

Drafting practice

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The first decision in any multilingual transaction concerns the working language of the negotiation and the authoritative language of the contract. It should be taken at the start, together with the choice of governing law and forum, because the three decisions interact. A contract governed by Swiss law, negotiated in English and to be enforced before a court in Basel will need a German translation if a dispute arises, while an arbitration clause with English as the language of the proceedings avoids that step. Where one party does not master the authoritative language, its advisers should ensure that it receives a reliable translation and independent advice, since an argument based on not understanding the contract will rarely succeed.¹

The second step concerns the vocabulary of the contract. A drafter writing a Swiss-law contract in English should use English words that describe Swiss legal institutions and define them where necessary, for example by stating that suretyship means a *Bürgschaft* within the meaning of Articles 492 ff. of the Code of Obligations. Common law terms that carry an established meaning in English case law, such as consideration, best endeavours, consequential loss or indemnity, should be avoided or defined. Where the parties choose English law and draft in German, the reverse applies, and the German text should state that terms are to be understood in the sense of English law. Defined terms should be identical across all versions, ideally by keeping the defined term in the authoritative language in brackets within the translation.²

Third, the format of the document deserves attention. A bilingual contract in two columns, with each clause in the authoritative language on the left and its translation on the right, makes inconsistencies visible and allows both parties to follow the text in their own language. The format is common in employment contracts, bank documentation and notarial practice across the border region. It requires matching paragraph numbers

and a discipline of updating both columns at the same time, which translation memory software supports. Separate versions in separate documents are easier to produce but harder to keep aligned, especially after several rounds of negotiation.³

Fourth, the language clause should be drafted with the governing law in mind. It should name the authoritative version, state that translations serve information only or define their status, provide for notices and ancillary documents and, where several versions are equally authentic, set out how divergences are resolved. In an employment contract with a French-resident frontier worker, the clause should take account of the possibility that French mandatory law applies to part of the work. In a consumer contract, it should be checked against the language rules of the consumer's state of residence. In an arbitration clause, the language of the proceedings should be specified separately from the language of the contract.⁴

Finally, the process of translation and review should be documented. A record of who translated the contract, which glossary was used, which tools were employed and who reviewed the result helps to show, if a dispute arises, that the parties shared a common understanding. Such a record also supports compliance with professional secrecy and data protection rules where machine translation or AI was used. Firms and legal departments in Basel that work regularly across languages benefit from treating translation as an integral part of legal work, with the same standards of care, confidentiality and quality control as the drafting itself.⁵

1 Notes

1. On the allocation of language risk between contracting parties under Swiss and German law, see the case law on the binding effect of signatures on documents in a foreign language. To be verified. ↩
2. On drafting contracts in English under Swiss law, see the Swiss practitioner literature on contract drafting in English. To be verified. ↩
3. On the two-column format for bilingual contracts, see the practitioner literature on legal translation and the practice of bilingual jurisdictions such as Canada and Hong Kong. To be verified. ↩
4. On model language clauses, see precedents published in practitioner handbooks on international contracts, and the ICC model contracts. To be verified. ↩

5. On quality assurance in legal translation, see the ISO 17100 standard for translation services and the professional guidance of translators' associations. To be verified. ↩

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