditions 11 and 12 below.

11. Liability

11.1 No liability of any nature shall be incurred or accepted by the Seller in respect of any representation made by the Seller, or on its behalf, to the Buyer, or to any party acting on its behalf, prior to the making of this contract where such representations were made or given in relation to:-

11.1.1. the correspondence of the Goods with any description or sample;

11.1.2. the quality of the Goods; or

11.1.3. the fitness of the Goods for any purpose whatsoever.

11.2 No liability of any nature shall be accepted by the Seller to the Buyer in respect of any express term of this contract where such term relates in any way to:

11.2.1. the correspondence of the Goods with any description;

11.2.2. the quality of the Goods; or

11.2.3. the fitness of the Goods for any purpose whatsoever.

11.3 Except where the Buyer deals as a consumer all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the

Goods, whether express or implied by statute or common law or otherwise are hereby excluded from the contract to the fullest extent permitted by law.

11.4 For the avoidance of doubt the Seller will not accept any claim for consequential or financial loss of any kind however caused.

12. Limitation of Liability

12.1 Where any court or arbitrator determines that any part of Clause 11 above is, for whatever reason, unenforceable, the Seller shall be liable for all loss or damage suffered by the Buyer but in an amount not exceeding the Price.

12.2 Nothing contained in these Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

13. Intellectual Property Rights

13.1 Where any Goods supplied by us embody, include or contain computer program(s) and/or related documentation the copyright in which is owned by a third party, all rights and liabilities associated with the use and/or reproduction thereof will be subject to the terms of the applicable end user licence, to the exclusion of all liabilities and obligations on our part.

13.2 The Buyer will indemnify us against all liabilities for infringement of third party intellectual property rights arising from our compliance with the Buyer's specific requirements regarding design or specification for the Goods or arising from the use of the Goods in combination with other products.

13.3 In the event that all the Goods or the use thereof (subject as aforesaid) are held to constitute an infringement of any intellectual property rights and the use is thereby prevented, the will at its own expense and option either procure for the Buyer the right to continue using the Goods or replace the same with a non-infringing product, or modify the Goods so that they become non-infringing, or

may elect to retake possession of the Goods and refund the Price. Subject to the foregoing, the Seller shall be under no liability to the Buyer for any loss, damage or enquiry, whether direct or indirect, resulting from any intellectual property right infringement of the Goods.

13.4 All Intellectual Property Rights produced from or arising as a result of the performance of any contract shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

13.5 All orders are processed in accordance with the quality system elements of ISO 9002 however the Goods may not have been procured from a quality assured source unless there is an asterisk(*) against the relevant items

14. Force Majeure

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may without liability on its part, terminate the contract or any part of it.

15. Relationship of Parties

Nothing contained in these Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Conditions shall be deemed to construe either of the parties as the agent of the other.

16. Assignment and Sub-Contracting

The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

17. Waiver

The failure by either party to enforce at any time or for any period any one or more of the Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Conditions of this Agreement.

18. Severability

If any term or provision of these Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

19. No set off

The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer may have or allege to have for any reason whatsoever.

20. Entire Agreement

These Conditions and any documents incorporating them or incorporated by them constitute the entire agreement and understanding between the parties.

21. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusion jurisdiction of the English courts.

22. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

AMERICAN STANDARD TERMS AND CONDITIONS OF SALE

http://www.usmicroproducts.com/terms_of_sale

I. Definitions

The term "Seller" as used herein shall refer to US Micro Products, Inc. The term "Buyer" as used herein shall refer to the customer designated on the face hereof. The terms "good(s)" and "services" as used herein shall refer to the items, services and/or statement of work described on the face hereof. The term "contract" as used herein shall refer to the terms, conditions and warranties contained in this document.

2. Acceptance

This document must be accepted in writing by Buyer. If for any reason Buyer should fail to accept in writing, any conduct by Buyer which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute an acceptance by Buyer of this document and all of its terms and conditions. Any terms proposed in Buyer's acceptance of Seller's offer which add to, vary from, or conflict with the terms herein are hereby objected to. If this document has been issued by Seller in response to an offer and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of this document by Seller shall constitute an acceptance of such offer subject to the express conditions that Buyer assent to such additional and different terms herein, and Buyer shall be deemed to have so assented unless Buyer notifies Seller to the contrary in writing within ten (10) days of receipt of this document.

3. Prices

Although it is Seller's practice to provide as much advance notice as possible, prices are subject to change without notice and adjustment to Seller's prices in effect at time of order placement. Unless otherwise specified by Seller, prices are for the specific quantity stated and do not include taxes nor charges for transportation, insurance, special packaging, or marking. Prices for any

undelivered goods or services may be increased by Seller in the event of any increase in the cost to Seller of supplies, raw materials, labor or services, or any increase in Seller's cost resulting from any cause beyond Seller's control.

4. Payment

(a) Payment to be made according to agreed upon terms: credit card, wire transfer, or check.

(b) Checks are accepted subject to collection and the date of collection shall be deemed the date of payment. Any check received from Buyer may be applied by Seller against any obligation owing by Buyer to Seller, under this or any other contract, regardless of any statement appearing on or referring to such check, without discharging Buyer's liability for any additional amounts owing by Buyer to Seller; and the acceptance by Seller of such check shall not constitute a waiver of Seller's right to pursue the collection of any remaining balance.

(c) Buyer agrees to pay the entire net amount of each invoice rendered by Seller pursuant to the terms of each such invoice without offset or deduction.

5. Terms

(a) Standard payment terms require receipt of cash in advance of performance for all new accounts. In the event that the Seller extends credit to the Buyer, the following additional terms are hereby agreed upon to be applicable. Application may take up to 30 days to process request for terms subject to approval by Seller.

(b) Buyer agrees to keep the account current and agrees to pay each invoice according to its terms from the date of invoice. Buyer agrees to provide funds in advance if their account has large disbursements that exceed the established credit limit. The amount of credit extended to the Buyer is subject to periodic review and any decision to increase, decrease or revoke the amount of credit granted to the Buyer shall be at the sole discretion of the Seller.

(c) Seller reserves the right to require payment in advance or C.O.D. or otherwise modify credit terms either before or after shipment of any or all of the goods specified herein, if, for any reason, Buyer's credit is or becomes objectionable to Seller. If Seller believes in good faith that Buyer's ability to make the payment called for by this contract is or may be impaired, Seller may cancel this contract or any remaining balance thereof, without incurring any liability. Buyer remains liable to pay for any goods already shipped.

(d) In the event that the Buyer fails to keep the account current, all amounts owed by the Buyer shall immediately become due and payable. The Buyer shall also become indebted to the Seller for costs of collection, including reasonable attorney fees, which arise if payment terms are not met. Said invoices not paid by maturity date will have a 1-1/2% per month late payment charge assessed against any unpaid balance from the due date of the invoice until the date of payment.

(e) If any indebtedness remains unpaid for thirty (30) days after the demand for payment, the Seller may, in addition to any other rights it has under other agreements and/or applicable law, exercise any or all of the rights of a secured party and forward Buyer to Collections.

6. Taxes

Unless otherwise agreed in writing, Buyer shall be responsible for the payment of any and all Federal, state and local sales, use, and excise taxes and all other taxes and charges assessed in connection with this contract.

7. Shipment

All shipments will be made ExWorks Seller's factory unless otherwise specified in this contract. In the absence of specific instructions, Seller will select the carrier. Title to the goods shall pass to Buyer upon delivery thereof by Seller to the carrier; thereupon, Buyer shall be responsible for the goods. Transportation from the ExWorks point designated in this contract, handling and insurance are

at the cost of Buyer. Goods held for Buyer, or stored for Buyer, shall be at the risk and expense of Buyer. Claims against Seller for shortages must be made within 10 days after arrival of shipment.

8. Delivery

All delivery dates are approximate. Seller will use best efforts to fill orders according to the delivery dates acknowledged by Seller. Delivery may be made in installments. Default or delay by Seller in shipping or delivering the whole or any part or installment of the goods or services under this contract shall not affect any other portion thereof.

9. Inspection

Unless Buyer notifies Seller in writing within ten (10) calendar days from the date of shipment of any goods or services that said goods or services are rejected, they will be deemed to have been accepted by Buyer. In order for the notice of rejection to be effective, it must also specify the reason(s) why the goods or services are being rejected.

10. Seller's limited warranty and limitation of liabilities

(a) Seller warrants that at the time of shipment the goods manufactured and services performed by Seller and sold hereunder will be free from defects in material and workmanship, and will conform to Seller's applicable specifications, or if appropriate, to other specifications accepted by Seller in writing.

(b) If any defect within this warranty appears, Buyer shall notify Seller immediately. Seller agrees, at its sole election, to repair, replace, or issue a credit in the amount of the unit contract price for any goods or service which within one year from the date of shipment or performance by Seller shall, upon test and examination by Seller, prove defective within the above warranty. Any repair or replacement shall not extend the warranty period. No goods will be

accepted for return or replacement without the written authorization of Seller with a designated Return Authorization Number (RMA). Upon such authorization, and in accordance with instructions by Seller, the goods will be returned shipping charges prepaid by Buyer per industry standard unless otherwise authorized.

(c) The warranty does not extend to any goods manufactured by Seller which has been subjected to misuse, neglect, accident, improper installation, unauthorized repair, or alteration.

(d) THIS WARRANTY IS EXTENDED TO BUYER ONLY AND IS NOT TRANSFERABLE TO SUBSEQUENT PURCHASERS OR USERS OF GOODS. **THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR OTHERWISE.** IN NO EVENT SHALL SELLER'S TOTAL LIABILITY TO BUYER EXCEED THE PURCHASE PRICE OF THE GOODS OR SERVICE. The remedies of Buyer shall be limited to those provided herein to the exclusion of any and all other remedies including, without limitation, incidental, special, indirect or consequential damages. No agreement varying or extending the foregoing warranty, remedies or this limitation will be binding upon Seller unless in writing, signed by a duly authorized officer of Seller.

11. Patent indemnity

(a) Seller shall conduct, at its own expense, the entire defense of any claim, suit or action alleging that, without further combination, the use or resale by Buyer of the goods delivered hereunder directly infringes any United States patent or copyright, But only on the conditions that:

(i) Seller receives prompt written notice of such claim, suit or action and full opportunity and authority to assume the sole defense

thereof, including settlement and appeals, and all information available to Buyer for such defense;

(ii) Said goods are made according to a specification or design furnished by Seller or, if a process patent is involved, the process performed by the goods is recommended in writing by Seller; and

(iii) The claim, suit or action is brought against Buyer. Provided all of the foregoing conditions have been met, Seller shall, at its own expense, either settle said claim, suit or action or shall pay all damages, excluding consequential and special damages and costs, and, if the use or resale of such goods is finally enjoined, Seller shall, at Seller's option, (1) procure for Buyer the right to use or resell the goods, (2) replace them with equivalent non-infringing goods, (3) modify them so they become non-infringing but equivalent, or (4) remove them and refund the purchase price (less reasonable allowance for use, damage and obsolescence).

(b) THE FOREGOING STATES SELLER'S EXCLUSIVE OBLIGATION WITH RESPECT TO CLAIMS OF INFRINGEMENT OF PROPRIETARY RIGHTS OF ANY KIND, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

(c) If any claim, suit or action of infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property right is based on a design or specification furnished by Buyer or on the performance of a process not recommended in writing by Seller, or on the use or sale of the goods delivered hereunder in combination with other goods not delivered to Buyer by Seller, Buyer shall indemnify and hold Seller harmless therefrom.

12. Property and ownership rights

Unless otherwise provided in writing, the design, development or manufacture by Seller of a goods or service for Buyer shall not be deemed to produce a work made for hire and shall not give to Buyer any patent, copyright or any other

intellectual property right interest in the goods, or any portion thereof. All such rights shall remain the property of Seller. Unless otherwise agreed in writing, all tooling, fixtures, test equipment, models, patterns, molds, processing software and technology, and proprietary information of Seller, whether or not made for, obtained or developed by Seller for the performance of this contract, shall remain the sole property of Seller; and the payment by Buyer of any costs or expenses relating to any of the foregoing (including non-recurring expenses), shall not be deemed to grant Buyer any ownership interests therein.

13. Changes

Unless otherwise provided in writing, Seller reserves the right to change specifications of goods ordered by Buyer herein, provided that the changes will not materially affect form, fit or function.

14. Excusable delays

In addition to any excuse provided by applicable law, Seller shall not be charged with any liability for delay, non-delivery or failure to perform any of its obligations herein arising from any event beyond Seller's control, whether or not foreseeable by either party, including but not limited to, delays of suppliers, labor disturbance or strike, war, fire, accident, adverse weather, inability to secure transportation, governmental act or regulation, inability of Seller to obtain materials, shortages of materials, and other causes or events beyond Seller's control, whether or not similar to those enumerated above.

15. Orders

(a) Each order for goods or services is subject to acceptance in writing by Seller.

(b) Order Changes - Buyer is liable for the costs of any changes to the goods, services, delivery schedule or specifications requested by Buyer and agreed to

by Seller including, but not limited to, cancellation or restocking charges, non-recurring engineering costs and other expenses, tooling and fixture charges, re-certification charges, re-work, wastage, and disassembly labor costs.

(c) Special Orders - All goods specially manufactured for Buyer and all special items, not normally stocked by Seller, including all special materials and supplies necessary to perform the work specified, are non-cancelable and non-returnable.

16. Termination

Except as otherwise agreed in writing, Buyer shall not have the right to terminate or reschedule all or any portion or installment of the goods or services covered by this contract without the written consent of Seller.

17. Buyer's default

Payment as required by the terms of this contract must be made when due regardless of any claim by Buyer. Failure by Buyer to pay the purchase price when due, or otherwise to perform this contract, shall give Seller the unlimited right, without liability, to take possession of the goods, with or without notice, and to have all of the remedies of a secured party under the Uniform Commercial Code of the State of Texas. In addition, Seller, at its option by giving written notice to Buyer of its election to do so, may, cancel any undelivered portions thereof and/or demand immediate payment of all outstanding bills of Buyer. All rights and remedies of Seller shall be cumulative and may be exercised successively or concurrently without impairing Seller's security interest in the goods. Buyer agrees to pay Seller reasonable attorneys' fees and legal expenses incurred by Seller in exercising any of its rights and remedies upon default in such amount as is permissible under law. All the foregoing is without limitation or waiver of any other rights or remedies available to Seller according to law or otherwise.

18. Limitations on Seller's liability

Buyer shall not be entitled to, and in no event shall seller be liable to buyer for, indirect, special, incidental or consequential damages of any nature, including, without being limited to, loss of profit, loss of use, promotional or manufacturing expenses, overhead, injury to reputation or loss of customers arising out of a failure by seller to deliver goods or services or resulting from the use, misuse, or inability to use the goods or services.

In no event shall seller's liability or buyer's recovery exceed the purchase price of the specific goods or services as to which a claim is made irrespective of the nature of buyer's claim, whether for breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts.

19. Limitation on actions

No action, regardless of form, arising out of this contract may be brought by either party more than one year after the cause of action arose, or in the case of non-payment, not more than two years from the date of last payment.

20. Governing Law

This contract shall be construed and interpreted in accordance with and governed by the laws of the State of Texas, excluding its conflict of law rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement, and its application is expressly excluded.

21. General

(a) This contract contains the entire agreement between the parties and supersedes any prior or contemporaneous oral or written agreements or communications between them relating the subject matter thereof.

(b) This contract may not be assigned, modified, or terminated without Seller's prior written consent, and any attempt to assign, modify or terminate without such consent shall be absolutely void.

(c) No delay or omission to exercise any right, power or remedy accruing to Seller upon breach or default by Buyer under this contract shall impair any such right, power or remedy of Seller, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

(d) No amendments to or modifications of the provisions of this contract will be valid and binding upon Seller unless in writing and signed by an authorized representative of Seller.

8. SUMMARY IN ITALIAN/RIASSUNTO

Per concludere la mia carriera universitaria, ho scelto un linguaggio settoriale specifico della lingua inglese: l'inglese legale e la sua traduzione in italiano. Data la sua complessità, è stato impegnativo, ma anche entusiasmante, mettersi a confronto con una lingua speciale e con la traduzione di due contratti, uno inglese e uno americano, per la vendita di beni dall'inglese all'italiano. Quando si ha a che fare con il linguaggio legale (non solo in lingua inglese), ci si rende subito conto che esso è più complesso rispetto agli altri linguaggi specifici poiché contiene in maniera implicita la responsabilità delle conseguenze che i suoi documenti implicano. Inoltre, una caratteristica molto importante è che ogni linguaggio settoriale si trova a metà tra la lingua stessa e l'ambito specifico di studio, e lo stesso avviene esattamente anche per il linguaggio legale. Esso infatti si divide tra lingua e diritto e nessuna di queste due discipline prevale sull'altra, esse hanno la stessa importanza. Questo ci ha sicuramente permesso di approfondire la disciplina legale, il suo funzionamento e, specialmente, il suo linguaggio. Presenterò ora le varie fasi della creazione di questo lavoro.

Innanzitutto, ho raccolto molto materiale riguardante questo argomento, sia dalle biblioteche di linguistica che di giurisprudenza dell'università, oltre che attraverso una ricerca minuziosa di documenti digitali in rete. Il risultato di queste ricerche è stato più che soddisfacente: sono riuscita a reperire numerosi testi che mi hanno avvicinata ad autori, periodi e provenienze diverse. Questa materia non ha una lunga storia nella ricerca linguistica: basti pensare che il linguaggio legale è stato incluso tra le lingue speciali soltanto nella seconda metà del ventesimo secolo, quindi tutti i documenti reperiti sono del ventesimo e ventunesimo secolo. Un'altra questione importante su cui i linguisti hanno riflettuto a lungo è stata la funzione dei testi legali: secondo loro, essi risultano essere generalmente testi informativi; infatti, il loro scopo principale è quello di fornire informazioni al lettore, sia esso coinvolto o meno nella situazione interessata da un dato documento legale. Un'altra corrente, invece, sostiene che la funzione di questi testi sia prescrittiva: essi infatti stabiliscono dei determinati comportamenti che un individuo dovrà assumere, altrimenti sarà punito o soggetto a sanzioni.

In secondo luogo, dopo aver studiato il materiale trovato, mi sono concentrata sul possibile indice e sulla struttura di questa tesi. Il metodo utilizzato, specialmente per i primi tre capitoli, è quello deduttivo: da premesse generiche riguardo al linguaggio e alla traduzione legale, ci si dirige verso il fulcro della tesi, costituito dalla traduzione di due contratti, passando per la descrizione di un contratto, della sua struttura e dei suoi contenuti. Vediamo ora in sintesi, capitolo per capitolo, le varie tappe di questa tesi.

Il primo capitolo è il più generico tra i quattro poiché costituisce un'introduzione all'argomento di questo lavoro: ho dato rilevanza alle principali caratteristiche del linguaggio legale e della sua traduzione. Il primo concetto illustrato è quello di "lingua speciale" attraverso una definizione esaustiva: essa ci spiega che questa è una varietà linguistica che riguarda un settore di conoscenza specialistico, utilizzata da un gruppo ristretto di parlanti poiché soddisfa dei bisogni comunicativi ben precisi; inoltre, ogni lingua speciale ha delle caratteristiche precise a livello grammaticale: il lessico e la morfosintassi presentano infatti delle ricorrenze fisse e particolari di quella data varietà.

Un linguaggio settoriale non può dunque essere considerato un linguaggio ordinario qualsiasi: i contenuti che esso esprime sono così tecnici che non tutti riescono a comprenderlo. Per questo motivo, quando si ha a che fare con una lingua speciale, è necessario possedere una buona conoscenza riguardo all'argomento che essa tratta. Il linguaggio legale è diviso in due: da una parte c'è la lingua, dall'altra il diritto. Per ricongiungere le due parti e ottenere quindi questa lingua speciale è necessario rimettere insieme quelle due parti diverse ma assolutamente complementari.

Il linguaggio legale funziona dunque esattamente grazie alla compresenza di queste due materie: non potrebbe esistere senza il diritto, ovviamente, ma nemmeno senza le regole precise dettate della lingua di riferimento. In questo capitolo cercherò di capire quindi che cosa rende diversa la lingua del diritto rispetto alle altre lingue speciali e anche quale sia l'approccio che un traduttore legale deve avere nei confronti di questa disciplina piuttosto complessa, delineando la figura ideale.

Il capitolo prosegue con l'analisi delle caratteristiche grammaticali principali del linguaggio legale. La presenza di parole e di espressioni con origine latina e francese dimostra l'influenza che queste due lingue hanno avuto nello sviluppo dell'inglese legale; molti altri aspetti caratterizzano questa lingua speciale: l'accostamento di due o più parole con lo stesso significato, formule fisse che si ripetono più volte nello stesso documento, pronomi ed avverbi composti che si presentano molto spesso nei documenti legali. Inoltre, ho sottolineato il scarso uso di punteggiatura che contraddistingue la stesura di questo linguaggio e che sicuramente complica ulteriormente la comprensione di tali documenti. E ancora, le parole comuni possono assumere significati diversi quando sono usate nei testi legali, dunque è estremamente necessario che il traduttore faccia attenzione ad ogni parola o espressione che trova durante il processo traduttivo per comprenderne, grazie al contesto in cui essa si trova, l'esatto significato. Per quanto riguarda i sintagmi verbali invece, nei contratti si riscontra un uso abbondante del verbo modale "shall" per esprimere tre diverse funzioni (autorizzazione, obbligo e condizione) e della voce passiva dei verbi, molto spesso per dare più importanza al significato dell'azione più che all'agente che l'ha compiuta.

Prima di passare alla seconda parte del primo capitolo, ho proposto un breve confronto tra due diversi sistemi legali, sottolineando le differenze tra Common Law e diritto civile.

Nella seconda parte del capitolo, invece, dopo aver trattato l'aspetto linguistico del linguaggio legale e il confronto dei sistemi legali, la mia attenzione si sposta sulla traduzione legale. Questo tipo di traduzione è sicuramente molto legato alla cultura di riferimento: infatti ogni nazione ha il proprio sistema legale e le proprie regole, e il traduttore deve tener conto di tutto ciò poiché sono quelli appena elencati sono degli elementi fondamentali per creare una buona traduzione.

Il linguaggio legale però non è solo una questione di terminologia ma implica molto più di essa: è necessario infatti trovare delle equivalenze sia a livello linguistico ma a livello semantico nella lingua d'arrivo. Tradurre documenti legali, infatti, significa confrontare culture legali diverse, ed è importante che il traduttore

faccia attenzione all'espressione di determinati concetti con metodi e procedure che fanno parte di un dato sistema legale, in modo da tradurre tale documento nel migliore dei modi. Ho nominato l'equivalenza perché è stato questo il metodo adottato per la traduzione dei due contratti per la vendita di beni: essa costituisce davvero una buona strategia di traduzione. L'obiettivo principale di un traduttore, infatti, è quello di trovare dei termini che risultino equivalenti sia sotto il profilo linguistico che concettuale, per produrre un testo che risulti al lettore il più naturale possibile.

Tuttavia, il processo traduttivo si compone anche di varie procedure e scelte che il traduttore ha la responsabilità di fare. Non è per niente semplice infatti tradurre documenti legali: come sottolineato nel primo capitolo, è necessario che il traduttore possieda una buona conoscenza sia linguistica che legale per dar vita ad una buona traduzione. Per questo, mi sono successivamente soffermata proprio sul ruolo svolto dal traduttore legale, che non si limita alla trasposizione linguistica di un testo, anzi. Data però la necessità di possedere una conoscenza approfondita del diritto, sembra che la soluzione migliore sia la compresenza di un traduttore e di un esperto in materia legale per ottenere un risultato finale qualitativamente migliore. Questa collaborazione è pensata soprattutto per i casi in cui il testo da tradurre fa parte di un certo sistema legale e dev'essere tradotto in una lingua con un sistema legale diverso; in questi casi, infatti, a volte è molto difficile trovare concetti ed espressioni corrispondenti. Nonostante ciò, il traduttore deve cercare di risolvere gli eventuali problemi, creando una traduzione che rispetti i contenuti e i propositi del testo di partenza.

Nel secondo capitolo, invece, ho presentato un genere specifico di documenti legali: i contratti. Nella prima parte, ho cercato di ricostruire una definizione di "contratto" che fosse il più completa possibile. In modo sintetico, si potrebbe definire un contratto come un accordo legalmente vincolante tra due o più parti. L'accettazione delle parti al contratto, definita in termini tecnici con l'espressione latina *consensus ad idem*, dà vita a diritti e doveri specifici e, se questi non vengono soddisfatti, verranno applicati conseguenti provvedimenti legali.

I principali contenuti di un contratto sono i seguenti: l'offerta che viene fatta da una parte all'altra, l'accettazione di quest'offerta e i termini che regolano il contratto e che stabiliscono i diritti e i doveri delle parti coinvolte. Un contratto può contenere due tipi di termini, le condizioni e le garanzie; la differenza principale tra queste è l'importanza che esse hanno all'interno del contratto stesso: le condizioni infatti sono dei termini essenziali, invece le garanzie non lo sono. Nel caso di violazione del contratto, le conseguenze saranno diverse in base alla tipologia di termine violato. Infatti, se una parte viola una garanzia, la parte innocente potrà richiedere i danni e non necessariamente recedere dal contratto. D'altra parte, se il termine violato è una condizione, la parte innocente potrà decidere di recedere dal contratto o solamente di richiedere i danni, facendo passare la condizione come una garanzia.

In seguito, ho presentato la struttura di un contratto per la vendita di beni, ovvero la tipologia dei contratti che verranno tradotti nel terzo capitolo. Ogni contratto presenta un inizio formale che contiene le informazioni generali riguardo al contratto e alle parti coinvolte nel documento. Dopo questa prima sezione, vengono date delle altre informazioni generiche e viene espresso il proposito del contratto stesso. La sezione centrale del contratto, la cosiddetta "parte operativa" è la più importante: è la più lunga ed è quella che produce gli effetti legali; essa contiene tutti i termini accettati dalle parti, suddivisi in base all'argomento trattato. Alla fine del contratto, si trovano tre parti che concludono il documento: sono presenti delle formule di conclusione fisse, delle eventuali appendici e la sezione delle firme, che dimostra l'evidente accettazione delle parti al contratto.

Nella seconda parte del capitolo, vengono presentati i diversi tipi di inadempimento del contratto e i rimedi previsti per il "breach of contract", che costituisce una tipologia specifica di violazione del contratto.

Infine, ho dedicato l'ultima parte del secondo capitolo ai fattori che rendono un contratto invalido o nullo. Spesso infatti, anche se un contratto sembra funzionare perfettamente, ci potrebbero essere dei difetti che rendono invalido o nullo il contratto in questione. Da una parte, un contratto invalido è un accordo che non produce effetti legali e che non vincola le parti; dall'altra parte, invece, un

contratto nullo è un documento valido al momento della sua formazione ma che una parte ha la possibilità di rescindere in un secondo momento.

Il terzo capitolo costituisce il fulcro di questa tesi: esso contiene infatti la traduzione di due contratti, uno inglese e uno americano, per la vendita di beni. Questo sarà un tentativo di traduzione di tutti i termini presenti: i primi che s'incontrano in entrambi i contratti sono chiaramente più semplici, si va poi via via verso quelli più lunghi e complessi.

Nel quarto e ultimo capitolo, si dà spazio all'analisi della mia traduzione. Innanzitutto, si ripercorrono le peculiarità del linguaggio legale presentate nel primo capitolo con degli esempi tratti dai contratti tradotti. Sono quindi ripresentate le caratteristiche principali di questa lingua speciale, come l'influenza della lingua latina e francese, la presenza di formule fisse, di avverbi e pronomi composti e i tre diversi usi del verbo modale "shall", tutte affiancate da esempi concreti. Successivamente viene presentata l'analisi dei problemi di traduzione riscontrati durante il processo traduttivo, proponendo poi quelle che secondo noi potrebbero essere le possibili soluzioni. Questa sezione è stata divisa in due parti, in modo da trattare separatamente i problemi riscontrati nei due diversi contratti, anche se la natura di queste difficoltà è stata più o meno la stessa: il lessico tecnico e specifico, la morfologia e le strutture sintattiche peculiari e i termini e le espressioni il cui significato era molto spesso immediatamente chiaro ma difficile da rendere in italiano. L'ultimo paragrafo di questo capitolo è dedicato al confronto dei due contratti e anche questo è diviso in due: nella prima parte viene presentato il sistema legale americano, influenzato inizialmente dal Common Law inglese ma poi sviluppatosi secondo modalità diverse rispetto a questo. Nella seconda parte invece vengono evidenziate le somiglianze e le differenze tra i due contratti; infine, vengono dunque analizzate quali sono le clausole simili e quali invece non trovano corrispondenza nell'altro contratto.

Questi sono i contenuti della presente tesi. Nessuna lingua speciale risulta essere semplice ma il linguaggio legale è ancor più difficile, dato che le conseguenze che i suoi documenti implicano sono molto significativi. Come ho già accennato, il metodo utilizzato in questo lavoro è quello deduttivo: esso mi ha permesso

infatti di iniziare con una visione generale del linguaggio e della traduzione legale verso una tipologia più specifica di documenti, il contratto, per passare poi alla sua traduzione.

Per quanto riguarda la traduzione invece, ho utilizzato un metodo diverso, composto da diversi passaggi. Prima di tutto, ho letto l'intero documento di partenza da tradurre per comprenderne tutte le caratteristiche linguistiche e contenutistiche. Poi, dal momento che in questi due contratti sono presenti delle espressioni e perfino delle formule fisse simili, se non identiche, ho creato una sorta di glossario personale, in modo da creare due traduzioni che fossero comunque coerenti e corrispondenti. Questo strumento si è rivelato molto utile anche perché ha reso immediata la ricerca degli stessi termini, facendo sempre presente quali erano state le scelte fatte precedentemente. Dopo questa fase, ho iniziato la vera e propria traduzione dei due contratti per la vendita di beni. Ho studiato molto materiale riguardo a questo argomento e ho letto molti contratti italiani per scoprirne le formule più comuni; inoltre, ho anche analizzato sistemi legali diversi per comprendere come questi possano influenzare perfino la traduzione di un documento. Dopo una prima traduzione dei contratti, è stato necessario rileggere ciò che si è prodotto più e più volte: sarà possibile così trovare eventuali errori fatti o miglioramenti da poter applicare. Questa fase di revisione è molto importante soprattutto perché, mentre si traduce, ci sono molti elementi da tenere in considerazione, come per esempio tutte le componenti grammaticali (lessico, morfologia e sintassi), la tipografia e soprattutto la scelta di ogni singola parola. Infine, quando la traduzione sembra funzionare, si può procedere con un'ultima lettura, cercando di ottenere la miglior versione che si potesse creare di quel dato testo.

La nostra considerazione principale riguardo all'intero lavoro è che è stato davvero impegnativo, ma allo stesso tempo entusiasmante, avere a che fare contemporaneamente con la lingua e con il diritto. Il diritto, inoltre, ha costituito per noi una nuova conoscenza da studiare e approfondire. Ho iniziato il primo capitolo con una citazione che, a mio parere, riassume perfettamente il lavoro fatto in questi mesi: "Operare con la lingua del diritto permette al traduttore di assumere il più nobile dei suoi ruoli: il ruolo di intermediatore culturale." (Viezzi

1994:4) Alla fine di questo lavoro, la motivazione che mi ha spinto a scegliere questa frase per iniziare questa tesi è ancora più chiara: questi capitoli infatti spiegano parti diverse dello stesso argomento; tuttavia, rispecchiano in toto questa citazione e, allo stesso tempo, la spiegano. Affrontare dei testi scritti con il linguaggio legale permette al traduttore di diventare molto più di un semplice specialista della traduzione: gli permettono di mettersi a confronto con altri aspetti riguardanti la cultura della lingua presa in considerazione. Perciò, posso affermare che il traduttore assume molti più ruoli di quanto teoricamente dovrebbe limitarsi a fare: egli infatti si può definire esattamente un intermediatore culturale, proprio come recita la citazione in questione. Il fatto che la parola 'intermediatore' contenga la preposizione latina 'inter', ci fa comprendere proprio come questa figura si ponga nel mezzo non solo di due lingue, ma anche di due culture e realtà diverse. Per questo motivo ho affermato più volte nella mia tesi che il ruolo del traduttore legale non è affatto semplice: il suo compito è anche quello di fare scelte che non sono propriamente linguistiche; infatti le sue decisioni riguardano anche cultura e diverse realtà legali, assumendosi quindi delle responsabilità che vanno aldilà di quelle che solitamente si prende un semplice traduttore. La posizione del traduttore legale è infatti pericolosa, poiché si trova nel mezzo di due forze opposte: una che lo conduce verso il testo originale, richiedendogli di rispettarlo per evitare imprecisioni, incomprensioni o interpretazioni errate; dall'altra parte, invece, l'altra forza gli richiede di dare una buona interpretazione al testo originale, concentrandosi sulla comprensione di esso per trasferire correttamente il messaggio. Implicitamente, queste due forze sostengono due diverse strategie di traduzione: la prima predilige la traduzione letterale, concentrandosi su ogni singola parola più che sul contesto o sul testo nel suo insieme; la seconda, invece, preferisce l'equivalenza funzionale che, come anticipato prima, ritengo essere la migliore strategia di traduzione per due motivi: innanzitutto, essa rispetta le funzioni del testo legale; in secondo luogo, essa cerca termini ed espressioni equivalenti rispetto al testo originale per far sì che il testo tradotto risulti il più naturale possibile al lettore.

Questo è ciò che ho cercato di fare in questa tesi: ho preso in considerazione la realtà legale inglese, sotto il punto di vista delle sue particolarità linguistiche e del

suo sistema, e poi ho fatto lo stesso con quella italiana, per trovare tra queste le corrispondenze (e le equivalenze) più adeguate. Soltanto in un secondo momento, quando era tempo di tradurre i contratti, ho messo in relazione queste due realtà per ottenere un tentativo di buona traduzione.

