



Fundamentals of International Business Transactions

Elements of IBT-Contracts Negotiations- and Contract-Management

Typical Elements of IBT-(Sales)Contracts

1. **Contract Term („Sales Contract“)**
2. **Parties**
3. **Main Purpose and Characteristics of the Contract**
4. **Obligations of the Parties**
 - a) **Purchase Price and Buyer´s Performance Guarantees**
 - b) **Transfer of Risk**
 - c) **Transfer of Property**
 - d) **Delivery, Packing, Transportation**
 - e) **Invoicing, Payment**
 - f) **Adjustment of Contract Price and Delivery Schedule**
5. **Liability and Limitation of Liability**
 - a) **Force Majeur**
 - b) **Liquidated Damages**
6. **Applicable Law**
7. **Choice of Jurisdiction / Arbitration Clause**
8. **Written Form**
9. **Attachments**
10. **Date, Signatures**

The Course of Business – The Formation of the Contract

➤ **Negotiation and Contract-Management**

- **Initiation**
- **Preparation**
- **Negotiations and Formation**
- **Implementation**

Phase 1: The Initiation of a Contractual Relationship

- I. Economic Target and Objectives**
- II. Internal Organization of the Company**
- III. With whom will I make the deal?**
- IV. Economic and technical risks**
- V. Compliance**
- VI. Budget**
- VII. Timetable**

The Initiation of a Contractual Relationship (2)

I. Economic Target and Objectives

II. Internal Organization of the Company

1. Expertise and Experiences
2. External Advise
3. Matrix of Tasks
4. Teambuilding

III. With whom will I make the deal?

1. Credit Standard
2. Seriousness
3. Power of Representation
4. Mother Companies and Affiliated Companies

The Initiation of a Contractual Relationship (3)

IV. Economic and Technical Risks

1. Payment of the purchase price
2. Transportation
3. Protection of Know-how and Good Will
4. Product Liability
5. Specifications
6. Force Majeure

V. Compliance

1. Anti-Corruption Standards
2. „Money Laundering“
3. Export- und Currency-Control

VI. Budget

VII. Timetable

Phase 2: The Preparation of the Contract

- I. Instruments of Contract Negotiations**
- II. Selection of proper Legal Instruments**
- III. Language**
- IV. Legal Risks of Cross Border Transactions**
- V. Documentation of the Negotiation Process**
- VI. Integration of Foreign (Legal) Expertise**

The Preparation of the Contract (2)

I. Instruments of Contract Negotiations

1. Non Disclosure Agreement - NDA

2. Letter of Intent – LOI

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IV. Legal Risks of Cross Border Transactions

1. Applicability of Foreign Law

2. Interfaces between Different Legal Regimes

a) Search for a Neutral Law

c) Different Legal Regimes for Different Topics?

d) Mandatory National Law?

3. Liability Risks

4. Enforcement Risks

a) Enforcement of Court Decisions in a Foreign Country

b) Applicable Law and Jurisdiction

5. Riskmanagement

a) Expertise of and Communication in the Team

b) Investigation

c) Insurance

Phase 3: Contract Negotiations and Formation

I. Negotiations

1. Strategy

2. The Course of Negotiations

a) Preparation

b) Beginning

c) Process

d) Documentation of Results

II. „Signing“

./. “Closing“

Contract Negotiations and Formation (2)

1. Strategy

- a) Strategy of Dominance
- b) Ready for Concessions
- c) Open for Solving Differences

2. The Course of Negotiations

a) Preparations

- Drafting Competence
- Technical and Economic Expertise
- Legal Questions
- Timetable

b) Beginning

- Initiative (Looking for Intermediaries?)
- Location
- Time
- Staff (additional team members? Replacement?)

c) Finalization and Documentation of Results

Phase 4: Implementation

I. Execution of the Contractual Obligations

1. Closing Date
2. Closing Meeting
3. „Closing Conditions“
4. „Deal Out Rights“
5. „Break Fees“

II. Transfer of Knowledge

III. Control of Risks (Risk Management)

IV. Documentation