

Understanding Contracts

Legal Contract Considerations

According to the UK Federation of Small Businesses (FSB), there is no single, continent-wide contract law within the EU (UK Federation of Small Businesses, 2011). Each of the 27 EU Member State has its own contract law and for an enterprise that intends to export to multiple EU countries, this could potentially result in hefty payments on legal advice across the various territories. In response to the fact that there is no global approach to the negotiation of contracts, the International Trade Centre has documented a number of “model contracts” developed by the International Chamber of Commerce. Some of these “model contracts” are presented below and can also be found at:

Export Sales Contract

- **Name and addresses of the parties.** State clearly and fully the parties to the contract.
- **Product, standards and specifications.** State the product name, as well as technical names (if any); sizes in which the product is to be supplied (if relevant); applicable national or international standards and specifications; specific buyer requirements; and sample specifications.
- **Quantity.** Specify units of measure in both figures and words.
- **Inspection.** State the nature, manner and focus of the envisaged inspection, as well as the inspection agency. A number of goods are now subject to pre-shipment inspection by designated agencies, and foreign buyers may stipulate their own inspection agencies and conditions for inspection.
- **Total value.** State the total contract value in words and figures, and specify the currency.
- **Terms of delivery.** State the delivery terms, based on one of the Incoterms 2010.
- **Taxes, duties and charges.** Clarify responsibility for all taxes. The prices quoted by the seller may be inclusive of taxes, duties, and charges. Levies in the country of importation (if any) may be the buyer’s responsibility.
- **Delivery.** Specify the place of dispatch and delivery. Also state whether the period of delivery will run from the date of the contract, from the date of notification of the issue of an irrevocable letter of credit, or from the date of receipt of the notice of issuance of the import licence by the seller.
- **Part-shipment, trans-shipment and consolidation of cargo.** State whether the parties to the contract have agreed on part-shipment or trans-shipment. Indicate the port of trans-shipment and the number, if any, of partial shipments agreed. If the goods are likely to be shipped under a “consolidation of export

cargos" scheme, mention this in the contract.

- **Packaging, labelling and marking.** Note all packaging, labelling and marking requirements in the contract.

- **Terms of payment: amount, mode and currency.** When quoting different payment terms, the exporter should specify whether the prices are based on the current rate of exchange of in-country currency, or on the basis of another currency (such as US dollars). Address payment terms for exchange rate fluctuations as well.

- **Discounts and commissions.** Specify the amount of discount or commission to be paid and by whom (by the exporter or by the importer). Stipulate the basis of calculation of commission and rate to be applied. Discount or commission rates may or may not be included in the export price agreed upon by the exporter and importer.

- **Licences and permits.** State whether the export transaction will require any export or import licences, and whose responsibility and expense it will be to obtain them. Import licences may be difficult to obtain in the buyer's country.

- **Insurance.** A contract should provide for the insurance of goods against loss, damage, or destruction during transportation. Specify the type of risk covered and the extent of coverage.

- **Documentary requirements.** Documents needed for international trade transactions fall into four categories:

- Documents for export and subsequent import of goods.

- Documents for the buyer to take delivery of the goods.

- Documents relating to payment.

- Special documents required by the nature of the goods, and conditions of sale (e.g., certain engineering goods may involve documents relating to construction, repair and maintenance).

Common export documents include the bill of exchange; commercial invoice and other invoices; bill of lading or airway bill; insurance policy; and letter of credit.

- **Product guarantee.** Fix and specify the length of the period of guarantee.

- **Delay in delivery.** Define the damages due to the buyer from the seller in the event of late delivery owing to reasons other than force majeure.

- **Force majeure or excuse for non-performance of contract.** Include provisions in the contract defining the circumstances which would relieve partners of their liability for non-performance of the contract. Such provisions are called force majeure and are intended to identify the relief which may be available to either party to the contract should supervening circumstances occur during the period of validity of the contract.

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- **Applicable law.** State the law of the country which is to govern the contract.
- **Arbitration.** Include an arbitration clause to facilitate amicable and quick settlement of disputes or differences that may arise between the parties.
- **Signature of the parties.** The signing of the contract indicates the agreement of both parties to the terms and conditions of the contract.