The aim of construction

First, the aim of the exercise of construction of a contract or other document is to ascertain the meaning which it would convey to a reasonable business person.

The objective principle

Secondly, the objective principle is therefore critical in defining the approach the courts will take. The courts are concerned usually with the expressed intentions of a person, not his actual intentions. The standpoint adopted is that of a reasonable reader.

The holistic or 'whole contract' approach

The courts adopt a holistic approach to construction, examining the entire context in which the contract is to be read.
Thirdly, the exercise is one based on the whole contract or an holistic approach. Courts are not excessively focused upon a particular word, phrase, sentence, or clause. Rather the emphasis is on the document or utterance as a whole.

The Contextual dimension

1.157

Fourthly, the exercise in construction is informed by the surrounding circumstances or external context. Modern judges are prepared to look beyond the four corners of a document, or the bare words of an utterance. It is permissible to have regard to the legal, regulatory, and factual matrix which constitutes the background in which the document was drafted or the utterance was made.

Business purpose

1.158

Fifthly, within this framework, due consideration is given to the commercial purpose of the transaction or provision. The courts have regard to the overall purpose of the parties with respect to a particular transaction, or more narrowly the reason why a particular obligation was undertaken.

Lawfull effect

1.159

Sixthly, a construction which entails that the contract and its performance are lawful and effective is to be preferred.

Contra proferentem

1.160

Seventh, where a particular species of transaction, contract or provision is one sided or onerous it will be construed strictly against the party seeking to rely on it.

Avoiding unreasonable results

1.161

Eighth, a construction which leads to very unreasonable results is to be avoided unless it is required by clear words and there is no other tenable construction.

[...]

General provisions versus precise provisions
1.163

Tenth, a more precise or detailed provision should override an inconsistent general or widely expressed provision.


Referring Principles:

- IV.5.1 - Intentions of the parties
- IV.5.3 - Interpretation in favor of effectiveness of contract
- IV.5.4 - Interpretation against the party that supplied the term
- IV.5.2 - Context-oriented interpretation