

A CONTRACT'S BUILDING BLOCKS

	DEFINITION	BUSINESS PURPOSE	REMEDY
Representation	Statement of fact as of a moment of time intended to induce reliance.	To induce reliance; to establish standards of liability; to allocate risk.	For a material, innocent or negligent misrepresentation, avoidance and restitutionary recovery. For a fraudulent misrepresentation, either <ul style="list-style-type: none"> • avoidance and restitutionary recovery or • damages (either out-of-pocket or benefit of the bargain) and possibly punitive damages.
Warranty	A promise that a statement is true.	To provide an indemnity if a statement is not true; to allocate risk.	Damages.
Covenant	A promise to do or not to do something. A covenant establishes a duty, also called an obligation to perform.	To require or prohibit action; to establish standards of liability; to allocate risk.	Damages and, if appropriate, specific performance. If the breach is so material that it is a breach of the whole contract that cannot be cured, then a party may have a right to cancel as well as other remedies.
Right	A party's entitlement to the other party's performance of a covenant. A right is the flip side of a covenant.	To require or prohibit action; to establish standards of liability; to allocate risk.	The same as for a covenant.
Condition to an Obligation	A state of facts that must exist before a party is obligated to perform. The occurrence of the condition must be uncertain.	To establish when a party is obligated to perform a covenant; to allocate risk.	A condition to an obligation cannot be breached. Its failure to occur means that the obligation to perform is not triggered. If the failed condition does not affect the parties' ongoing relationship, the condition is an ongoing condition. If the failed condition permits one party to choose whether to perform, the condition is a walk-away condition that creates a walk-away right.
Discretionary Authority	The right to choose what action to take; permission to act.	To provide choice or permission; to allocate risk.	Not applicable.

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Condition to Discretionary Authority	A state of facts that must exist before a party may exercise discretionary authority.	To establish when discretionary authority may be exercised; to allocate risk.	Not applicable.
Declaration	Statement of fact as to which the parties agree.	To create definitions and establish policies.	Not applicable.
Condition to a Declaration	A state of facts that must exist before a policy has substantive consequences.	To establish when a policy is applicable.	Not applicable.