

Export Practice:

Sales contracts in export business

The contractual framework strongly influences the payment behaviour of customers in the field of export business. As a rule, risks that affect a contract's validity are likely to increase if business partners fail to finalise essential positions clearly and unambiguously. Poorly defined clauses and differing interpretations with respect to a contract's terms often cause parties to the contract either to hold or even default on payments.

Below are the most crucial issues for sales contracts in export business.

Prior to making an offer

To avoid legal problems later on, be sure to clarify the following issues in advance:

- Does your future partner have an appropriate credit rating?
- Is an export licence required?
- Which costs and risks might arise (Incoterms)?
- What is the legal situation in the country of import?
- Does the country of import impose import restrictions?
- Is it possible to insure against economic and political credit risks?

Contract partners

- Be sure to obtain your contract partner's correct, legally binding identity
- Make sure the billing and delivery address really exists
- Is the potential customer authorised to close the deal?

Merchandise

Providing correct data will avoid later disagreements with your business partners. Be sure to:

- Itemise the product(s)
- List the exact quantities

Sale price

Make sure that all factors determining the price are listed:

- The currency needs to be precisely defined
- Clarify if an escalator clause is required

Payment conditions

Payment conditions need to be clearly stated. These should include:

- Due date for payment
- Method of payment (e.g. providing exact specifications of the letter of credit)

Delivery conditions

- Are Incoterms offered and are they based on the latest version?
- Are place and time of delivery exactly specified?

Legal aspects

- Clarify which national laws apply to the contract
- The place of jurisdiction is of particular importance

Retention of title

The legal effectiveness of retention of title differs from country to country. Contact specialist lawyers, chambers of commerce or Atradius for details.

Make sure that the relevant clause is formulated correctly and complies with the legal regulations of the import country. As soon as the merchandise has crossed the border, the laws of the country of import will apply.

Further securities

Obtaining further security depends upon the seller's position. If the market is buyer-dominated, the options will be limited. Best to credit insure if the importer's creditworthiness is not impeccable.

Arbitration

Agreeing on arbitration is a sensible step, if legal proceedings would take too long to settle in front of an ordinary court.

Language

Agree on one common negotiation and contract language. This is fundamental, if the contract requires interpretation in the case of disputes.