

## Contracts in English under Swiss law

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Many contracts concluded by Zug companies are drafted in English and governed by Swiss law. This combination is common in international business, but it raises particular questions. English contract drafting is shaped by the common law, which relies on detailed definitions, representations and warranties, indemnities and boilerplate clauses that have been developed in response to the case law of English and American courts. Swiss contract law is codified in the Code of Obligations and relies on general principles, such as good faith, the interpretation of contracts according to the real intention of the parties and default rules on warranties and damages.<sup>1</sup>

A contract drafted in the common law style and governed by Swiss law may produce unexpected results. A Swiss court will interpret the English terms in the light of Swiss law and may give them a meaning different from the one they would have in English law. Common law concepts such as "consideration", "condition precedent", "best endeavours" or "liquidated damages" have no exact equivalents in Swiss law and must be interpreted by reference to the parties' intentions and to the closest Swiss concepts. Exclusions of liability that are valid under English law may be void under Swiss law if they exclude liability for gross negligence or intent.<sup>2</sup> Advisers who draft contracts in English under Swiss law must therefore adapt the common law style to the Swiss framework.

The author's experience as a solicitor in England and Wales and in Hong Kong, and as a lawyer admitted in Germany and Switzerland, confirms that the combination of English drafting and Swiss law works well if the drafters understand both systems. The best contracts use English as the language and Swiss law as the substance, with definitions and clauses designed for the Swiss framework. The worst contracts transplant English precedents into a Swiss-law contract without adaptation and leave the courts or arbitral tribunals to sort out the consequences.

## 1 Notes

1. Art. 18 para. 1 OR, German and English text on [droit-bilingue.ch](https://www.droit-bilingue.ch): in assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations. ↩
2. Art. 100 para. 1 OR, German and English text on [droit-bilingue.ch](https://www.droit-bilingue.ch): any agreement purporting to exclude liability for unlawful intent or gross negligence in advance is void. ↩

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