

**CROSS-BORDER TRANSACTIONS: A DRAFTING GUIDE FOR INTERNATIONAL
SALES CONTRACTS**

PROJECT OF THE IBA - INTERNATIONAL SALES COMMITTEE

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ISC Commentary Research Guide

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I. ARE YOU/YOUR CLIENTS READY TO EXPORT?

While exporting (for the purposes of this Guide, this includes all forms of relationships described below) holds substantial economic promise for most companies, the international counsel should carefully advise his or her client to consider if it he or she is ready to take on the challenges and demands associated with international transactions for the sale of goods or services. Exporting may not be an option for clients that cannot carry on their domestic business profitably and are limited to utilizing their already taxed financial and human resource capabilities. This section and related links will provide you and your clients with tools that will assist you to counsel them to identify their readiness, advise on how to acquire export skills, assess the competitiveness of their products or services in the new market, define clear objectives in their export plan, and help your clients decide on the legal relationship they will require to carry out their objectives. It is not intended to be a substitute for specific legal advice or research.

A. Preparing to Export Goods, Services or Intellectual Property

Several government agencies and other entities have published useful overviews or checklists of the issues to be considered in preparing to export. These include:

- <http://www.tradecommissioner.gc.ca/eng/guide-exporting.jsp> - This site of the Department of Foreign Affairs and Trade Development Canada (DFATD) includes a step-by-step guide to exporting and an export checklist on various major export considerations.
- <http://www.sba.gov/content/exporting-and-importing> - (U.S. Small Business Administration guide).
- <http://www.export.org.uk> - This site provides overseas market information; access to trade finance advice; downloadable international trade education and training material; online travel advice services; assistance with technical and documentation problems and the UK's most comprehensive database of international trade information and tested global links.
- http://www.ukti.gov.uk/zh_cn/export.html – This incredibly useful website is maintained by the UK government and specifically deals with assisting businesses to export. Prospective exporters can use the site to searching by country for which more information is desired, or by business sector in which the exporter is involved, which are all found under the general branch of exporting.
- <http://exportsource.ca/105/165/922/> – This site also provides a basic guide to exporting.
- http://www.exporthelp.co.za/assistance/export_guide.html – This website includes a step guide to the export process.

- <http://www.intracen.org/Exporters/> – This site provides support and training to enterprises. It includes a special section for exporters which is divided into different and useful titles.
- <http://www.intracen.org/itc/exporters/researching-export-markets/> - This site includes contact information about the different associations of importers organized by countries.
- [http://fita.org/webindex/browse.cgi/International Transportation and Logistics](http://fita.org/webindex/browse.cgi/International%20Transportation%20and%20Logistics) – This site provides useful information for exporters.

Other country-specific information is available to a greater or lesser degree and should be consulted, depending upon the country. The following sites, for example, offer helpful information links on a number of countries:

- <http://www.edc.ca/EN/country-info/Pages/default.aspx>
- <http://www.austrade.gov.au/Country/default.aspx>
- <http://www.findlaw.com/12international/countries/index.html> and http://export.gov/worldwide_us/index.asp
- In South Africa, the Department of Trade and Industry has a website which provides a potential exporter with assistance on a wide range of matters – http://www.thedti.gov.za/trade_investment/learn_to_export.jsp

B. Suggestions to Businesspersons on Visit to the Export Market

Companies considering export sales for the first time or to a new jurisdiction should be encouraged, before any relationship with a foreign representative is entered or any transaction takes place, to visit the subject country or countries to assess the markets as well as their local contacts. Some care should be devoted to the object of the visit to the export market, planning the visit, preparing checklists and materials (samples, sales and marketing, promotional, multilingual cards and other material), bringing gifts, cultural issues, negotiation styles, requisite documentation and travel requirements. These and other issues are surveyed at <http://export.gov/basicguide/>

Before actually visiting the country, the company planning to export should compile a briefing book or similar resource for all of its personnel surveying the planned country or region as well as information on the available markets in that country or region. Much valuable information of this sort is available on the web, including the following:

- <http://www.intracen.org/> – International Trade Center: Trade Information Index provides links to national trade support institutions and country-specific business information.
- http://export.gov/mrktresearch/eg_main_018210.asp – Step-by-Step Approach to Market Research by U.S. Government.

Information about the European Union and its members can be found on several sites, including:

- <http://madb.europa.eu/mkacddb2/indexPubli.htm> – the EU Market Access Database.
- <http://www.eurofound.europa.eu/emire/emire.htm> – The Emire database.
- <http://www.eurofound.europa.eu/publications/htmlfiles/ef9842.htm> – the online version of the European Employment and Industrial Relations Glossaries, which explain the national industrial relations systems of the EU member states through their terminology. This includes such important terms as “agent” and “bankruptcy,” terms, which are vital in understanding and penetrating EU markets.
- <http://www.abh-ace.be/en/> – website of the Belgian Foreign Trade Board.
- <http://www.germany.info/> - general information about Germany and its markets, published by the German embassy in Washington, D.C.
- <http://www.german-business-portal.info/> - the German Business Portal, providing a method for locating trade contacts and business partners in Germany as well as a summary of the tools, services and information that various government and semi-independent players in Germany provide.
- <http://www.amcham.de/> - website of the American Chamber of Commerce in Germany offering a wealth of information, including, at its Info Center, market research and information on forming a company in Germany.

Information about exporting to the Asian markets can also be found at several websites, including:

- <http://www.jetro.go.jp/> – The Japan External Trade Organization (JETRO) website provides guidebooks for export to Japan.
- <http://www.jetro.go.jp/en/database/> – The website also contains free online business partner database that allows companies and individuals around the world to search and browse through business proposals and reach out to potential Japanese business partners.
- <http://en.ec.com.cn/> – This website of China International Electronic Commerce Network contains at <http://ep.ec.com.cn/> a database of company names and details to assist export suppliers in expanding their business effectively.
- <http://english.customs.gov.cn/> – This China Customs government website provides guides to clearance of export goods, export statistics, and information on policy and regulation.

- <http://www.china-tax.net/app/search?q=refund> – An introduction to VAT Export Refund Rules in China. The information contained is a useful guide on the refund of VAT for export goods from China.
- http://exporthelp.europa.eu/thdapp/index_en.html – (Export Helpdesk) which includes full information about exporting to Europe, requirements, tariffs, and more.

Information about exporting from and to markets in the Americas can be found on the following sites:

- <http://www.cfr.org/trade/mercosur-south-americas-fractious-trade-bloc/p12762> - General information about the Southern Common Market (MERCOSUR).
- http://www.comexbrasil.gov.br/conteudo/ver/chave/50_exportacao_-_visao_geral/menu/43 – This is the official site of external trade of Brazil, it provides specific information of exporting and importing from and to Brazil, including several administrative perspective, customs, taxes and legislation.
- http://www.sice.oas.org/agreements_e.asp – This site provides the full legal framework of the trading in the Americas.
- http://www.expomercosur.com/system/contenido.php?id_cat=38 - This site provides a basic guide of the requirements for exporting from the Southern Common Market (MERCOSUR).
- <http://www.redmercosur.net/trade-policy/content/144/en/>

C. Financing the Export Program

Several governments offer assistance to companies desiring to enter the export market. For example, the website <http://www.tradecommissioner.gc.ca/eng/funding/global-opportunities-associations/home.jsp> describes Global Opportunities for Associations (GOA), formerly known as the Program for Export Market Development. This program offers assistance to **Canadian** companies who are seeking to undertake new or expanded international business development activities, in strategic markets and sectors, for the benefit of an entire industry. The program provides assistance on the basis of several factors including capability of associations to complete the proposed activities as described in a timely basis and the identification of new or enhanced results or activities that building on GOA-supported outcomes from past years (incrementally) etc. Eligible activities include direct contacts (such as trade shows, outgoing missions and incoming visits); marketing tools (such as web site development targeting foreign customers, print materials and other materials that promote integrative trade opportunities of a Canadian industry); and other marketing activities (such as research, awards programs, and direct marketing that promotes relationship building, or improve access to foreign markets).

Annual non-repayable contributions range from a minimum of \$20,000 to a maximum of \$150,000 over a one-year period from April 1 to March 31. It also provides matching funds of up to 50% of eligible expenses.

U.S. companies get assistance from the U.S. Small Business Administration, whose program is described at <http://www.sba.gov/content/us-export-assistance-centers>. Finding overseas markets, dealing with the initial complexities of exporting, and financing export sales are some of the challenges facing smaller firms seeking to participate in international trade. To help them meet these challenges, the U. S. Small Business Administration offers aid to current and potential small exporters through two major programs: business development assistance and financial assistance.

Other comparable web sources from other countries include the following:

- <http://english.bmf.gv.at/> – the Austrian Federal Ministry of Finance.
- <http://www.german-business-portal.info/> – the German Business Portal.
- <http://www.edc.ca/> - is the Canadian government Agency providing export credits and guarantees.
- <https://www.eda.admin.ch/> – the Economic and Financial Affairs Division of the Swiss Federal Department of Foreign Affairs.

II. SUBSTANTIVE LAW OF SALES

A. International Instruments and Principles

Multiple legal systems are potentially applicable to sales contracts when international trade is involved. Efforts have therefore been made at worldwide or regional levels to harmonize private international law and substantive sales law with a view to easing the difficulties inherent to such encounters of multiple legal systems.

Several organizations, such as The Hague Conference on Private International Law, the International Institute for the Unification of Private Law (UNIDROIT), the United Nations Commission on International Trade Law (UNCITRAL) and more recently the European Union or the Organisation for the Harmonisation of Business Law in Africa (OHADA) have sought to promote instruments to that end.

The Uniform Commercial Code also constitutes an effort towards harmonization of the law of sales and other commercial transactions in all 50 States within the United States of America.

Below is a brief overview of some relevant major instruments, either already in existence or in the making, with an indication of on-line references where additional information can be found.

1. THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

In an effort to create some uniformity in the rules relating to contracts for the sale of goods, the United Nations Commission on International Trade Law (UNCITRAL) drafted the Convention on Contracts for the International Sale of Goods ("CISG") was signed in Vienna in 1980 by most developed countries. As of January 1, 2014, 77 countries have adopted the CISG, including the United States, Canada, most European countries, China, Japan, and the Russian Federation. A significant exception remains the United Kingdom.

The CISG applies automatically to any contract for the commercial sale of goods entered into by parties whose places of business (regardless of the contracting parties' nationalities) are in different countries, each of which has ratified the CISG. The CISG thus displaces the national commercial contract law, which would otherwise apply to the transaction, with regard to the formation of the contract and the rights and obligations of the buyer and seller under the contract.

Notwithstanding the automatic application of the CISG, the parties may exclude the CISG and choose the law of a particular State in their agreement, or derogate from the effect of any of the CISG's provisions. Consensus appears to be developing that exclusion of the CISG must be done expressly. Under this view, it is not sufficient to state "This agreement shall be governed by the laws of Country X," if that country has ratified the CISG, because the CISG will be applied as an integral part of the laws of the designated country. Express exclusion of the CISG can be accomplished through clauses such as "This agreement shall be governed by the laws of Country X, not including the Convention on Contracts for the International Sale of Goods," or "This agreement shall not be governed by the Convention on Contracts for the International Sale of Goods, but instead shall be governed the laws of Country X."

The CISG applies to both oral and written contracts for the commercial sale of good and does not require that contracts be in writing, although some countries, including Denmark, Finland, Iceland, Norway and Sweden, have preserved the requirement of written formalities found in their own national commercial laws, as a derogation from the terms of the convention. Those same four countries have also declared that the CISG is inapplicable to contracts entered into by parties whose respective places of businesses are in one of those five countries

The CISG applies only to contracts for the sale of goods, not contracts primarily for services. It has a limited scope and does not supplant national provisions governing the validity of the contract or the effect that the contract may have in property rights in the goods sold.

The CISG governs contracts for international sales of goods between private businesses, excluding sales to consumers and sales of services, as well as sales of certain specific types of goods. It applies to contracts for sales of goods between parties whose places of business are in different Contracting States, or when the rules of private international law lead to the application of the law of a Contracting State. (Member States are however, allowed to opt out of that last rule and the US, for instance, made use of that right when adhering to the CISG). It may also apply by virtue of the parties' choice. Likewise, the parties are free to exclude its application.

The CISG provides rules regarding, in particular, (i) the formation of the contract, (ii) the obligations of the parties to the contract, (iii) the passing of risk, (iv) anticipatory breach of contract, (v) damages, (vi) interest and (vi) exemptions from performance of the contract. Finally, whilst the CISG allows for freedom of the form of the contract, States may lodge a declaration

requiring the written form. In turn, certain matters relating to the international sale of goods, such as, for instance, the effect of the contract on the property in the goods sold, defects in consent, unfair contract terms and prescription, fall outside the Convention's scope.

Related instruments being of interest are:

- The Convention on the Limitation Period in the International Sale of Goods. Adopted in 1974 was further amended in 1980 in order to harmonize its text with that of the CISG, in particular, with regard to scope of application and admissible declarations. The Convention was adopted by 29 states, out of which 21 are a party to the amended version.
http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1974Convention_limitation_period.html;
- The draft UN Convention on the Use of Electronic Communications in International Contracts, 2005.

The following are among the major websites devoted to CISG and CISG issues, including the text of the CISG, the status of ratification, numerous cases (court decisions and arbitral awards) and comments relating to the application of the CISG:

- The CISG provides for uniform interpretation of its provisions, and to that end, the CLOUT international database of decisions taken under the CISG is compiled and hosted at: http://www.uncitral.org/uncitral/en/case_law.html
- The most recent digest of CISG decisions published by UNCITRAL, and additional cases collected by legal scholars and practitioners, is found at: <http://www.cisg.law.pace.edu/cisg/text/digest-cases-toc.html>
- The current status of the CISG, with a list of all countries which have adopted it and any stated reservations, can be found at the UNCITRAL website: http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html
- A table of all contracting states is at the Pace University website: <http://www.cisg.law.pace.edu/cisg/countries/cntries.html>
- The text of the CISG, in six official languages and many unofficial translations, can be found at: <http://cisgw3.law.pace.edu/cisg/text/text.html>
- A good general source for all materials related to the CISG is The Pace University School of Law database on the CISG and International Commercial Law: <http://www.cisg.law.pace.edu/>
- www.unilex.info, a database in both English and French of international case law and a bibliography on the United Nations Convention on Contracts for the

International Sale of Goods (CISG) but also on the UNIDROIT Principles of International Commercial Contracts.

- www.unidroit.org, official website of the International Institute for the Unification of Private Law (UNIDROIT), an independent intergovernmental organization, whose purpose is to study needs and methods for modernising, harmonising and co-ordinating private and particularly commercial law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve those objectives.
- www.unidroit.org, set up by decision of the UNIDROIT Governing Council, the database is intended to permit ready access to up-to-date information regarding uniform law conventions and other instruments. The database is in both English and French and seeks to cover a large number of uniform law instruments. Work started on the 1956 Convention on the Contract for the International Carriage of Goods by Road (CMR) and is continuing with other conventions.
- <http://cisgw3.law.pace.edu/>, the database was developed by the Institute of International Commercial Law and the [Pace Law Library](#) (Pace University) and now contains [9,000 bibliography citations](#), over 2,600 cases, and over [1,400 full texts of commentaries](#), monographs and books on the CISG and related subjects;
- www.jus.uio.no/lm, website dedicated to provision of information on international commercial law with subsidiary interests in commerce and (mostly open standard) Net and information technologies that may be of interest to law academics and professionals worldwide.

2. UNIFORM COMMERCIAL CODE (UCC)

The **Uniform Commercial Code (UCC)**, a comprehensive code addressing most aspects of commercial law, is generally viewed as one of the most important developments in American law.

The UCC is a **model code**, so it does not have legal effect in any jurisdiction *unless* UCC provisions are enacted by the individual legislatures as statutes. Currently, the UCC (in whole or in part) has been enacted, with some local variations, in all 50 states, the District of Columbia, and the U.S. Virgin Islands. Bearing in mind the potential variations introduced by the states upon adoption of the UCC, local law must still be checked when doing business in different states, however Article 2 of the UCC, which governs commercial sale of goods, has been adopted in substantially identical form as statutory law in all 50 states and the U.S. Virgin Islands.

The primary sources for UCC research are:

- a. The Code itself;
- b. The Official Comments of the UCC Permanent Editorial Board (PEB);
- c. The Permanent Editorial Board Commentaries; and

d. Judicial opinions which interpret and apply the Code, as enacted in a particular state.

- www.law.duke.edu/lib/researchguides/ucc#related - it will give you an overview of the primary source materials.
- www.law.cornell.edu/ucc/2/overview.html - an overview, together with the full text of the law.
- <http://www.uniformlawcommission.com/> - the official website of the National Conference of Commissioners on Uniform State Laws contains information about UCC drafts and final acts and about state legislation based on the UCC. The site provides summaries of each Article of the UCC and legislative fact sheets on state adoptions of UCC provisions.
- <http://uniformlaws.org/Acts.aspx> - the site, a joint project between the Uniform Law Commissioners and the University of Pennsylvania Law School, is the official archival site for drafts of uniform and model acts. This site includes an index to drafts in progress for the UCC and the full-text of the drafts themselves.
- www.law.cornell.edu/uniform/ucc.html - Cornell's Legal Information Institute has created a useful chart indicating where UCC Articles are codified in each state's statutes. For many states, it provides links directly to the state statutes.

3. GERMANY

- <http://www.iuscomp.org/gla/> - German Law Archive, which includes the text of the 2002 Law of Obligations contained in the German Civil Code.

4. PROPOSED COMMON EUROPEAN SALES LAW

In 2001, the EU Commission launched a process of extensive public consultation on the fragmented legal framework in the area of contract law and its hindering effects on cross-border trade. In July 2010, the Commission launched a public consultation by publishing a 'Green Paper on policy options for progress towards a European contract law for consumers and businesses' (Green Paper), which set out different policy options on how to strengthen the internal market by making progress in the area of European contract law.

The Green Paper responses expressed concern regarding the lack of clarity in relation to the substantive content of a possible European contract law instrument as well as preferences for the material scope of the instrument. Whilst it had originally been envisaged to develop the *acquis communautaire* through a newly created tool; the Common Frame of Reference, which was i.a. to build a starting point for an optional European Civil Code; it was finally decided to focus on contracts for the sale of goods. It was also opted to do so by way of a regulation, which is considered the most appropriate instrument bearing in mind the objectives sought after.

On 11 October 2011, the EU Commission filed a Proposal, with the European Parliament and the Council for a Regulation, on a Common European Sales law (COM(2011) 635 final), which seeks

to harmonize the national contract laws of the Member States not by requiring amendments to the preexisting national contract law, but by creating within each Member State's national law a second contract law regime for contracts covered by its scope that is identical throughout the European Union and will exist alongside the pre-existing rules of national contract law. The Common European Sales Law will apply on a voluntary basis, upon express agreement of the parties, to a cross-border contract. Both B to B and B to C transactions will be addressed as opposed to C to C transactions.

Since the Common European Sales Law will not cover every aspect of a contract (e.g. illegality of contracts, representation) the existing rules of the Member State's civil law that is applicable to the contract will still regulate such residual questions.

Among the major websites of interest are:

- www.eur-lex.europa.eu: where i.a. the text of the Proposal and of the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (COM(2011) 636 final) can be found.
- www.copeccl.org: website of the "Joint Network on European Private Law – Network of Excellence" which started its works in 2005 at the initiative of the Commission and under the direction of Prof. Schulte-Noelke. The task of that network was to deliver to the EU Commission the "Common Principles of European Contract Law" (CoPECL) that would constitute a possible basis for the future Common Frame of Reference of European Community law.

III. UNIDROIT PRINCIPLES, PRINCIPLES OF EUROPEAN LAW AND PRINCIPLES OF EUROPEAN CONTRACT LAW

A. The UNIDROIT Principles

A similar initiative was also launched in the seventies by UNIDROIT although it did not effectively take off before the eighties. Unidroit, being an intergovernmental organization of a universal nature, which addresses the entire world, however, confined the scope of its project to international commercial contracts. Unidroit's efforts culminated with the publication of the Unidroit Principles of International Commercial Contracts in 1994. That first edition has already been amended twice, for the first time in 2004 and second in 2010.

The new edition of the UNIDROIT Principles consists of 211 Articles (as opposed to the 120 Articles of the 1994 edition and the 185 Articles of the 2004 edition). Only the black letter version of the 2010 edition is available on line, as opposed to the 1994 and 2004 versions, the integral version of both are available online at www.unidroit.org.

B. Principles of European Law and Principles of European Contract Law

While the European Community institutions' first signs of interest for the harmonization of private law as a means to achieve a single market among member States date back only from the end of

the 1980's, scholars originating from different European countries had already started investigating that road since the early '80s. The best known works are:

- the Principles of European Contract Law (PECL) prepared by the “Lando Commission” set up in 1982 under the direction of Prof. Ole Lando, i.e. a body of rules on general contract law and, partially, on the general law of obligations. The text can be consulted at:
http://www.researchgate.net/publication/228218861_The_Principles_of_European_Contract_Law_Some_Choices_Made_by_the_Lando_Commission;
- the series “Principles of European Law” (PEL) resulting from the works by the Study Group on a European Civil Code established in 1988 under the leadership of Prof. Christian von Bar and covering not only specific contracts but also tort law, some matters relating to property law, unjustified enrichment and benevolent intervention in another's affairs. The overall aim of that Study Group is to elaborate a basic set of rules for Europe. The works of that Study Group are available at www.sgecc.net, website of the Study Group on a European Civil Code.

C. The Uniform Act Relating to General Commercial Law (OHADA)

The OHADA Treaty (where OHADA stands for “Organisation pour l'Harmonisation du Droit des Affaires en Afrique”, in English as the “Organization for the Harmonisation of Business Law in Africa”) was signed in 1993 and entered into force in 1995. The OHADA Treaty is made up today of 16 African states (Benin, Burkina-Faso, Cameroun, Central African Republic, Comoros, Congo, Democratic Republic of Congo, Ivory Coast, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, Senegal, Chad and Togo). Amongst those states only Benin, Gabon and Guinea are also currently signatories of the CISG.

The OHADA Treaty seeks to harmonize business law within the member States and facilitates the adoption of Uniform Acts. The Uniform Act relating to General Commercial Law was originally adopted in 1997 and entered into force in all 17 member States on 1 January 1998. On 15 December 2010 a new instrument replaced it.

Beyond the provisions inspired by the CISG, the Uniform Act also contains rules regarding the passing of title and of risks as well as the statute of limitations as regards commercial sales.

Further information can be found at

- www.ohada.org: the official site of the OHADA.
- www.ohada.com: website dedicated to the OHADA business legal environment. It contains the entire OHADA regulations, most of the court precedents and doctrine.

D. Title Retention/Security Interest Law

To provide some security for the promised payment for goods shipped within a sales transaction, the seller (exporter), if not paid immediately or by a letter of credit, may seek to retain title to the goods or to obtain some other form of security interest. A security interest in such a transaction

arises when the purchaser of the goods agrees that the seller/exporter (the secured party) may take the goods or other identified collateral owned by the purchaser if payment for the goods is not made as provided for under the parties' agreement. A security interest also provides the exporter with some assurance that if the purchaser should become insolvent or go bankrupt, the exporter may still be able to recover the amount owed by the purchaser by taking possession of the goods or other collateral.

In an international context, the effectiveness of the parties' arrangements in that respect and the perfection of the proposed security interest will in general very much be a matter to be determined pursuant to international private law.

In the United States, Article 9 of the Uniform Commercial Code governs security interests in personal property such as goods. <http://www.law.cornell.edu/ucc/9/overview.html>. As noted above, the UCC has been adopted with some modifications by every state in the United States. An important point to note is that a contractual clause retaining title until full payment has been received is ineffective to establish a security interest under the UCC. In order to have priority against the claims of other creditors, the interest must be "perfected," ordinarily through a filing made at the state level. Attempts at harmonization have been initiated by UNCITRAL, where a Working Group is dedicated to that topic, which so far has led to one Convention (not yet entered into force) and two Guides:

- 2010 – UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Rights in Intellectual Property.
- 2007 – UNCITRAL Legislative Guide on Secured Transactions.
- 2001 – United Nations Convention on the Assignment of Receivables in International Trade.

The OHADA also adopted, on 15 December 2010, the UNIFORM ACT ORGANIZING SECURITIES, replacing the former 1997 edition. Amongst other things, it regulates the conditions for a retention of title clause to be effective and opposable against third parties.

Useful websites discussing the concept of secured transactions and related issues include those mentioned above in this chapter and:

- http://www.uncitral.org/uncitral/commission/working_groups/6Security_Interests.html - UNCITRAL Working Group VI: Security interests.

E. Antitrust/Unfair Competition Laws

Individual country or regional (e.g. European Union) competition laws may dictate limitations to the parties' contractual freedom as regards a number of provisions of sales related agreements, such as distribution, franchising, agency or licensing agreements. For example, restrictions on the prices that may be charged by a reseller of products, the territory that the reseller may sell in, the other (i.e. competitive) goods that the reseller may carry during the term of the parties' relationship and other similar provisions may be subject to challenge under one or more of such competition laws.

By merely clicking on the region of interest, the IBA's (Global Competition Forum) website offers direct access to the most current versions of the world's competition laws, direct links to national competition authorities and international organizations, and articles, speeches, and commentary by world-renowned experts in competition law enforcement, regulation and reform.

Additional resources are available at a number of websites around the world, including the following:

- www.ec.europa.eu/competition: the website of the European Commission's Competition Directorate
- www.antitrustinstitute.org: the website of the American Antitrust Institute, an independent non-profit organization with a mission to increase the role of competition, ensure that competition works in the interests of consumers, and challenge abuses of concentrated economic power in the American and world economy
- www.unctad.org: the website of the United Nations Conference on Trade Development and in particular its sub-site dedicated to competition law and policy
- www.apeccp.org.tw: the Competition Policy and Law Database of the Asian-Pacific Economic Cooperation (APEC)'s website

IV. CURRENCY AND PAYMENT ISSUES

Methods of financing exports include open account, cash payments, documentary credits. Contracts will generally provide mechanisms to ensure orderly payment and transfer of title, including any requirements of financing entities. Concerns in payment transfers include compliance with applicable laws and regulations on bribery, corruption, and money laundering.

A. Currency for Payment

Typically the parties to an export transaction will specify the currency for payment of invoices for the goods or services delivered by the exporting company. See Section 6.3 of the specimen document in Section XII below.

B. Payment Mechanisms

Having agreed to the currency of the transaction, it is necessary to consider the method and timing of payment. A very common set of practices used in contracts, letters of credit, and shipping documents for international transactions is set forth in the Incoterms 2010, published by the International Chamber of Commerce, which define the responsibilities of buyers and sellers for delivery of goods, providing uniform terms to describe the allocation of costs and risks. Standard Incoterms include EXW (Ex Works); FCA (Free Carrier); CPT (Carriage Paid to); CIP (Carriage and Insurance Paid to); DAT (Delivered at Terminal); DAP (Delivered at Place); DDP (Delivered Duty Paid); FAS (Free Alongside Ship); FOB (Free on Board); CFR (Cost and Freight); and CIF (Cost, Insurance and Freight):

- <http://www.iccwbo.org/incoterms/id3042/index>

Another useful publication is the Uniform Customs and Practices for Documentary Credits (UCP), which sets out rules for issuance and use of letters of credit in international trade transactions. The International Chamber of Commerce publishes the UCP and last updated it in July 2007, with UCP 600.

In addition, the ICC has published rules for use of letters of credit in internet transactions, the eUCP version 1.0, last updated in July 2007:

- <http://www.iccwbo.org/policy/banking>

UNCITRAL Conventions intended to provide uniform international payments standards include:

The UN Convention on Independent Guarantees and Stand-by Letters of Credit – 2005 – entered into force on 1 January 2000, to provide standard principles for guarantees and letters of credit.

- http://www.uncitral.org/uncitral/en/uncitral_texts/payments/1995Convention_guarantees_credit.html

The United Nations Convention on International Bills of Exchange and International Promissory Notes, applies where the negotiable instrument provides it is subject to the UNCITRAL Convention:

- http://www.uncitral.org/uncitral/en/uncitral_texts/payments/1988Convention_bills_promissory.html

The UNCITRAL Model Law on International Credit Transfers – 1992 – covers the obligations of senders, originating banks, receiving banks and liabilities for errors in international payment transfers.

- http://www.uncitral.org/uncitral/en/uncitral_texts/payments/1992Model_credit_transfers.html

A general guide to trade financing methods is published by the US Department of Commerce:

- http://trade.gov/media/publications/pdf/trade_finance_guide2007.pdf

C. Export Finance and Promotion

In addition to the resources described in Section B. above, several countries offer services and financing for exporters:

Export Development Canada provides exporters with financing, insurance and bonding services as well as foreign market expertise. EDC provides export financing and indirect loans to buyers of Canadian capital goods and services.

- <http://www.edc.ca/>

The Export-Import Bank of the United States (Ex-Im Bank) is an independent U. S. Government agency that helps finance the overseas sales of U. S. goods and services. It provides guarantees of working capital loans for U.S. exporters, guarantees the repayment of loans or makes loans to foreign purchasers of U.S. goods and services. Ex-Im Bank also provides credit insurance that protects U.S. exporters against the risks of non-payment by foreign buyers for political or commercial reasons. Ex-Im Bank does not compete with commercial lenders, but assumes the risks they cannot accept. It must always conclude that there is reasonable assurance of repayment on every transaction financed.

- <http://www.exim.gov/>

The International Trade Center is an organization of the United Nations and the World Trade Organization, focused on provided technical assistance and advice to less developed nations in connection with international trade opportunities.

- <http://www.intracen.org/>

D. Anti-Bribery and Corruption Laws

Led by the OECD, several countries have adopted laws and regulations dealing with the issues of bribery and corruption in international business transactions. The website of Transparency International, the global coalition against corruption, may be found at:

- <http://www.transparency.org/>

Among other things, this site includes TI's annual Global Corruption Report.

- <https://www.transparency.org/whatwedo/publications/doc/gcr/>

The OECD Convention and Anti-Corruption Division are described at the following sites:

- <http://www.oecd.org/> – Country reports on enforcement of the Anti-Bribery Convention.

The US Foreign Corrupt Practices Act

The U.S. Foreign Corrupt Practices Act (FCPA) seeks to prevent the bribery of foreign officials by representatives of U. S. companies operating internationally. Provisions may apply to many non-U.S. entities that cause, directly or through agents, an act in furtherance of a corrupt payment to take place within the territory of the United States. Websites devoted to the FCPA and its interpretation and enforcement include the following:

- www.usdoj.gov/criminal/fraud/fcpa/ – Department of Justice – FCPA text, regulations, enforcement actions, international agreements and lay person's guide;

- http://tcc.export.gov/Bribery/Yearly_Antibribery_Reports/index.asp – Department of Commerce – Trade Compliance Center;
- <http://www.state.gov/www/issues/economic/bribery.html> – Department of State Bureau of Energy, Economic and Business Affairs – reports on bribery and corruption inquiries;

E. UK Bribery Act 2010

The UK Bribery Act 2010 replaced the offence of common law bribery and statutory offence of corruption by creating four new distinct criminal offenses: bribing another, being bribed, bribing a foreign official, (for commercial organizations) failing to prevent bribery. The scope is very broad, applying to commercial entities that carry on business or part of its business in the UK. The primary enforcement agency is the Serious Frauds Office, whose web site includes many useful links, as does the Ministry of Justice:

- <http://www.sfo.gov.uk/bribery--corruption/the-bribery-act.aspx>
- <https://www.gov.uk/government/publications/bribery-act-2010-guidance>
- <http://thebriberyact.com/>

F. Other Similar Enactments

- <http://laws-lois.justice.gc.ca/eng/acts/c-45.2/index.html> – Corruption of Foreign Public Officials Act 1998. Department of Justice, Canada.
- www.bmz.de/en/what_we_do/issues/goodgovernance/korruption – Germany, Federal Ministry for Economic Cooperation and Development.
- <https://www.bj.admin.ch/bj/en/home/sicherheit/kriminalitaet/korruption.html> - Switzerland, Federal Department of Justice and Police.
- http://www.icac.org.hk/en/corruption_prevention_department/sd/index.html – Hong Kong Independent Commission against Corruption Ordinance.
- http://www.acrc.go.kr/eng_index.html – Republic of Korea Anti-Corruption and Civil Rights Commission.

G. Money Laundering

Europe – Several countries and international institutions have developed money laundering laws and regulations. Money laundering is defined in Chapter 1, Article 1.2 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing:

“(a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising

the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;

(b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;

(c) the acquisition, possession or use of property knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;

(d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points.”

- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:EN:PDF>

United States – The most publicized addition to U.S. money laundering laws is the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (the “Patriot Act”), adopted in the wake of the terrorist attacks on the U.S. on September 11, 2001. However, many other U.S. laws can apply to financial transactions, of which a comprehensive catalogue is found at:

- <http://www.justice.gov/publications/resources>

The Patriot Act made significant changes to previously existing money laundering and bank secrecy laws in order to assist law enforcement authorities in fighting terrorism. Among other things, both banks and (broadly defined) non-bank financial institutions must establish procedures and controls to prevent money laundering and to report unusual activity to the government.

In the UK, the Financial Services Authority (FSA) is an independent non-governmental body, given statutory powers by the Financial Services and Markets Act 2000. The FSA has a statutory objective to reduce the extent to which it is possible for a firm to be used for a purpose connected with financial crime, which includes money-laundering. The FSA is also the competent authority for supervising compliance of most credit and financial institutions with the Money Laundering Regulations. This includes financial institutions that are not FSMA-authorized.

- http://www.fsa.gov.uk/about/what/financial_crime/money_laundering

Canada – The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) was established as an independent agency with a mandate to collect, analyze, assess and disclose information in order to assist in the detection, prevention and deterrence of money laundering and the financing of terrorist activities. FINTRAC’s guidelines for compliance with the Proceeds of Crime (Money Laundering) and Terrorist Financing Act are set out at:

- <http://www.fintrac-canafe.gc.ca/publications/guide/Guide1/1-eng.asp>

India – the Prevention of Money-Laundering Act, 2002, effective 1 July 2005

- <http://fiuindia.gov.in/pmla2002.htm>

V. IMPORT/EXPORT REGULATIONS

A. Customs

All countries require import formalities to bring goods in the country and most impose customs duty or some sort of import tax. Useful customs law websites include:

- <http://www.wcoomd.org/en.aspx> – World Customs Organization.
- <http://www.wcoomd.org/en/about-us/wco-members/customs-websites.aspx> – Links to World Custom Organizations.
- https://www.wto.org/english/tratop_e/cusval_e/cusval_e.htm – Customs valuation on the WTO website.
- <http://www.cbp.gov/trade> – U.S. Customs (CBP).
- <http://www.citba.org/> – Customs and International Trade Bar Association.
- <http://www.cbp.gov/trade/rulings/ruling-letters> – Ruling letters issued by U. S. Customs Service and Border Protection.
- <http://eur-lex.europa.eu/en/index.htm> – current European Union legislation.
- <http://www.hmce.gov.uk/> – this site deals with all aspects of importing and exporting from the UK including a note of the rates applicable to imports and exports.
- <http://www.customs.go.jp/english/exp-imp/index.htm> - this site deals with all aspects of importing and exporting from Japan.
- <http://english.customs.gov.cn/> - this site deals with all aspects of importing and exporting from (the PR of) China.
- <http://www.cbec.gov.in/cae1-english.htm> - this site deals with all aspects of Excise and Customs in India.
- <http://eng.customs.ru/> - this site deals with all aspects of importing and exporting from Russia.

- <http://www.cbsa-asfc.gc.ca/comm-eng.html> has information on Canadian import regulations and value for duty principles.

B. Foreign Trade Regulations

Foreign trade regulations have been made more accessible by the web. Following are some useful sites:

- <http://www.washlaw.edu/forint> – the foreign and international law web is a service of the Washburn University School of Law Library. The goal is to provide links to primary foreign and international legal resources, research aids, and sites useful in conducting research in these areas of the law.
- <http://export.gov/mrktresearch> – The Country Commercial Guides (CCG) are prepared by U.S. Embassy Staff once a year and contain information on the business and economic situation of foreign countries and the political climate as it affects U.S. business.
- <http://www.ic.gc.ca/eic/site/ic1.nsf/eng/home> – Services provided by Industry Canada.
- <http://www.cit.uscourts.gov/> – contains decisions of the United States Court of International Trade on international trade issues.
- <http://www.cites.org/> – Convention on International Trade in Endangered Species (CITES) site contains listings of wildlife protected under CITES, as well as permit requirements for the international trade of such wildlife and commercial products derived from such wildlife.
- <http://www.indianindustry.com/trade-information/trade-regulations.html> – Indian Industry information on the Foreign Exchange Management Act.

C. Imports

1. Licenses

In any international sales transaction, the goods or services being exported may be subject to licensing requirements in the exporting and/or importing countries. Following are some descriptive websites:

- https://www.wto.org/english/tratop_e/implic_e/implic_e.htm – Import licensing on the WTO website.
- <http://www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/import-licensing> – Exporting License Requirements: U.S. Perspective.
- http://www.pmdt.state.gov/regulations_laws/itar.html – U.S. Department of State Office of Defense Trade Controls site contains information regarding

export/import regulations for defense articles and defense services covered by the United States Munitions List (USML).

- <http://www.tid.gov.hk/> – The 1st Step to Import/Export Licensing: Hong Kong SAR Perspective.
- <http://eweb.trade.gov.tw> – Board of Foreign Trade, ROC Taiwan: Import/Export Licensing.
- <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/bn-ne/ndn/mprtxpirt-eng.html> – Canada Customs and Revenue Agency site has a guide for foreigners wishing to sell goods to Canada.
- http://export.gov/china/doingbizinchina/eg_cn_027473.asp – Export.gov page on PRC Chinese Import & Export Licensing & Administration Laws
- <http://www.bis.gov.uk/policies/export-control-organisation> – this comprehensive site explains up to date requirements for export from the UK.

2. Duties

Duties may be assessed against imported products in the country of importation. The following sites are among those that describe the duty rates and related issues:

- http://export.gov/logistics/eg_main_018130.asp/ - tariff rates on imports from the United States.
- <http://www.trade.gov/ia/> - Import Administration: Safeguarding American Industries and Jobs against Unfair Trade.
- <http://www.usitc.gov> - Harmonized Tariff Schedule of the United States (HTSUS). This site provides links to the current harmonized tariff schedule which specifies the specific duty rate and/or quota category for all imported products.
- <http://www.cra-arc.gc.ca/menu-eng.html> - Canada Customs and Revenue Agency site lists Customs Tariffs, Regulations, Memoranda, Duty Deferral Fact Sheets and other publications relating to rates of duties.
- <http://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/menu-eng.html> - Canada Customs Tariffs.
- <http://www.cbec.gov.in/customs/cst2012-13/cst1213-idx.htm> - India Customs Tariffs.

3. Quotas

Quotas provide limitations on the quantity of certain goods that may enter the commerce of the import country or the quantity that may so enter subject to a reduced customs duty rate.

One commentator has noted that “[t]here are two basic types of quotas: absolute quotas and tariff-rate quotas. Absolute quotas limit the quantity of imports to a specified level during a specified period of time. Sometimes these quotas are set globally and thus affect all imports while sometimes they are set only against specified countries. Absolute quotas are generally administered on a first-come first-served basis. For this reason, many quotas are filled shortly after the opening of the quota period. Tariff-rate quotas allow a specified quantity of goods to be imported at a reduced tariff rate during the specified quota period.” Steven M. Suranovic, *International Trade Theory & Policy Analysis*, Ch. 10, available at <http://internationalecon.com/Trade/T-toc.php>.

Following are some useful sites describing quota trade barriers:

- <http://www.cbp.gov/trade/quota/quota-restrict> – U. S. Customs Service: Quota Information.
- http://www.wto.org/english/tratop_e/markacc_e/markacc_e.htm#specifics – WTO: Quotas.
- <http://www.emergingtextiles.com/?q=idx&s=11-trad> – Quotas and Tariffs: Textile and Clothing Trade Information.
- <http://otexa.ita.doc.gov/> – Office of Textile and Apparels (OTEXA) site contains information regarding the implementation and applicability of various textile and apparel-related trade preference programs. For instance the North American Free Trade Agreement (NAFTA), the African Growth and Opportunity Act (AGOA), the Caribbean Basin Trade Partnership Act (CBTPA), and quota regimes <http://www.cbsa-asfc.gc.ca/menu-eng.html> - Canadian Tariff Rate Quotas Memorandum, which provides a general overview of tariff rate quotas and the legislation that applies to them. It also outlines departmental guidelines for the administration of tariff rate quotas.
- http://www.export.gov/China/doingbizinchina/eg_cn_027473.asp - NOVEXCN PRC Chinese Tariff Rates.
- <http://sars.gov.za/home.asp?pid=180> - South African Tariff Rates.
- <http://www.russian-customs-tariff.com/> - Russian Federation Customs Tariff Rates.

4. Trade Barriers

There has been much discussion over the years of the impact of trade and nontrade barriers to imports in various countries. The following websites provide a useful overview:

- http://www.wto.org/english/tratop_e/serv_e/serv_e.htm – General Agreement on Tariffs and Trade (1947) (as amended) via The World Trade Organization.

- https://www.wto.org/english/tratop_e/gatt_e/gatt_e.htm – GATT and the Goods Council.
- <http://tariffdata.wto.org/> – WTO Bound Tariffs Database.
- http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm – Technical barriers to trade.
- https://www.wto.org/english/tratop_e/sps_e/sps_agreement_cbt_e/c9s3p1_e.htm – Agreement on Technical barriers to trade.
- <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2012-1> – 2012 National Trade Estimate Report on Foreign Trade Barriers. Summary of trade limitations and conditions on a list of countries.
- <https://ustr.gov/trade-agreements> – US trade agreements.
- http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/customs_tariff/index_en.htm – EU Online customs tariff database (TARIC).
- <http://egs.apec.org/resources/apec-tariff> – APEC Tariff database.
- <http://www.citt.gc.ca/> – The Canadian International Trade Tribunal (the Tribunal) is an administrative tribunal operating within Canada's trade remedies system. It is an independent quasi-judicial body, that carries out its statutory responsibilities in an autonomous and impartial manner and reports to Parliament through the Minister of Finance. Its mandate *inter alia* is to conduct inquiries into whether dumped or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry; hear appeals made under the Customs Act, the Excise Tax Act and the Special Import Measures Act; conduct inquiries and provide advice on such economic, trade and tariff issues conduct inquiries into complaints by potential suppliers concerning procurement by the federal government that is covered by the North American Free Trade Agreement, the Agreement on Internal Trade and the World Trade Organization Agreement on Government Procurement; conduct safeguard inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers.

D. Exports

There are many government websites devoted to the issue of product exporting, virtually all governments do this to a lesser or greater extent, including the following:

- <http://www.export.gov/> – U.S. government export portal.
- <http://www.ita.doc.gov/> – U.S. International Trade Administration (ITA) website contains general export promotion information.

- <http://www.exim.gov/> – Export-Import Bank of the U.S. The Office Export Credit Agency of the U. S. Government.
- <http://www.census.gov/foreign-trade/schedules/b/index.html> – The U.S. Census Bureau provides the 10 digit Schedule B classification product codes which are used to classify U.S. exports.
- <http://www.fas.usda.gov/programs/export-credit-guarantee-program-gsm-102> – Official U.S. Department of Agriculture export credit programs for U.S. grown or made foodstuffs.
- <http://www.bis.doc.gov/index.htm> – U.S. Department of Commerce Bureau of Industry and Security (BIS) site contains information regarding export licensing requirements for those products covered by the commodity control list.
- <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx> – U.S. Department of Treasury Office of Foreign Assets Control (OFAC) site contains information regarding licensing requirements for exports to those countries currently covered by U.S. embargoes.
- <http://cbp.gov/> – U.S. Customs and Border Patrol website contains general export information.
- <http://www.deadiversion.usdoj.gov/> – U.S. Drug Enforcement Administration Office of Diversion Control site contains information regarding export licensing/registration requirements for certain chemicals.
- <http://www.inpi.gov.br/portal/> – Brasil National Institute of Industrial Property Ministry of Development, Industry and Foreign Trade (INPI).
- <http://www.international.gc.ca/international/index.aspx?lang=eng> provides the Canadian official DFATD (Department of Foreign Affairs and Trade Development website.

VI. RESALE REGULATION IN COUNTRY OF EXPORT

A. Advertising Restrictions

Advertising – particularly advertising directed at consumers – is subject to a variety of restrictions imposed by national governments around the world, generally prohibiting unfair or deceptive advertising but also limiting other types of advertising considered pernicious in the consumer context. The following websites describe some of these restrictions:

- <http://www.asa.org.uk/> – Advertising Standards Authority. Follow “LINKS” link to access useful sites on Advertisement and Self-regulation.

- <http://www.ftc.gov/bcp/> – Federal Trade Commission: Advertising: Business, Consumer, Policy Information, Industry Guides to Advertising.
- <http://competition.ic.gc.ca/> – Canadian Competition Bureau is responsible for administration and enforcement of the Competition Act, the Consumer Packaging and Labelling Act, the Textile Labelling Act and the Precious Metals Marking Act. Its role is to promote and maintain fair competition so that Canadians can benefit from lower prices, product choice and quality services. This is an extensive site with a number of Guidelines relating to marking of “Made In Canada” rules and Advertising Guidelines.
- <http://www.inspection.gc.ca/food/labelling/guide-to-food-labelling-and-advertising/eng/1300118951990/1300118996556> – the Canadian Food Inspection Agency Guide to Food Labelling and Advertising
- <http://www.adstandards.com/en/> – the Canadian Code of Advertising Standards (Code) has been developed to promote the professional practice of advertising and is administered by Advertising Standards Canada, the industry body committed to creating and maintaining community confidence in advertising. The Code sets the criteria for acceptable advertising and forms the basis upon which advertising is evaluated in response to consumer, trade or special interest group complaints.
- <http://www.easa-alliance.org/> – European Advertising Standards Alliance (EASA).
- http://ec.europa.eu/consumers/cons_int/ – European Union directives and enforcement policies on fair business practices, comparative and misleading advertising, and related subjects.
- http://ec.europa.eu/justice/consumer-marketing/unfair-trade/false-advertising/index_en.htm – EU Directive 2006/114/EC on misleading and comparative advertising.
- <http://www.consumerombudsman.dk/Regulatory-framework/Danish-Marketing-Practices-Act> – Danish Marketing Practices Act.
- <http://www.irishstatutebook.ie/1978/en/act/pub/0001/index.html> – Irish Consumer Information Act, 1978.
- <http://www.asai.ie/> – Advertising Standards Authority for Ireland (self-regulatory body).
- https://www.reclamecode.nl/bijlagen/dutch_advertising_code.pdf – Dutch Advertising Code (a system of self-regulation).
- <http://www.konsumentverket.se/Other-languages/English-Engelska/> – overview of Swedish consumer, advertising and marketing law.

- <http://www.spamlaws.com/> – summaries and links to laws dealing with unsolicited commercial email (“spam”) in the United States, European Union (and its member states) and ten other countries.

B. Business Ethics/Codes

Beyond statutory law, companies entering a new country may be subject to a variety of ethical precepts or business codes applicable to the conduct of business or marketing in the country. The following websites provide examples of such codes:

- <http://www.business-ethics.org/> – International Business Ethics Institute.
- <http://www.ethicsweb.ca/> – Center for Applied Ethics: Business Ethics Resources (Canada).
- <http://www.spu.edu/depts/sbe/cib/> – Business Ethics Site U. S..
- <http://www.licensing.org/about/code-of-business-practices/> – Code of Business Practices for Licensing.
- <http://www.businessethics.ca/> – Canadian resource for Business Ethics. Links to domestic and international institutes, organizations, case law and other useful resources.
- <http://ethisphere.com/> - Business Ethics in different Countries.

C. Consumer Protection Laws

Consumer protection concerns manifest themselves in a wide variety of legislation, ranging from the prohibition of certain “unfair” terms in consumer contracts to minimum terms for certain contracts such as consumer product warranties. The following sites survey the types of legislation that may be found in various countries:

- <http://unctad.org/en/Docs/poditcclpm21.en.pdf> – UNCTAD: United Nations Guidelines for Consumer Protection.
- http://www.oecd.org/document/51/0,3746,en_21571361_43348316_1824435_1_1_1,00.html - OECD Recommendation of the OECD Council Concerning Guidelines for Consumer Protection in the Context of Electronic Commerce (Organization for Economic Co-operation and Development) 1999.
- <http://www.bis.gov.uk/policies/by/themes/consumer%20issues> – UK Department for Business Innovation & Skills Consumer issues overview.
- <http://www.consumersinternational.org/> – Consumer International: A worldwide non-profit federation of consumer organizations, dedicated to the protection and promotion of consumer interests.

- <http://www.ftc.gov/bcp/consumer.shtml> – Federal Trade Commission: Consumer Protection Information.
- http://www.ic.gc.ca/eic/site/ic1.nsf/eng/h_00012.html – Industry Canada’s site that list and links privacy laws, provincial and federal consumer protection laws, voluntary industry codes and standards.
- <http://www.consumerinformation.ca/eic/site/032.nsf/eng/home> – The Canadian Consumer Information Gateway is a Government Online initiative that includes over 35 federal government departments and agencies, as well as over 250 provincial and territorial partners. These organizations have come together in a unique partnership to promote Canadian consumer interests and awareness. Selected Non-Governmental Organizations (NGOs) will join this cooperative initiative, further enhancing its value to Canadian consumers.
- <http://ec.europa.eu/consumers/rights/> – a list of all current EU legislation addressing consumer rights. Note that all directives must be implemented into national law by the member countries. Each directive therefore specifies a term within which the content of the directive must be implemented into member states’ national legal systems. The content of the directive constitutes the minimum legal standard for such legislation, but any member state is permitted to go further in its own national law than provided by the directive.
- <http://www.kfst.dk/> – Danish consumer laws and enforcement authorities.
- <http://www.ecic.ie/legislation/list/index.htm> – Irish consumer legislation.
- <http://www.konsumentverket.se/Other-languages/English-Engelska/> – overview of Swedish consumer law.
- <https://www.gov.uk/consumer-protection-rights> - U.K. consumer rights overview.
- <http://www.econsumer.gov/english/> – This website enables consumers to register cross-border e-commerce complaints.

D. Transfer Pricing

Most countries have laws that regulate transfer pricing and in particular prohibit the manipulation of prices between connected parties so as to transfer profits to lower tax jurisdictions. Transfer pricing refers to the price for the transfer of products and services in transactions between parts of a multinational corporate group, transactions which if manipulated could affect the allocation of profits.

for tax and other purposes among such entities. In an effort to avoid the inappropriate allocation of such profits, international guidelines promulgated by the OECD adopt the arm’s length principle – that a transfer price should be set at the same price as if the two companies were two independent entities, negotiating at arm’s length, not part of the same corporate structure.

The OECD Transfer Pricing Guidelines provide a detailed framework for the application of the arm's length principle. They are available for purchase at <http://www.oecd.org/publications/> and are to be found summarized at <http://www.oecdobserver.org/>. Other resources include the following:

- <http://www.oecdobserver.org> – several other articles to be found on the OECD Transfer Pricing Guidelines.
- <http://www.irs.gov/irm> – U.S. Internal Revenue Service guidelines and directives on the determination of transfer pricing methodologies for international transactions.
- <http://www.cra-arc.gc.ca/E/pub/tp/ic94-4r/ic94-4r-e.html> – This circular sets out the Canada Customs and Revenue Agency's views and Advance Pricing Arrangements.
- <http://www.sars.gov.za/> – in their practice notes and addenda the South Africa Revenue Services set out details relating to their adoption of the arm's length principle.

E. Sale of Goods – Local Restrictions

Goods imported into a foreign market may be subject to local content, disclosure and performance requirements or restrictions, such as those referenced on the following websites:

- <http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products> – U.S. Code of Federal Regulations (CFR) site contains links to all titles of the code of federal regulations, which contain all federal import and export regulations.
- <http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/importexport> – USDA import information.
- <http://www.fda.gov/> – U.S. Food and Drug Administration (FDA) website contains information regarding the regulation of domestic and imported food, cosmetics, cosmetic devices (including sunglasses), drugs, medical devices and radiation emitting devices (including consumer and business products).
- <http://otexa.ita.doc.gov/> – Office of Textile and Apparels (OTEXA) site contains information regarding the implementation and applicability of various textile and apparel-related trade preference programs, such as the North American Free Trade Agreement (NAFTA), the African Growth and Opportunity Act (AGOA), the Caribbean Basin Trade Partnership Act (CBTPA), etc. This website also maintains information on textile quotas.

- <http://endangered.fws.gov/> – U.S. Fish and Wildlife Service (FWS) website contains information on import regulations concerning federal endangered species, as well as commercial products derived from such federal endangered species.
- <http://www.fcc.gov/> – U.S. Federal Communications Commission (FCC) site contains information on import regulations for electronic and telephonic devices.
- <http://www.ftc.gov/os/statutes/textilejump.htm> – Federal Trade Commission (FTC) rules regarding garment labeling requirements for clothing.
- <http://www.aphis.usda.gov/> – U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) site contains information on regulations for imported animal and agricultural products.
- <http://www.fsis.usda.gov/wps/portal/fsis/home> – U.S. Department of Agriculture Food Safety and Inspection Service (FSIS) website contains information regarding import/export requirements of meat, poultry, and egg products.
- <http://www.epa.gov/oppt/import-export/> – U.S. Environmental Protection Agency (EPA) site contains information on the Toxic Substance Control Act (TSCA) which regulates the imports of certain chemical substances.
- <http://www.atf.gov/> – Bureau of Alcohol, Tobacco, and Firearms (ATF) regulations concerning the import of alcohol, tobacco, and firearm products.

F. Intellectual Property Protection

The intellectual property associated with exported products – trademarks, copyrights or perhaps patents, as well as trade secrets associated with the products or their production – are subject to extensive protection throughout the world, by way of national legislation in every country as well as a network of international treaties. The following websites provide an overview of the protections available:

- <http://www.wipo.org/> – the World Intellectual Property Organization administers international treaties on intellectual property. This site contains a number of useful intellectual property resources, including the WIPO Guide to Intellectual Property Worldwide at <http://www.wipo.org/about-ip/en/>.
- <http://www.uspto.gov/web/menu/other.html> - Extensive information including documents, forms, and links for intellectual property offices worldwide.
- <http://www.wipo.int/portal/index.html.en> - (search website for: World Intellectual Property Organization: Copyright Treaty (20 Dec 1996).
- <http://www.wipo.int/portal/index.html.en> - (search website for: World Intellectual Property Organization-World Trade Organization: Agreement Between WIPO and WTO(Geneva, 22 December 1995).

- <http://www.wipo.int/portal/index.html.en> - (search website for: Universal Copyright Convention as revised at Paris on 24 July 1971; and Protocols (24 Jul 1971).
- http://europa.eu/legislation_summaries/internal_market/businesses/intellectual_property/index_en.htm - European Union Intellectual & Industrial Property Policies.
- <http://ip.thomsonreuters.com/maketheswitch> - Thomson Reuters intellectual asset management solutions empower business and intellectual property (IP) professionals to analyze, manage and leverage intellectual property assets.
- <http://www.law.com/practice-areas/intellectual-property/> - site featuring Intellectual Property news, current cases and practice papers. The News section is free of charge, for other information subscription is required.
- http://portal.unesco.org/culture/en/ev.php-URL_ID=14076&URL_DO=DO_TOPIC&URL_SECTION=201.html - UNESCO's Copyright Laws Database ("national legislations on authors rights and neighboring rights").
- <https://www.iprhelppdesk.eu/> - Intellectual Property Rights Help Desk (European Commission).
- http://www.wto.org/english/tratop_e/trips_e/trips_e.htm#issues - World Trade Organization (WTO) Intellectual Property Page.
- <http://www.inta.org/> - International Trademark Association (INTA).
- <http://www.iipa.com/> - International Intellectual Property Alliance (IIPA).
- <http://www.jiii.or.jp/english/apic/> - Asia-Pacific Industrial Property Center (APIC).
- <http://www.jus.uio.no/lm/intellectual.property/toc.html> - Lex Mercatoria: Intellectual Property.
- <http://www.copyright.gov/> - United States Copyright Office (Library of Congress).
- <http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/Home> - The Canadian Intellectual Property Office, a Special Operating Agency (SOA) associated with Industry Canada, is responsible for the administration and processing of the greater part of intellectual property in Canada. The site contains laws, guides, links, and databases of patents, trademarks and copyright registrations.
- <http://www.ipo.gov.uk/> - The UK Intellectual Property Office site surveying intellectual property and the protections therefore.

- <http://www.hg.org/intell.html> - Hieros Gamos: “Intellectual Property Law” (includes links to national government web sites).
- <http://www.patents.com/> - Oppedahl & Larson Patent Law Web Server “Intellectual property resources on the Internet.”
- <http://www.sice.oas.org/> - Organization of American States (OAS) Foreign Trade Information System/Sistema de Información sobre Comercio Exterior (SICE) (national legislation, directories, and links to official sources on IP information).
- <http://www.wipo.int/wipolex/en/> – Collection of Laws for Electronic Access, includes bibliographic citations/references and some full texts in English translation of foreign intellectual property laws.
- <http://english.sipo.gov.cn/> – Patent Office State Intellectual Property Office of the Peoples’ Republic of China (SIPO).
- <http://www.rupto.ru/rupto/portal/start?lang=en> – Russian Federal Service for Intellectual Property.
- <http://copyright.gov.in/> – Copyright Division, Department of Higher Education, Ministry of Human Resource Development, Government of India.
- <http://www.ipindia.nic.in/> – Office of the Controller-General of Patents, Designs and Trademarks, Department of Industrial Policy Promotions, Ministry of Commerce and Industry, Government of India.
- <http://www.inpi.gov.br/portal/> – Brazil National Institute of Industrial Property Ministry of Development, Industry and Foreign Trade (INPI).
- <http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/Home> – Canadian Intellectual Property Office (CIPO) Industry Canada.
- <http://www.med.govt.nz/business/intellectual-property> - Intellectual Property Policy Group, Competition, Trade and Investment Branch, Ministry of Economic Development.
- <http://www.ag.gov.au/Pages/default.aspx> – Australia’s Copyright Law Branch, Attorney-General’s Department.

G. Electronic Commerce Issues

As the internet becomes progressively more ubiquitous in people’s lives, it is having impacts throughout society and business. Electronic commerce is no longer a toy for consumer purchases of books, CDs and electronics. Rather, the internet has rapidly developed into a tool for facilitating business. It is also causing a rethinking of the law, its substance and its application. Traditional legal concepts are being applied to a medium never contemplated at the time of their establishment,

and new laws are being adopted at a dizzying pace. The following websites provide an example of the scope of ongoing legal developments:

- http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html - UNCITRAL – Model Law on Electronic Commerce (revised 14 June 1996) with additional article 5 bis as adopted in 1998.
- http://www.uncitral.org/uncitral/uncitral_texts/electronic_commerce/2001Model_signatures.html - 2001 – UNCITRAL Model Law on Electronic Signatures with Guide to Enactment.
- http://www.uncitral.org/uncitral/uncitral_texts/electronic_commerce/2005Convention.html – 2005 United Nations Convention on the Use of Electronic Communications in International Contracts.
- <http://www.iccwbo.org/policy/ebitt/> – International Chamber of Commerce: Digital Economy.
- <http://www.jus.uio.no/lm/electronic.commerce/toc.html> – Lex Mercatoria guide to Electronic Commerce.
- <http://www.ftc.gov/> – U.S. Federal Trade Commission: Consumer Protection: E-Commerce & the Internet.
- <http://e-com.ic.gc.ca/english/index.htm> – Electronic Commerce regulations in Canada. This site is the virtual focal point for information on Canada's Electronic Commerce Strategy, outlining the various initiatives, laws and regulations, which are helping make Canada a world leader in the adoption and use of electronic commerce.
- <http://www.bis.gov.uk/> - website of the UK Department for Business, Innovations & Skills Communications that provides useful information related to E-commerce.
- <http://www.ecommerce-europe.eu/home> - Website of the association of e-commerce companies selling products and/or services to consumers in Europe.

VII. TAXES

A. What Taxes May Apply?

International sales transactions may involve a variety of different tax issues. Sometimes, the parties may negotiate responsibility for certain taxes as part of the purchase price, or the seller may negotiate for indemnity or reimbursement in case of tax liability. Applicable taxes may include sales tax, value added tax (VAT), and goods and services tax (GST), among other taxes. Application of any tax will depend on the facts of each case, such as the countries involved, whether the seller has a permanent establishment in the buyer's country, and the terms of sale.

- <http://www.jus.uio.no/lm/tax.and.financial.regulation/tax.html> - Lex Mercatoria: Links to tax and finance sources hosted by the University of Oslo.
- <http://www.ll.georgetown.edu/guides/internationaltaxlawresearch.cfm> - International & Foreign Tax Law Research Guide provided by Georgetown University Law Center.
- <http://www.taxsites.com/international.html> - A wealth of resources about international taxation.
- http://ec.europa.eu/taxation_customs/common/legislation/legislation/taxation/index_en.htm - EU legislation on taxation. Note that tax law is still a creature of national legislation, and hence a check must be made of the law of each country into which a company plans to enter.
- http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/index_en.htm - EU information on VAT, including a link to the VAT authority in various countries and EU information document discussing different VAT rates.
- <http://www.ey.com/GL/en/Services/Tax/Worldwide-VAT-GST-Sales-Tax-Guide--Country-list> - Ernst & Young 2015 Worldwide VAT, GST and Sales Tax Guide – interactive guide.
- <http://www.ccca-adrc.gc.ca/ecom/> - Information from the Canada Revenue Agency on conducting business on the Internet.
- <https://www.ato.gov.au/Business/International-tax-for-businesses/In-detail/Doing-business-overseas/Doing-business-overseas---what-you-need-to-know/> - Doing business overseas – what you need to know; general international tax information provided by the Australian Taxation Office, including information on permanent establishment and Australian GST.
- <http://www.oecd.org/tax/> - General tax information from the OECD.
- http://www.oecd.org/document/31/0,3343,en_2649_201185_5574623_1_1_1_1,0_0.html - OECD consumption tax guidance series.

B. Tax Treaties

A tax treaty is designed to avoid double taxation for people who would otherwise pay tax on the same income in two countries. Generally, a tax treaty determines how much each country can tax income such as pensions, wages, salaries, interest and royalties. Tax treaties also generally provide guidance on permanent establishment issues.

- http://www.oecd.org/departement/0,3355,en_2649_33747_1_1_1_1,00.html - Tax treaty information published by the OECD.

- <http://www.oecd.org/dataoecd/25/24/47213736.pdf> - 2010 model OECD convention.
- <http://www.irs.gov/Businesses/International-Businesses/United-States-Model---Tax-Treaty-Documents> - United States Model – Tax Treaty Documents.
- <http://www.un.org/esa/ffd/documents/DoubleTaxation.pdf> and <http://www.un.org/esa/ffd/tax/unmodel.htm> - United Nations Model Double Taxation Convention between Developed and Developing Countries, 2001, and related documents and information.
- <http://www.mcgill.ca/tax-law/treaties> - Model treaties, Canada's tax treaties, multilateral treaties, government finance websites, and international organization links provided by McGill University in Canada.
- <http://www.windstar-tech.com/public/treaties.html> - Tax Treaties: Windstar Technologies, Inc. Requires registration.
- http://www.fin.gc.ca/treaties-conventions/in_force--eng.asp - Department of Finance Canada information on tax treaties.
- <https://www.gov.uk/government/collections/tax-treaties-signed-and-in-force> - United Kingdom HM Revenue & Customs information on tax treaties.
- <http://www.irs.gov/businesses/small/international/article/0,,id=96454,00.html> - United States Internal Revenue Service information on tax treaties.
- <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/default.aspx> and <http://www.irs.gov/businesses/international/article/0,,id=96739,00.html> - United States Department of Treasury and Internal Revenue Service tax treaty resources with access to texts of US income tax treaties.
- <http://www.ssa.gov/international/index.html> - provides a description and the text of U. S. bilateral social security agreements with 24 countries, eliminating dual Social Security coverage and taxes. "Social Security Programs throughout the World" provides a summary of social security programs, legislation and administration in over 170 countries. Also contains links to the social security web sites of other countries.

VIII. ARBITRATION AND DISPUTE RESOLUTION

For international business disputes, **arbitration** is still considered as the best alternative to court proceedings. By arbitration the parties to a business dispute refer it to one or more arbitrators which are either selected by the parties or by an appointing authority chosen by the parties. Arbitration requires the consent of the parties, usually provided for in an arbitration clause which is part of the respective business agreement. The decision of the arbitrator(s) is final and legally binding to the parties.

Another form of dispute resolution outside the courts is **mediation** by which a third party, commonly referred to as mediator, tries to assist the parties to settle the dispute by reaching a settlement agreement.

In practice, alternative dispute resolution clauses are often drafted as an escalation clause, starting with negotiation, continuing with mediation if negotiation fails, and ending up with arbitration if mediation fails.

For the parties of an (international) business transaction it is important to consider the potential advantages and disadvantages of arbitration vs. proceedings in front of a state court.

Potential advantages may be:

- arbitral proceedings are confidential
- arbitral proceeding are usually faster and more business orientated than court proceedings
- in arbitral proceedings arbitrators with a certain expertise can be appointed by the parties
- in arbitral proceedings the language of arbitration may be chosen freely
- arbitral awards can be easily executed under the Convention on the Recognition and Enforcement of Foreign Awards of 19 June 1958
- arbitral awards can only be appealed in most countries for a very limited number of reasons which is limits the time of the dispute

Some of the disadvantages include:

- arbitration may become very expensive
- arbitral awards can only be appealed in most countries for a very limited number of reasons which means that a wrong decision is very difficult to change

A. Mediation Rules and Advisability

- http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-2&chapter=22&lang=en – European Convention on International Commercial Arbitration of 1961 Done at Geneva, April 21, 1961 United Nations, Treaty Series, vol. 484, p. 364 No. 7041 (1963-1964).
- <http://www.oas.org/juridico/english/treaties/b-35.html> – Inter-American Convention on International Commercial Arbitration (Panama Convention, January 30 1975).

B. Arbitration Rules

- <http://www.asil.org/erg/?page=arb> – International Commercial Arbitration Institution Rules Contains Arbitration Rules of International Organizations and countries Arbitration Rules.
- <http://www.jus.uio.no/lm/arbitration/institution.rules.html> – International Arbitration Rules: United Nations Arbitration Rules; World Intellectual Property (WIPO) Arbitration Rules; Institutionalized Arbitration; Arbitration involving states.
- <http://www.asil.org/erg/?page=arb> – The American Society of International Law Guide to International Commercial Arbitration.
- http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration.html - Arbitration Model Laws.
- https://www.adr.org/aaa/ShowPDF?doc=ADRSTG_019805 – International ADR: National Arbitration Laws.
- <http://www.jus.uio.no/lm/arbitration/national.laws.html> - National Arbitration Laws.

C. Enforceability of Arbitral Awards

- http://www.uncitral.org/uncitral/uncitral_texts/arbitration/NYConvention.html – United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).
- <http://curia.europa.eu/common/recdoc/convention/en/c-textes/brux-idx.htm> - Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968.
- <http://curia.europa.eu/common/recdoc/convention/en/c-textes/lug-idx.htm> - Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1988.
- <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32012R1215> - Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
- http://www.tomeika.jur.kyushu-u.ac.jp/procedure/Overview02_judgments.html – The Enforcement of Foreign Arbitral Awards in Japan, by Takao Tateishi.

D. Other Dispute Resolution Methods

- http://www.uncitral.org/uncitral/commission/working_groups/2Arbitration.html – UNCITRAL Working Group II: Arbitration and conciliation.

- <http://icsid.worldbank.org/ICSID/Index.jsp> – International Center for Settlement of Investment Disputes: Rules of Procedure for Conciliation Proceedings (Conciliation Rules).
- http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1980Conciliation_rules.html - UNCITRAL Conciliation Rules, 1980.

IX. “SOFT” ISSUES

In the international context, there are several issues, which have a sensible importance beside the law and regulations. “Soft” issues may play a crucial role in negotiating a contract and they are part of the education of great international counselors. We have selected few of them to provide some tools to who has to negotiate an international sale contract, and shall take into account the language, the cultural difference and the trends in the international business community.

A. Soft Law

Although there is no a unique definition of soft law, it might be assumed that it concerns “rules” which are developed by different actors in the international arena (institutions, global merchants, arbitrators, etc.) to implement form of governance, conducts or commitments which may regulate a contractual relationship and which do not rely on binding rules issued by the legislative power of states.

- <http://www.jus.uio.no/lm/> - Website dedicated to the provision of information on international commercial law with subsidiary interests in commerce and (mostly open standard) Net and information technologies;
- <http://nyulaw.libguides.com/content.php?pid=45600&sid=670771> - This guide lists the major print and online sources for researching international law.

LEX MERCATORIA

- <http://www.jus.uio.no/lm/> - this website provides links to primary sources dealing with international business law. The section entitled “Private International Commercial Law” provides links to relevant documents on the harmonization of contract law.

UNIDROIT

- <http://www.unidroit.org/instruments/commercial-contracts/upicc-model-clauses> - Unidroit principles of international commercial contracts;
- <http://www.unidroit.org/> - UNIFORM LAW REVIEW / REVUE DE DROIT UNIFORME :A publication of the International Institute for the Unification of Private Law (UNIDROIT).

UNILEX

- www.unilex.info/dynasite.cfm?dssid=2375&dsmid=14276 - A collection of international case-law and bibliography on two of the most important international instruments for the regulation of international commercial transactions – Database of Case Law and a Bibliography on the Unidroit Principles and the UN CISG.

ICC

- <http://www.iccwbo.org/> - Website of the ICC (International Chamber of Commerce). Useful information regarding business, soft law and other valuable aspect for International commerce:
- www.iccwbo.org/incotermsrules/ - The 11 Incoterms® rules;
- <http://store.iccwbo.org/icc-uniform-customs-and-practice-for-documentary-credits-ucp-600-leaflet-format-set-of-25> – *ICC Uniform Customs and Practice 600*;

TERMS

- http://export.gov/exportbasics/eg_main_017485.asp - US Terms of Trade;

EUROPE

- http://europa.eu/documentation/official-docs/green-papers/index_en.htm - the list contains all Green Papers published since 1993 – and some from before then;
- http://europa.eu/documentation/official-docs/white-papers/index_en.htm - the list contains all Green Papers published since 1993 – and some from before then;

CULTURE

- <http://www.escapeartist.com/> - The site lists everything you need to know about living overseas, offshore investing and country destination profiles;
- <http://www.worldbusinessculture.com/> - Website regarding world business culture with individual profiles of 39 countries;
- <http://www.kwintessential.co.uk/resources/country-profiles.html> - Website with country Profiles in order to help Understanding other people's languages, cultures, etiquettes and taboos;
- <http://www.cyborlink.com/> - Website with information regarding international business etiquette, manners, and cross cultural communication;
- <http://businessculture.org/business-culture/> - business reports providing practical advice on proper negotiating tactics, international management, international

business entertainment, cross-cultural communication, international business practices and international business behavior. The information also includes recommendations on international business travel, international business safety and international business resources;

- <http://www.philodialogue.com/10.html> - The Cultural Dimension of Business Ethics;
- <http://www.deborahswallow.com/category/around-the-world/> - Website with “Top Ten Business tips” distributed in continents and countries.

LANGUAGE

- <http://www.internationaltrade.co.uk/articles.php?AID=179&Title=Trade+Terms+%26+Definitions> – International Trade Terms;
- <http://www.culture.fr/> - As of August 5,1995, in France, the use of French shall be mandatory for the designation, offer, presentation, instructions for use, and description of the scope and conditions of a warranty of goods, products and services, as well as bills and receipts;
- <http://www.better-english.com/vocabulary.htm> - Business English Vocabulary Exercises;
- <http://www.importexporthelp.com/a/international-trade-terms.htm> - Website regarding providing the meaning for some of the words and phrases most frequently used in global business and commerce;
- <http://www.foreign-trade.com/reference/glossary.cfm> - Website providing an International Trade & Transportation Glossary;
- <http://iate.europa.eu/iatediff/switchLang.do?success=mainPage&lang=it> Interactivity terminology for Europe;
- http://ec.europa.eu/languages/policy/learning-languages/languages-growth-jobs_en.htm - Languages for business and employability;
- <http://www.businessdictionary.com/> - Easy-to-use free business glossary with over 20000 terms. Concise, clear, and comprehensive.

IBA GUIDELINES

- <http://www.ibanet.org/Search/Taxonomy.aspx?Taxonomy=Guidelines&TaxonomyUid=60A5F561-AFB4-4258-8F23-F88810038C67> - Link to IBA Style Guideline.

BUSINESS PRACTICES

- <http://www.worldbiz.com/> - Provides cross-cultural country reports for business executives. International Management Reports 2002: Purchase or order online;
- <http://www.cbponline.com/> - Source for Project Management Research and Publications;
- http://www.mra-net.org/resources/documents/best_business_practices.PDF – Marketing Research Information: Recommended Best Business Practices;
- <http://www.wklawbusiness.com/Default.asp> - Bureau of Business Practices Aspen Publishers, Inc.;
- <http://www.legacee.com/Culture/CultureOverview.html> - The Global Leader, a website on understanding Chinese Business Culture and Business Practices;
- <http://www.itds.gov/> - The business case for using e-commerce data to manage product admission at international borders;
- http://www.unglobalcompact.org/Issues/human_rights/Business_Practice.html - This section provides case studies about efforts by companies to integrate human rights principles into their business practices;
- www.ustr.gov/trade-topics/trade-toolbox - useful “tools of the trade” to assist in your understanding of trade-related issues.

X. SPECIMEN FORMS OF AGREEMENT FOR USE IN INTERNATIONAL SALES TRANSACTIONS

“Model Form” is a misnomer, given that no form is adequate for every purpose, and needs to be customized to achieve the goals of the parties. Inherent in the use of forms of contracts is the implicit need to mold the form for the particular purpose or purposes to be served. In addition, the choice of law in a contract will affect how particular clauses are interpreted or even whether they are enforceable as written. The forum, whether in arbitration or litigation, will also affect how a contract is enforced, as procedural rules vary. Additionally, while the specimen forms here are presented in English, translations of documents may impact their interpretation and enforcement.

It is important to look upon a form contract as a means and not an end in itself. The contract is not just a legal device, but an expression of the business reality of the particular transaction. To borrow the cliché, one size does not fit all. This is particularly true when a form contract drafted with a civil law system in mind is transferred to a common law system, and vice versa.

Nonetheless, form contracts can be useful both as a checklist and for suggestion of language. Forms of model contracts for international transactions are provided by various entities. Without commenting on the particular merits of any of the below, the following offer “form” agreements:

- <http://www.iccbooks.com/Home/Home.aspx> - International Chamber of Commerce forms of model contracts available for purchase. These include a variety

of international sales and distribution agreements, as well as agency and occasional intermediary contracts.

- www.idiproject.com/ – International Distribution Institute – forms of model distribution contract available for members (membership fee required).
- <http://www.intracen.org/model-contracts-for-small-firms/> - International Trade Center of the World Trade Organization and United Nations – forms of model contracts, specifically oriented to small and medium size businesses available for free PDF download or purchase of hard copy.
- <http://www.sec.gov/edgar.shtml> - Publicly traded companies file a variety of reports with the United States Securities and Exchange Commission, which often contain copies of contracts in a variety of contexts.

We are including here a form of Distribution Contract, drafted from the standpoint of an exporter / manufacturer in the United States. Many of the clauses would require modification for use by exporters in other countries, where U.S. laws are specifically mentioned or incorporated. In addition, it must be considered the countries into which goods will be imported may have laws or regulations impacting the contract terms, for instance laws restricting the termination of distributorships. There is no substitute for researching the specific laws of the countries in question. We provide brief commentary on each clause, but emphasize that these comments are not all-inclusive or exhaustive, and not meant to be either critical or supportive of the way each clause is drafted, as such will be dependent upon the choice of law employed.

| TEXT | COMMENTS |
|--|---|
| [Note: Many of the numbers, time periods, etc. provided herein are suggestions only and may need to be altered dependent on the nature of the product being sold]. | |
| THIS AGREEMENT is made and entered into by and between <i>[LEGAL NAME OF MANUFACTURER]</i> , a New York corporation with its principal office at <i>[Address of Manufacturer]</i> , U.S.A. (“Manufacturer”), and <i>[LEGAL NAME OF DISTRIBUTOR]</i> , a [type of entity] with its principal office at <i>[Address of Distributor]</i> (“Distributor”). | It is important to identify the correct legal name of the parties, particularly where subsidiaries or affiliate companies are involved. Principal office may be relevant for purposes of the CISG |
| WHEREAS, Manufacturer is or intends to be engaged in the business of manufacturing <i>[Products]</i> (the “Products”); | Whereas clauses may not have legal validity in certain jurisdictions, but in some jurisdictions, may be helpful in interpreting intent of the parties |
| WHEREAS, Distributor desires to act as Manufacturer’s <i>[sole or nonexclusive]</i> distributor of the Products in <i>[Territory]</i> (the “Territory”), and Manufacturer desires that Distributor provide such sales and distribution services in | |

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| accordance with the terms and conditions hereinafter set forth; and | |
| WHEREAS, the success of both the Manufacturer and the Distributor is directly affected by the business conduct of the Distributor and the Distributor therefore recognizes that adherence to the terms of this Agreement is a matter of mutual importance and consequence to the Distributor and the Manufacturer; | |
| NOW, THEREFORE, in consideration of the premises and mutual promises, terms and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows: | Consideration is usually considered an essential element of contracts in common law jurisdictions, but the mere recitation of it does not necessarily suffice if as a substantive matter, there is none. |
| 1. Definitions. As used in this Agreement, defined terms shall have the meaning set forth in the Definitions attached hereto as Exhibit A, which is incorporated herein by reference. | Definitions are useful, particularly when the same term is used several times (or in related contracts, for consistency) and should be specific to the transaction. |
| 2. Appointment and Acceptance. 2.1 Products and Territory. The Manufacturer hereby appoints Distributor as its distributor to sell the Products within the Territory. | |
| 2.2 Customers. Distributor agrees to resell Products only to Customers. Distributor is specifically excluded from soliciting (or causing anyone to solicit) orders from parties outside the Territory and from soliciting orders for or selling any other products of Manufacturer. | |
| 2.3 <i>[Alternative 1.]</i> Sole Distributor. Distributor shall be a sole distributor of the Products in the Territory during the term of this Agreement, subject to Manufacturer's right from time to time to make direct sales of the Products in the Territory or outside the Territory for use by Customers in the Territory. <i>[Alternative 2.]</i> Nonexclusive Distributor. Distributor is a nonexclusive distributor for the Products of the Manufacturer and Manufacturer has the right to make direct sales of the Products in the Territory, to make sales of the Products outside the Territory for use by Customers in the Territory, and to appoint additional distributors, sale | |

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| representatives or other agents with a right to sell or offer for sale in the Territory any or all of the Products. | |
| 2.4 Independent Contractor. This Agreement does not constitute Distributor an agent, employee, or legal representative of Manufacturer for any purpose whatsoever. | This is designed to avoid establishing principal/agency relationships that may be relevant to jurisdictional inquiries as well as labor and employment law issues. |
| Distributor is not granted, nor shall it represent that it has been granted, any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of Manufacturer, to incur debts or make collections for Manufacturer or to bind Manufacturer in any manner whatsoever; it being the intent of the parties hereto to create the relationship on the part of the Distributor of an independent contractor, for whose actions or failure to act the Manufacturer shall not be responsible. | This is meant to avoid issues of apparent authority. |
| 2.5 Acceptance of Appointment. The Distributor hereby accepts appointment as distributor in the Territory and agrees to keep, observe, and perform all of the terms and conditions of this Agreement. | |
| <p>3. Product Changes; Price of Products.</p> <p>3.1 Product Changes. <i>[Alternative 1.]</i> The Distributor agrees that the Manufacturer has the right, at its sole discretion and without incurring any Liability to Distributor, to add or delete Products from the coverage of this Agreement and such addition or deletion will not be a breach of this Agreement or be considered a termination of this Agreement.</p> | |
| <p><i>[Alternative 2.]</i> Manufacturer reserves the right, in its sole discretion and without incurring any Liability to Distributor, to (a) alter the specifications for any Product; (b) discontinue the manufacture of any Product; (c) discontinue the development of any new product, whether or not such product has been announced publicly; or (d) commence the manufacture and sale of new products having features which make any Product wholly or partially obsolete, whether or not Distributor is granted any distribution rights in respect of such new products.</p> <p>Notwithstanding the foregoing, the Manufacturer shall use its best efforts to provide Distributor with prompt written notice of such decisions no less than sixty (60) days prior to their effective date. The Manufacturer shall fill all</p> | |

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| accepted purchase orders from Distributor for any altered or discontinued Products of which manufacturing and commercial deliveries shall have commenced but otherwise shall have no obligation to do so unless the delivery date requested in the relevant purchase order was prior to the effective date of the change. | |
| 3.2 Prices. The prices at which the Manufacturer shall sell Products to the Distributor shall be equal to the Suggested International Retail Prices less the Discount in effect at the time the order is received. | |
| 3.3 Price Changes. Manufacturer may, at any time during the term of this Agreement, increase its Suggested International Wholesale Prices for the Products by providing Distributor with at least sixty (60) days prior written notice. Increased prices shall not apply to purchase orders accepted prior to the effective date of the price increase unless such orders provide for delivery, and delivery is in fact made, more than ninety (90) days after the date of acceptance of the order. Price decreases with respect to all Products shall be effective immediately upon written notice to the Distributor on all such Products not yet delivered. | |
| 3.4 EX WORKS. The prices paid by Distributor, unless otherwise stated, are EX WORKS (EXW) (INCOTERMS 2000) Manufacturer's facility in the U. S.A. or abroad, as determined by Manufacturer. | Use of Incoterms should reference the most current version of the International Chamber of Commerce publication. Incoterms are not contractual obligations in themselves, but definitions that provide an understood assignment of risks and obligations between buyer and seller. |
| 3.5 Resale Price. Distributor shall resell Products at such prices as Distributor, in its sole discretion, may determine; provided, however, that such prices shall be determined by Distributor in a manner that maximizes its sales in the Territory (both in terms of quantity and dollar volume) and is consistent with positioning the Products and Manufacturer's name as being of the highest quality, yet affordable to the general buying public. Distributor shall provide Manufacturer with its initial list prices for the Products and shall keep Manufacturer fully informed by | Clauses like this must be evaluated in terms of the chosen law and its antitrust or unfair trade laws. |

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| providing Manufacturer with any new list sales prices within ten (10) days of any change in such list prices. | |
| 4. Orders. | |
| <p>4.1 Purchase Orders. All orders for Products shall be submitted to the Manufacturer in the form of a Purchase Order which shall be sent by mail or by facsimile and shall set forth:</p> <ul style="list-style-type: none"> (a) the identity of Product being purchased; (b) the quantity to be purchased; (c) the purchase price in accordance with Section 3.1; (d) the general shipping instructions including destination address; (e) a reference to the priority of this Agreement; (f) the delivery or performance schedules agreed with Manufacturer; and (g) any other special information required by this Agreement or by the circumstances of the particular order. <p>Except as otherwise agreed by the Manufacturer, Distributor's Purchase Orders must be received by the Manufacturer at least sixty (60) days prior to the requested delivery dates.</p> | Parties may consider electronic submission of orders and other means. |
| <p>4.2 Incorporation of Terms and Conditions. The terms and conditions of this Agreement shall be deemed incorporated into and made a part of each Purchase Order, and shall not be superseded by any Purchase Order except as expressly agreed to in a writing which specifies the extent to which such Purchase Order overrides the terms and conditions of this Agreement and which is signed by authorized representatives of both parties.</p> | This is an effort to avoid the "battle of the forms." However, depending upon the choice of law, or if the CISG applies, it may not succeed. |
| <p>4.3 <i>[Alternative 1.]</i> Firm Orders. Orders placed by Distributor will be considered firm with no right of cancellation.</p> | |
| <p><i>[Alternative 2.]</i> Cancellation. Distributor shall not, without Manufacturer's written consent, cancel any of its orders for the Products within thirty (30) days of the scheduled Delivery Date. Distributor may, at any time, cancel an order thirty-one (31) days or more before the scheduled Delivery Date subject to a cancellation charge equal to Manufacturer's actual documented non-recoverable costs incurred resulting from cancellation of such order.</p> | |

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| <p>4.4 Placement and Acceptance of Orders. All Purchase Orders from Distributor are subject to acceptance in writing by Manufacturer at its Order Address, which may be granted or denied in its sole discretion. Each Purchase Order shall be deemed to be an offer by Distributor to purchase the Products pursuant to the terms of this Agreement and, when accepted by the Manufacturer as herein provided, shall give rise to a contract between Distributor and Manufacturer on the terms and conditions set forth herein. All acceptances and shipments are conditional upon the Distributor's compliance with the payment terms set forth in Article 6 below.</p> | |
| <p>5. Shipment.</p> | |
| <p>5.1 Shipping Costs. Distributor shall pay all shipping costs EXWORKS, including but not limited to the cost of export packing, carriage to port of shipment, freight to the port of destination, and insurance, including war risk insurance if applicable. Distributor shall be responsible for unloading the goods at port of destination, and for direct payment of lighterage and wharfage charges, customs charges, import duties, costs resulting from customs delays or work stoppages at the port of destination, and any other costs occurring after Delivery.</p> | |
| <p>5.2 Insurance. Distributor agrees to insure each shipment of Products with a reputable insurer for the full invoice price of such shipment. Such insurance shall provide, at a minimum, for coverage of the Products from Delivery until title passes pursuant to Section 5.4. Manufacturer shall have no obligation to deliver Products without receipt of a certificate of insurance from Distributor evidencing such coverage and showing Manufacturer as an additional named insured.</p> | <p>Parties may also consider specifying exact amounts to avoid ambiguity.</p> |
| <p>5.3 Late or Partial Shipments. Distributor acknowledges that Manufacturer has a finite production capacity which will vary from time to time or which may be interrupted entirely and therefore Manufacturer's responsibilities to ship orders to Distributor are limited to best efforts and late shipments or partial shipments are permissible.</p> | |
| <p>5.4 Title to Products and Risk of Loss. <i>[Alternative 1.]</i> Title to the Products and risk of loss passes to Distributor upon Delivery.</p> | |

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| <p><i>[Alternative 2.]</i> To secure the payment of all amounts due hereunder and the observance and performance of all the terms, provisions, agreements and covenants of this Agreement, Manufacturer shall retain title to each Product sold to Distributor under the terms of this Agreement until the earlier of the dates on which Distributor shall have (a) resold the Products to a Customer or (b) made payment in full to Manufacturer of all amounts due hereunder. Such retention of title shall operate to the maximum extent permitted under the law of the country in which the respective Product is physically located, and Distributor shall comply with any formalities required to give effect thereto.</p> | |
| <p>6. <u>Payment.</u></p> <p>6.1 Payment. <i>[Alternative 1.]</i> Payment shall be by irrevocable letter of credit in a form acceptable to Manufacturer and issued or confirmed by a bank acceptable to or designated by Manufacturer.</p> | |
| <p><i>[Alternative 2.]</i> Payment shall be made no later than thirty (30) days after distributor is invoiced by Manufacturer for Products, which shall not occur until after Delivery of such Products.</p> | |
| <p>6.2 Alternative Method of Payment.</p> | |
| <p>Notwithstanding the foregoing, a different method of payment or credit arrangement may be agreed to in writing by the parties in which case such other method of payment or credit arrangement will govern until otherwise determined by Manufacturer.</p> | |
| <p>6.3 Currency. Distributor agrees to make all payments in U.S. currency.</p> | |
| <p>6.4 Late Fees. If, for any reason, the Distributor does not pay any amounts due Manufacturer pursuant to this Agreement, Distributor shall pay late charges on such past due amounts at a monthly rate of one and one-half percent (1 1/2%) (or, if less, the maximum interest rate then allowed under applicable law).</p> | |
| <p>6.5 Credits for Returned Items or Disputed Amounts. In the event of any dispute arising over any part of an invoice or the total amount due under an invoice, all undisputed amounts shall be promptly paid by Distributor in accordance with this Article 6.</p> | |

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| 7. Advertisement. | |
| <p>7.1 <i>[Alternative 1.]</i> Advertising Materials. Distributor shall diligently advertise the Products in the Territory. Manufacturer shall furnish Distributor with reasonable quantities of Manufacturer’s brochures, sales literature, advertising copy and other materials in the English language, for use by Distributor in preparing its own advertising materials. All expenses incurred by Distributor in creating and preparing advertising materials and in advertising the Products shall be borne by Distributor. Distributor shall provide to Manufacturer copies of all advertising materials concerning the Products, Trademarks or the Manufacturer which it shall create or prepare prior to any use thereof and shall not use the same without the prior written consent of Manufacturer, which shall not unreasonably be withheld.</p> | <p>Use of words such as “diligently” may invoke concepts of “best efforts.” If the parties desire particular standards of performance, they should review the law applicable by virtue of the of the choice of law provision, to see how the jurisdiction handles such issues.</p> |
| <p><i>[Alternative 2.]</i> Media Plan. The Distributor and Manufacturer shall agree upon a media plan which shall establish a budget, select media outlets, set the frequency of advertising and otherwise define a program to advertise Products in the Territory.</p> <p>Such media plan shall be agreed upon within thirty (30) days after the execution of this Agreement by both parties. All expenses associated with advertising the Products shall be borne by the Distributor. Notwithstanding the foregoing, all creative control shall remain exclusively with Manufacturer and Distributor shall not advertise, distribute any advertising materials regarding the Products or use the Trademarks except as provided for in the media plan developed with Manufacturer.</p> | |
| <p><i>[Optional:]</i> 7.2 Promotions. Distributor agrees to develop and actively implement sales, promotion and merchandising programs, including those suggested by Manufacturer and to participate in trade shows, fairs and exhibitions in the Territory where such participation can reasonably be expected to promote the Products.</p> | |
| 8. Customer Support. | |
| <p>8.1 Maintenance. Distributor agrees to provide maintenance and other customer support services to Customers in the Territory in accordance with standards established by Manufacturer and communicated to Distributor in writing from time to time. Without limiting</p> | <p>Parties may consider having a separate agreement to deal with service issues, as opposed to sale of goods. Contracts that combine both service and goods may complicate</p> |

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| <p>the generality hereof, Distributor shall have the following obligations in this respect: (a) To maintain at all times a sufficient staff of personnel who are fully trained and qualified to perform such support services; (b) To maintain inventories of spare parts which shall be sufficient to ensure timely maintenance of installed Products and, without limiting the generality hereof, to purchase an initial supply of spare parts, the content of which shall be reasonably defined by Manufacturer; (c) To cooperate with Manufacturer in dealing with any Customer complaints concerning the Products and to take any action reasonably requested by Manufacturer to resolve such complaints; and (d) To cooperate with Manufacturer in arranging for any Customer warranty service.</p> | <p>application of either the CISG or, in the United States, Article 2 of the Uniform Commercial Code, both of which apply generally to sales of goods, not services.</p> |
| <p>8.2 Training. The sales and technical support functions in respect of Products sold to Customers shall be carried out by Distributor. Distributor shall identify from among its sales and technical personnel, individuals having the educational and professional qualifications required for competent performance of such functions. It shall designate from among those individuals an agreed number for training by Manufacturer, all of whom shall be reasonably conversant in the English language. Manufacturer will train such personnel at its facility in [location of training facility], U. S.A. or other facility as designated by Manufacturer. There will be no charge for the initial training or the training materials, the contents of which will be determined by Manufacturer. Manufacturer will provide additional training at Manufacturer's standard fees for such training, or at such other fees as may be established by mutual agreement. Except as otherwise agreed, all such training shall be in the English language. Distributor will pay for all travel expenses related to such training, including airfare, meals, lodging and other living expenses.</p> | |
| <p>9. Additional Responsibilities of Distributor. In addition to all other requirements and obligations set forth in this Agreement, the Distributor agrees to accept the responsibilities and obligations set forth below. [These are optional and shall be reviewed to choose those which apply]</p> | |
| <p>9.1 Best Efforts. Distributor agrees to devote its best efforts to the distribution, promotion, sale, and servicing of the</p> | <p>See the comment above regarding use of the word "diligently." The more carefully drafted a "best efforts" clause in terms of</p> |

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| Products in the Territory and to protect and enhance the reputation of the Manufacturer and the Products. | specificity, the better chance there is for enforcement. |
| 9.2 Competitive Products. [Alternative 1:] The Distributor acknowledges that Products have an image for high quality and that it derives a benefit from being an authorized retailer with the right to sell such Products. To preserve this image for the highest quality and thereby enhance its own sales, and in consideration for the Manufacturer making available to the Distributor the Products at favorable prices, the Distributor agrees that during the term of this Agreement it shall not, either directly or indirectly, develop, produce, distribute or market products in the Territory which are competitive with existing Products or which are likely to adversely affect market opportunities in the Territory for future Products of the Manufacturer having functional characteristics similar to those of existing Products. | |
| [Alternative 2:] [If in an European Union country and a Nonexclusive Agreement] Distributor agrees to notify Manufacturer of any other manufacturer from which it is purchasing products competitive with the Products for resale to the Customers in the Territory during the term of this Agreement. | |
| 9.3 Sole Source of Products. Distributor agrees that it will only purchase Products from Manufacturer or Manufacturer's licensees authorized to sell Products to Distributor in the Territory as confirmed by Manufacturer. | |
| 9.4 Counterfeit or Improper Sales. Distributor agrees to notify Manufacturer immediately if it becomes aware of any counterfeit products of Manufacturer's Products or unauthorized sales of the Products and to assist Manufacturer at Manufacturer's cost in its attempts, if any, to halt such conduct. Manufacturer has the right, but not the obligation, to pursue any counterfeit or improper sales at its sole and absolute discretion. | Use of the word "immediately" may lead to ambiguity of interpretation; consider specific time frames. |
| 9.5 Investment in Capital. Distributor represents and agrees that, upon the expiration or termination of this Agreement that it will be able to easily utilize any buildings, equipment, installation, furnishings, or supplies in which it invests or any specially-trained personnel that it employs to perform this Agreement in other activities in which it is or can reasonably become involved. | |

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| 9.6 Office and Employee Expenses. Distributor agrees to maintain and pay all salary and other business expenses. | |
| 9.7 Insurance. Distributor shall procure and maintain continuously during the term hereof, comprehensive public liability insurance insuring both Distributor and Manufacturer against claims for bodily injury, death, property damage and any other Liability arising out of or as a result of Distributor's or Distributor's Agent's activities. Distributor shall not be required to purchase insurance coverage for any Liability resulting from Manufacturer's negligence. Such insurance shall be for an amount that is reasonable and customary in the business; provided, however, that Manufacturer may establish minimum amounts for such insurance by written notice to Distributor. Distributor shall provide to Manufacturer a certificate of insurance evidencing such coverage and showing Manufacturer as an additional named insured within ten (10) days after execution of this Agreement by both parties and prior to conducting any business pursuant to this Agreement. Distributor's failure to send such certificate to Manufacturer shall be considered a material breach of this Agreement. | |
| 9.8 Minimum Order. Distributor agrees that it will meet the Quarterly Minimum Purchase Requirement each Quarter for distribution in accordance with this Agreement. Failure to purchase the Quarterly Minimum Purchase Requirement during any Quarter after the first six (6) months of this Agreement shall constitute a material breach of this Agreement. | |
| 9.9 Marketing Reports. Within five (5) days of the beginning of each Quarter, Distributor shall submit to Manufacturer (in a form designated by Manufacturer) a written report including without limitation business trends in the Territory and Customer contacts. Once a year on the date determined by the Manufacturer and communicated to the Distributor in writing, Distributor shall submit to Manufacturer (in a form designated by Manufacturer) a written report including without limitation production and market forecasts for the Products in the Territory for the following year. | |
| 9.10 Sales Reports. Within five (5) days of the beginning of each month, Distributor shall submit to Manufacturer (in a form designated by Manufacturer) a written sales report. | |

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| 9.11 Other Sales Records. Distributor agrees to maintain and provide to Manufacturer at its request complete records as to maintenance, performance and reliability of all Product units sold in the Territory. | |
| 9.12 Business Leads. Distributor agrees to investigate diligently all leads with respect to potential Customers referred to it by any source, including Manufacturer. | Note again the word “diligently” as compared with the “best efforts” obligation. |
| 9.13 Inspection. Distributor agrees to permit Manufacturer to contact and/or visit Customers and to visit Distributor’s place of business and to inspect its inventories, service records, and other relevant documents upon reasonable notice. | Drafters also refer to “reasonable notice;” in some circumstances, specified time frames may be suitable. |
| 10. Additional Responsibilities of Manufacturer. In addition to all other requirements and obligations set forth in this Agreement, the Manufacturer agrees to accept the responsibilities and obligations set forth below. | |
| 10.1 Cooperation. Manufacturer agrees to cooperate with Distributor in the promotion and sale of the Products in the Territory. | |
| 10.2 Sales Literature. Manufacturer agrees to furnish Distributor catalogs, sales bulletins, samples and engineering data adequate to describe the Products in the English language without charge. Manufacturer will pay the shipping and mailing costs incurred in sending this material to the Distributor. Local taxes and import duties shall be paid by Distributor. Distributor agrees to translate such documents when necessary. | |
| 10.3 Financial Statements. Manufacturer, upon request, will furnish Distributor its current financial statements as made public in the U.S.A. | |
| 11. Duration and Termination. 11.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall expire on the Expiration Date, unless sooner terminated pursuant to Sections 11.2 through 11.4 below. There shall be no right to renew this Agreement. | |
| 11.2 Immediate Termination. This Agreement shall terminate after a party gives written notice of the occurrence of any of the following events, which termination shall be effective as of the date of such notice: (a) Failure by Distributor to comply with the requirements | The chosen law should be consulted for other adjustments or how termination of such agreements are handled. |

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| <p>set forth in Articles 12 or 13 of this Agreement. (b) The bankruptcy or insolvency of either party or the appointment of a receiver or trustee for assets of either party. (c) Determination by the Manufacturer that a conflict of interest exists due to any agreement or other relationship between the Distributor and any competitor of Manufacturer, which agreement or relationship has not been approved in writing by Manufacturer. <i>[If European Union country and nonexclusive agreement, delete everything after the word “exists “ to conform to Section 9.2]</i> (d) Determination by Manufacturer that the Distributor has lost key personnel who Manufacturer deems critical to the continued effective representation of Manufacturer in the Territory by the Distributor. (e) Determination by Manufacturer that ownership or a controlling interest of Distributor has changed.</p> | |
| <p>11.3 Thirty-Day Cure. This Agreement shall terminate thirty (30) days after a party gives the other party written notice of such other party’s default of any of its material obligations under this Agreement (except those obligations governed by the previous section) and the other party’s failure to cure such default within such thirty (30) days.</p> | <p>If there is to be a cure period, the parties should consider mutuality of obligation during the cure period. In other words, if one party is in breach and entitled to cure for thirty days, there may be occasions where the aggrieved party would not want to perform until it know the other party would cure. This should be specified.</p> |
| <p>11.4 Termination Without Cause. This Agreement shall terminate on the ninetieth (90th) day after written notice by one party to the other party of a desire to terminate the Agreement without cause.</p> | |
| <p>11.5 Orderly Changeover. Within thirty (30) days of the effective date of the expiration or termination of this Agreement for any reason, the Distributor shall provide Manufacturer with lists of Customers, location and purchasers of all Products sold which are still covered by the Warranty, current sales negotiations and other information reasonably necessary for an orderly changeover of distributorship arrangements in the Territory.</p> | |
| <p>11.6 Return of Materials. Upon the expiration or termination of this Agreement, the Distributor shall deliver immediately, at its expense, to the Manufacturer the originals and all copies of any Trade Secrets or Proprietary</p> | |

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| Information, as well as all demonstration equipment, sales literature, and other property of Manufacturer which has been provided to Distributor and which has not otherwise been disposed of in accordance with Manufacturer's instructions. | |
| 11.7 Effect on Prior Orders. [<i>Alternative 1:</i>] The expiration or termination of this Agreement shall not affect the rights and obligations of the parties that have vested prior to the effective date of such expiration or termination, including rights and obligations with respect to orders accepted by Manufacturer prior to such effective date. Final settlement for such orders shall be on the same basis as though this Agreement were continuing, and any obligations of one party to the other with respect to such orders shall remain in full force and effect until fully paid or discharged. | |
| [<i>Alternative 2:</i>] Manufacturer shall have the right at its option to (a) cancel any or all accepted Purchase Orders which provide for delivery after the effective date of termination, and/or (b) repurchase all or any part of the inventories of Products in Distributor's possession as of the termination date at Manufacturer's invoiced price to Distributor for such products, less depreciation calculated from the Delivery Date on a twenty-four (24) month, straight-line basis and less any appropriate amount for excessive wear and tear. Manufacturer shall exercise its option under this subsection by notifying Distributor in writing no later than thirty (30) days after the effective termination date. | |
| 11.8 Maintenance. If requested in writing by Manufacturer, Distributor shall continue to maintain Products installed at Customer sites in the Territory for a period of up to twelve (12) months following termination. During such period, Manufacturer shall continue to supply to Distributor, on the same terms and conditions as applied prior to the termination, all hardware, software upgrades and spare parts that are required to enable Distributor to provide such maintenance. | |
| 11.9 No Compensation. In the event of termination of this Agreement for any reason in accordance with the terms hereof, the parties hereby agree that, without prejudice to any other remedies with either party may have in respect of any breach of this Agreement, neither party shall be entitled | |

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| to any compensation or like payment from the other as a result of such termination. | |
| 12. Compliance with Laws. | |
| 12.1 U.S. Export Laws. The Products may require a license for export from the U. S. Government which demands advance disclosure of the ultimate consignee and all parties to the sale, and prohibits diversion, transshipment, or re-exportation out of the Territory contrary to U. S. law and regulations by any party. The Distributor hereby agrees to furnish all documentation required by the U. S. Government in connection with obtaining any required export license, and certifies that unauthorized diversion, transshipment or re-exportation of the Products in violation of the export license or any applicable law will not be permitted. | If there are other particular requirements based on the type of goods involved, of course that can be specified. |
| 12.2 Import Laws. The Distributor shall obtain all authorizations required to import the Products into the Territory and shall obtain any other regulatory approvals (except the export license) required. | |
| 12.3 Transfer of Technical Data. The Distributor represents and warrants that it will not transfer, directly or indirectly, any technical information received from the Manufacturer, nor any product produced from such technical information, except as set forth in this Agreement and in accordance with the Export Administration Act (as amended from time to time), or any successor provision or any other applicable laws, rules, or regulations pertaining to the export of data, information or products, as in effect in the United States or the Territory. | |
| 12.4 <u>Registration.</u> Distributor agrees to submit this Agreement to governmental authorities in the Territory for approval or registration as required by law, and to obtain such approval or registration within thirty (30) days after the Execution Date and prior to conducting any business. Distributor shall pay all costs and expenses for obtaining such registration or approval. Within sixty (60) days after the Execution Date, Distributor shall furnish the Manufacturer with written evidence that such approval or registration has been accomplished. Any translation of this Agreement from the English language to another language must be verified and approved by Manufacturer prior to | |

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| registration or filing with the governmental authorities in the Territory. | |
| 12.5 Foreign Corrupt Practices Act. Distributor hereby specifically represents and warrants that it will comply with all laws relating to the conduct of business practices which prohibit any gratuities or inducements. In particular, the distributor acknowledges that the Manufacture is subject to certain United States laws, including but not limited to the Foreign Corrupt Practices Act of 1977 and any amendments thereto, which apply to activities carried out on the Manufacturer's behalf outside the United States and agrees neither to take nor omit to take any action if such action or omission, as the case may be, might cause the Manufacturer to be in violation of any such law. Upon written notice from Manufacturer, the Distributor shall provide such information as the Manufacturer shall reasonably consider necessary to verify compliance by the Distributor with the provisions of this section. | There are other treaties or statutes that may be applicable, beyond the American one. The distributor may also want the manufacturer to comply. It is redundant to require a representation for a party to comply with law; making it a breach should be sufficient. |
| 12.6 Other Laws. In addition, Distributor shall comply with all other applicable laws, regulations, or other requirements of any countries which affect this Agreement and the Distributor's performance hereunder and, without limiting the generality of the foregoing, shall (a) furnish all documentation required by any such other country in connection with the exportation or importation of the Products and (b) maintain all registrations with governmental agencies, commercial registries, chambers of commerce, or other offices which may be required under local law in order to enable it lawfully to conduct its business and perform its obligations under this Agreement. | |
| 12.7 <u>Materiality.</u> Non-compliance by Distributor with the provisions of this Article 12 shall constitute a material breach of this Agreement. | |
| 12.8 Indemnification. Distributor agrees to indemnify and hold harmless the Manufacturer from losses and penalties resulting from Distributor's failure to comply with this Article 12. | What constitutes a "loss" may vary from jurisdiction to jurisdiction. Depending upon the transaction, specificity may be appropriate. |
| 13. Intellectual Property Rights. | |
| 13.1 Trademarks. (a) Manufacturer hereby grants to Distributor a non-exclusive, non-transferable, and royalty-free right and license to use the Trademarks in connection with the sale, | |

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| <p>rental, lease, or other distribution, promotion, advertising and maintenance of the Products for so long as such Trademarks are used by Distributor in accordance with Manufacturer's standards, specifications and instructions, but in no event beyond the term of this Agreement. Distributor shall afford Manufacturer reasonable opportunities during the term hereof to inspect and monitor the activities of Distributor in order to ensure Distributor's use of the Trademarks in accordance with Manufacturer's standards and instructions.</p> <p>(b) Distributor shall acquire no right, title or interest in such Trademark is other than the foregoing limited license and all rights in the Trademarks shall be in the name of Manufacturer, and Distributor agrees not to use any Trademarks as part of Distributor's corporate or trade name or permit any third party to do so without the prior written consent of Manufacturer. Distributor further agrees that it will not in any manner represent that it has ownership of the Trademarks and it will not register or attempt to register any such Trademarks under the laws of any jurisdiction, and will not at any time do, or cause to be done, any act or thing contesting, or in any way impairing or tending to impair, any part of Manufacturer's right, title, and interest in such Trademarks, whether or not they are registered in the jurisdictions in which Distributor is located or does business.</p> <p>(c) Manufacturer shall use its best efforts to register the Trademarks in any jurisdictions within the Territory in which Manufacturer, in its sole discretion, determines such registration to be necessary or useful to the successful distribution of the Products. In addition, in the event Manufacturer believes that it is advisable to enter into a registered user agreement, effect any filing or obtain any governmental approval or sanction for the use by Distributor of any of the Trademarks pursuant to this Agreement, the parties shall fully cooperate in order to do so. All expenses relating to the registration of the Trademarks in the Territory, as well as the making of filings or obtaining any governmental approvals for the use by Distributor of the Trademarks, shall be borne by Distributor.</p> <p>(d) Distributor shall promptly notify Manufacturer of any use by any third party of the Trademarks or any use by such third parties of similar marks which may constitute an</p> | |

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| <p>infringement or passing off of Trademarks. Manufacturer reserves the right in its sole discretion to institute any proceedings against such third party infringers and Distributor shall refrain from doing so. Distributor agrees to cooperate fully with Manufacturer in any action taken by Manufacturer against such third parties, provided that all expenses of such action shall be borne by Manufacturer and all damages which may be awarded or agreed upon in settlement of such action shall accrue to Manufacturer.</p> <p>(e) Distributor agrees to use the Trademarks so as to assure their continued validity and enforceability and in strict compliance with all applicable laws and regulations.</p> <p>In addition, Distributor agrees not to (i) remove or alter any patent numbers, trade names, trademarks, notices, serial numbers, labels, tags or other identifying marks, symbols or legends affixed to any Products or containers or packages, (ii) affix to the Products any other trade name or trademark, or (iii) use the Trademarks on any other products or articles, advertisement, business card, sales brochure, or other document available to the Customers, or the public without Manufacturer's prior written approval.</p> | |
| <p>13.2 Proprietary Information and Trade Secrets.</p> <p>(a) Distributor acknowledges that it and the Distributor's Agents will be entrusted with trade secrets and Proprietary Information that, the Manufacturer has developed and has a legitimate business interest in protecting. Pursuant therewith, the Distributor agrees to the following provisions.</p> <p>(b) Distributor will treat as confidential and will not, without the prior written approval of the Manufacturer, use (other than in the performance of its duties hereunder), publish, disclose, copyright or authorize anyone else to use, publish, disclose or copyright, (i) any information which constitutes Trade Secrets during the term of this Agreement and subsequent thereto, or (ii) Proprietary Information either during the term hereof or for three (3) years after expiration or termination of this Agreement.</p> <p>(c) Distributor further agrees that it will require each of the Distributor's Agents to be bound by the requirements of this Agreement and that, upon the request of the Manufacturer, Distributor will provide evidence satisfactory to Manufacturer of having fulfilled such requirement to Manufacturer.</p> | |

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| <p>13.3 Injunctive Relief. The Distributor agrees that its and any of the Distributor's Agents actual or threatened breach of the provisions of Section 13.1 or 13.2 shall constitute irreparable harm to the Manufacturer, and the Manufacturer, in addition to all other rights, shall be entitled to seek an injunction restraining Distributor or such person therefrom.</p> <p>Nothing herein shall be construed as prohibiting the Manufacturer from pursuing any other available remedy for such breach or threatened breach, including the recovery of damages from Distributor or such person. This provision shall remain in full force and effect in the event Distributor or such person should claim that the Manufacturer violated any of the terms of this Agreement and any other claims shall be pursued independently of the covenants set forth in this Section 13.3. 97. <i>[Optional: Manufacturer does not have to agree to indemnify Distributor for patent infringement, only if requested by Distributor]</i></p> | |
| 13.4 Patent Indemnification. | |
| <p>(a) Manufacturer shall, at its own expense, defend any suit instituted against Distributor which is based on an allegation that any Products manufactured by Manufacturer and sold to Distributor hereunder constitute an infringement of any patent of any country in the Territory and shall indemnify Distributor against any award of damage and costs made against Distributor by a final judgment of a court of last resort if it is determined therein that any such Product constitutes an infringement of any patent of any country in the Territory, provided that Distributor shall have given Manufacturer timely notice in writing of any notice or claims of infringement and permitted Manufacturer through Manufacturer's counsel to defend the same and given Manufacturer all available information, assistance and authority to enable Manufacturer to assume such defense.</p> <p>Manufacturer shall have control of the defense of any such suit, including appeals from any judgment therein and any negotiations for the settlement or compromise thereof, with full authority to enter into a binding settlement or compromise.</p> <p>(b) In the event that any Product is held to infringe and its use is enjoined, Manufacturer shall at its option and expense (i) procure for Distributor the right to continue</p> | |

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| <p>using such Product, (ii) provide the necessary instructions and documentation to modify such Product so that it no longer infringes, or (iii) grant Distributor a credit for such Product upon its return to Manufacturer, allowing for reasonable depreciation for deterioration, damage and obsolescence.</p> <p>(c) Notwithstanding the provisions of Section 13.1 hereof, Manufacturer shall have no Liability whatsoever to Distributor with respect to any patent infringement or claim thereof which is based upon or arises out of (i) the use of any Product in combination with other equipment not recommended or supplied by Manufacturer if such combination causes or contributes to the infringement, (ii) the use of any Product in a manner for which it was neither designed nor contemplated, or (iii) any modification of any Product by Distributor or any third party which causes the Product to become infringing.</p> <p>(d) Section 13.4 hereof states the entire liability of Manufacturer for or arising out of any patent infringement or claim thereof with respect to Products furnished to Distributor under this Agreement.</p> | |
| 14. Dispute Resolution. | |
| 14.1 <u>Negotiation.</u> The parties will first attempt to resolve any Dispute which arises in connection with this Agreement by negotiation by an officer of each company not directly involved with the subject matter of this Agreement. | The concept is to have some kind of “cooling off” period. The parties may wish to consider tighter time frames and limitations on when such efforts are over. |
| <p>14.2 <u>Arbitration.</u> <i>[Use this arbitration clause only if willing to arbitrate under AAA rules:]</i> If the parties cannot resolve the Dispute through negotiation within thirty (30) days or such longer period as may be agreed upon by the parties in writing, the parties agree and consent to resolve the Dispute solely through arbitration in accordance with International Arbitration Rules of the American Arbitration Association (“AAA”) at the offices of the AAA in <i>[location for Arbitration]</i>, U. S.A. in the English language. Each party shall appoint one arbitrator with the two arbitrators thus appointed selecting a third arbitrator. The arbitrators shall be empowered to resolve all Disputes, whether in contract or in tort, and to award any remedies authorized by this Agreement and any applicable statute or common law.</p> <p>All arbitration proceedings, including all evidence and statements, shall be confidential and shall not be used or</p> | There are multiple regimes for arbitration. The chosen one’s particular rules and recommended arbitration clauses should be consulted. The choice of law provision should also be respected, as to what additional procedures may be allowed to be included by the parties. |

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| <p>disclosed for any other purpose. Each party shall pay its own attorneys' fees and expenses; all other expenses of arbitration shall be equally divided between the parties; provided, however, the arbitrators shall have the authority to assess any of the foregoing costs against any party acting in bad faith.</p> <p>The award of the arbitrators shall be final and binding and is the sole and exclusive remedy of the parties regarding any Disputes hereunder except that nothing contained in this Agreement shall prohibit either party from seeking injunctive relief or equitable remedies in a court of competent jurisdiction of pursuing other equitable remedies. A judgment on the award may be entered in any court having jurisdiction thereof. The award shall be in U.S. Dollars and shall earn interest from the date of the award until satisfied in full at the United States prime interest rate as reported in the Wall Street Journal on the business day immediately preceding the date of the award. Should either party bring any legal action against the other with respect to any claim required to be arbitrated under this Agreement by any method other than arbitration, the other party shall be entitled to recover from such party all damages, costs, expenses and attorneys' fees incurred as a result of such action.</p> | |
| <p><i>[Use if unwilling to use AAA.]</i> Any Dispute which is not resolved by negotiation as provided above shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration ("LCIA"), which rules are deemed to be incorporated by reference, in London, England, in the English language. Each party shall appoint one arbitrator with the two arbitrators thus appointed selecting a third arbitrator.</p> <p>The arbitrators shall be empowered to resolve all Disputes, whether in contract or in tort, and to award any remedies authorized by this Agreement and any applicable statute and common law. All arbitration proceedings, including all evidence and statements, shall be confidential and shall not be used or disclosed for any other purpose. Each party shall pay its own attorney's fees and expenses; all other of arbitration shall be equally divided between the parties; provided, however, that the arbitrators shall have the authority to assess any of the foregoing costs against any party acting in bad faith. The award of the arbitrators shall be final and binding and is the sole and exclusive remedy</p> | |

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| <p>of the parties regarding any Disputes hereunder, except that nothing contained in this Contract shall prohibit either party from seeking injunctive relief or equitable remedies in a court of competent jurisdiction or pursuing other equitable remedies.</p> <p>The award may be confirmed and enforced in any court of competent jurisdiction. The award shall be in U.S. dollars and shall earn interest at the LIBOR rate (on the business day immediately preceding the date of the award) from the date of the award until the award is satisfied in full. The parties agree that if any question of law arises in the course of arbitration or with respect to any award made by the arbitral tribunal, no appeal or application shall be made to any court including without limitation appeal to the High Court under Section 1 of the Arbitration Act of 1979 or application under Section 2 of said Act.</p> | |
| <p>14.3 Governing Law. This Agreement shall be governed by and construed accounting to the laws <i>[OPTION 1 (IF UNDER AAA RULES):]</i> of the State of [state of governing law], U.S.A., not including its conflict of laws rules or principles, and applicable U. S. federal laws. <i>[OPTION 2 (IF UNDER LCIA RULES):]</i> of England and Wales, not including the rules and principals regarding conflict of laws. <i>[ADD REMAINING TERMS:]</i> The United Nations Convention on the International Sale of Goods shall not apply to this Agreement. Subject to the foregoing provisions in this article, the Distributor hereby answers to submit to the jurisdiction of the state and federal courts in the State of [state of governing law], U.S.A.</p> | <p>This scope of what law governs is important. If the parties want more than just the interpretation and enforcement of the contract to be arbitrated, that is, related tort claims. Note also the express disclaimer of applicability of the CISG. Note further the forum selection clause. If the parties want a mandatory clause and a particular place, it must be expressed in exclusive terms. The same would apply for arbitration.</p> |
| <p>15. Warranty</p> <p>15.1 Warranty or Products. Manufacturer warrants for a period of [warranty period] after the date of shipment of the Products by Manufacturer that such Products shall be free from defects in design, material and workmanship. Manufacturer's sole obligation in the event of a breach of such warranty shall be to repair or replace all defective Products or parts. In no event shall Manufacturer have any responsibility or bear any Liability for the cost of labor for the repair of any defective Products or parts, the removal of defective parts or the installation of replacement parts. All costs of shipment to Distributor any repaired or replaced</p> | |

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| Products or parts shall be borne by Manufacturer. If and as requested by Manufacturer, Distributor shall return at its cost all parts replaced under the said warranty to Manufacturer within thirty (30) days after such replacement. All such replaced parts shall become the property of Manufacturer upon their replacement. | |
| 15.2 Claims. Warranty claims hereunder must be made promptly and in writing; must recite the nature and details of the claim, the date the cause of the claim was first observed and the serial number of the Product concerned; and must be received by Manufacturer no later than thirty (30) days after the expiration of the warranty period. | |
| <p>15.3 Exclusions from Warranty. Manufacturer shall have no obligations under the warranty set forth in Section 15.1 in the event that:</p> <p>(a) Repair or replacement of the Products was necessitated in whole or in part by catastrophe or due to damage or mishandling by Distributor, its customer or any other party who is not an employee or representative of Manufacturer;</p> <p>(b) The Product or part was maintained or repaired other than by an authorized employee or representative of Manufacturer or Distributor or was modified in any manner without the prior written consent of Manufacturer; or</p> <p>(c) The Product or part was properly used or maintained in accordance with Manufacturer's then applicable operating and/or maintenance manuals, whether by Distributor or its customers.</p> | |
| 15.4 No Warranty on Software. All software provided to Distributor hereunder is on an "as is" basis without warranty of any kind. | |
| 16.16 LIMITATION OF LIABILITY. EXCEPT AS EXPRESSLY PROVIDED IN ARTICLE 15, THE MANUFACTURER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO DISTRIBUTOR, CUSTOMERS AND/OR SUBDISTRIBUTORS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF NON-INFRINGEMENT. FURTHERMORE, UNDER NO CIRCUMSTANCES SHALL MANUFACTURER BE RESPONSIBLE FOR INDIRECT, SPECIAL, INCIDENTAL, | |

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| <p>CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH OR RELATING TO THE USE OF ANY ITEMS OR SERVICES FURNISHED, WHETHER SUCH CLAIM IS BASED ON BREACH OF WARRANTY, CONTRACT, TORT OR OTHER LEGAL THEORY AND REGARDLESS OF THE CAUSES OF SUCH LOSS OR DAMAGES OR WHETHER ANY OTHER REMEDY PROVIDED HEREIN FAILS, NOR SHALL MANUFACTURER' S TOTAL LIABILITY EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID BY THE DISTRIBUTOR TO THE MANUFACTURER FOR PRODUCTS PURSUANT TO THIS AGREEMENT.</p> | |
| <p>17. Additional Indemnification. Each party shall indemnify and hold the other party harmless, including their directors, officers, employees, agents, subsidiaries, affiliates, subcontractors and assignees, or any of them, from and against any Liability occasioned by, arising out of, resulting from, caused by, or directly or indirectly relating to this Agreement, for which the other party is neither wholly nor contributorily responsible.</p> | <p>140.</p> |
| <p>18. Miscellaneous.</p> | <p>141.</p> |
| <p>18.1 Force Majeure. Manufacturer will exercise every reasonable effort to meet any quoted or agreed upon shipment date or dates. Manufacturer shall not, however, be liable for any loss or damage, including consequential damages, due to delays or failure to ship resulting from any cause beyond its reasonable control, such as, but not limited to, securing necessary export licenses, compliance with government laws or regulations, acts of God, acts or omissions of the Distributor, acts of civil or military authority, judicial action, defaults of vendors, labor disputes, failure or delays in transportation, embargoes, wars or riots, the inability of Manufacturer or its vendors to secure adequate material, labor or facilities, or the inability of carriers to make scheduled deliveries.</p> | <p>Compare the language “every reasonable effort” with the words “diligent efforts” and with “best efforts.” Consider including “terrorist acts” as such events are not necessarily considered “acts of war.”</p> |
| <p>18.2 No Waiver of Rights. A failure by one of the parties to this Agreement to assert its rights for or upon any breach of this Agreement shall not be deemed a waiver of such rights, nor shall any such waiver be implied from the acceptance</p> | <p>The parties may also wish to address whether acceptance of a partial payment does not mean that</p> |

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| of any payment. No waiver in writing by one of the parties hereto, with respect to any right, shall extend to or affect any subsequent breach, either of like or different kind, or impair any right consequent thereon. | there has been an accord and satisfaction for a disputed claim. |
| 18.3 <u>Agreement</u> . This Agreement constitutes the entire Agreement between the Manufacturer and the Distributor and supersedes any prior or contemporaneous agreements between Manufacturer and Distributor whether written or oral. | |
| 18.4 Amendments. No agreement varying or extending the terms of this Agreement shall be binding on either party unless covered by an addendum signed by an authorized representative of each Party. | |
| 18.5 <u>Non-Assignable</u> . This Agreement and/or the rights granted hereunder shall not be assignable or transferable by Distributor, directly or indirectly, in whole or in part without the written consent of Manufacturer. | If the parties want such a transfer in violation of this clause to be void, rather than voidable, it should be specified. |
| 18.6 Notices and Other Information. All notices given pursuant to this Agreement shall be in the English language. Notices shall be deemed effective on the day they are dispatched by certified air mail or express courier requiring signature on receipt to the other party at such party's Notice Address. | The parties should consider specifying logistics that accommodate changes in technology. |
| 18.7 Severability of Provisions. The invalidity under applicable law, regulations, or other governmental restrictions or prohibitions of any provisions of this Agreement shall not affect the validity of any other provisions of this Agreement, and in the event that any provision hereof be determined to be invalid or otherwise illegal, this Agreement shall remain effective and shall be construed in accordance with its terms as if the invalid or illegal provision were not contained herein. | |
| 18.8 Effective Date. This Agreement shall become effective as of the Effective Date upon acceptance in writing by the Manufacturer at its office in [place of acceptance], U. S.A. | |
| 18.9 Gender. As used herein, the singular shall include the plural and the plural may refer to only the singular. The use of any gender or the terms "it" or "its" shall be applicable to all genders, corporations, partnerships, and other entities. | |

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| 18.10 No Third-Party Benefit. Nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any person, firm, or corporation, other than the parties hereto, any remedy or claim by reason of this Agreement or any term, covenant or condition hereof, all of which shall be for the sole and exclusive benefit of the parties hereto. | |
| 18.11 Survival. All provisions which would naturally survive the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement. | |
| 18.12 Headings. The headings as to contents of particular sections are inserted only for convenience and shall not be construed as part of this Agreement or as a limitation on the scope of any terms or provisions of this Agreement. | |
| 18.13 <u>Publicity</u> . This Agreement is confidential and neither party shall issue press releases or engage in other types of publicity of any nature dealing with the commercial and legal details of this Agreement without the other party's prior written approval shall not be unreasonably withheld. Approval of such disclosure shall be deemed to be given to the extent such disclosure is required to comply with governmental rules, regulations or other governmental requirements. In such event, the disclosing party shall furnish a copy of such disclosure to the other party. | |
| 18.14 Counterparts. This Agreement may be executed in two or more counterparts in the English language, and each such counterpart shall be deemed an original hereof. In case of any conflict between the English version and any translated version of this Agreement, the English version shall govern. All correspondence, documents and communications of any kinds made under this Agreement shall be made in the English language. | |

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year shown below.

[NAME OF DISTRIBUTOR:]

BY: _____
NAME: _____
TITLE: _____

[NAME OF MANUFACTURER:]

BY: _____
NAME: _____
TITLE: _____

EXHIBIT A DEFINITIONS

“Annual Minimum Purchase Requirement” shall mean the amount set forth in Item 7(b) of the Term Sheet.

“Agreement” shall mean the agreement between the Manufacturer and Distributor and all the exhibits attached hereto.

“Customers” shall mean the actual or potential end-users of the Products who purchase the Products in the Territory.

“Delivery” shall mean the time when Products are made available to Distributor at Manufacturer’s facility in the U.S.A. or abroad, as determined by Manufacturer.

“Discount” shall mean the discount specified in Item 5 of the Term Sheet.

“Dispute” shall mean any claim or controversy arising out of this Agreement or the breach, termination or validity thereof involving either of the parties or its affiliates and the officers, directors and employees thereof, including any claims or controversies which could otherwise be submitted to a court of competent jurisdiction.

“Distributor” shall mean the party identified in the first paragraph of the Agreement above as the Distributor.

“Distributor’s Agents” shall mean Distributor’s shareholders, officers, directors and employees who act on behalf of the Distributor with respect to the Agreement.

“Effective Date” shall mean the date specified in Item 1 of the Term Sheet, or if later, the date on which Distributor has received all necessary government approvals in the Territory for the performance of its obligations hereunder and for the remittance of funds to Manufacturer.

“Expiration Date” shall mean the date specified in Item 2 of the Term Sheet.

“Liability” shall mean any and all liability, losses, damage, expenses (including attorneys’ fees), costs, claims, suits, demands, actions, causes of action, proceedings, judgments, assessments, and deficiencies and charges.

“Manufacturer” shall mean [name of manufacturer], a [state of incorporation], U.S.A. corporation.

“Notice Address” shall be the address of each party as set forth in Item 8 of the Term Sheet to which the other party shall send notice.

“Order Address” shall be the address for placing orders as set forth in Item 7 of the Term
“Product” or “Products” shall mean the products manufactured by Manufacturer under its Trademarks which Manufacturer shall make available to Distributor from time to time for

distribution in accordance with the Sheet, or such other address as designated in writing by the Manufacturer.

“Product” or “Products” shall mean the products manufactured by Manufacturer under its Trademarks which Manufacturer shall make available to Distributor from time to time for distribution in accordance with the terms and conditions of the Agreement, including, but not limited to, those products described in Item 4 of the Term Sheet. The Products specifically exclude, without limitation, [products excluded].

“Proprietary Information” shall mean any and all information, whether or not in tangible form, of a confidential, proprietary or secret nature belonging to the Manufacturer or licensed by it, other than Trade Secrets, which is material to the Manufacturer and not generally known by the public, including all information annotated by a legend, stamp or other written identification as “Proprietary Information”.

“Purchase Orders” shall mean the written purchase orders used by the Distributor to submit orders for Products to the Manufacturer.

“Quarter” shall mean each three month period beginning on January 1, April 1, July 1 and October 1, during the term of the Agreement, provided that the first Quarter shall consist of the period from the Effective Date to the sooner of March 31, June 30, September 30, or December 31.

“Quarterly Minimum Purchase Requirement” shall be that amount set forth in Item 6(a) of the Term Sheet.

“Suggested International Wholesale Prices” shall mean those prices for the Products as set forth in Exhibit C.

“Term Sheet” shall mean the Term Sheet attached hereto as Exhibit B.

“Territory” shall mean the territory specified in Item 3 of the Term Sheet.

“Trade Secret” shall mean any and all information, whether or not in tangible form, belonging to the Manufacturer or licensed by it which derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and which is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Without limiting the generality of the foregoing, Trade Secrets shall include but are not limited to marketing plans, price lists, product costs, product strategies, technical or nontechnical data, formulae, techniques, drawings, designs, processes, financial data, financial plans, product plans, marketing plans, advertising plans, lists of actual or potential customers or suppliers, and related items.

“Trademark” shall mean any and all trademarks, logo types and trade names of Manufacturer including, but not limited to, those names listed in Item 11 of the Term Sheet as the same may be modified by Manufacturer from time to time to include additional trademarks, logo types and trade names.

**EXHIBIT B
TERM SHEET**

EFFECTIVE DATE OF AGREEMENT: _____

EXPIRATION DATE OF
AGREEMENT: _____

TERRITORY OF THE DISTRIBUTOR: _____

PRODUCTS: _____

DISCOUNT: Percent (_____%) off the Suggested International Wholesale Prices.

MINIMUM PURCHASE REQUIREMENT:

| | A. QUARTERLY | | B. ANNUAL |
|--------------|-------------------|---|----------------|
| Year 1: U.S. | _____ \$ _____ | X | _____ \$ _____ |
| Year 2: U.S. | _____ \$ _____ | X | _____ \$ _____ |
| Year 3: U.S. | _____ \$ _____ | X | _____ \$ _____ |
| Year 4: U.S. | _____ \$ _____ | X | _____ \$ _____ |
| Year 5: U.S. | _____ \$ _____ | X | _____ \$ _____ |

ADDRESS FOR PLACEMENT OF ORDERS: _____

SERVICE OF NOTICE: _____

Manufacturer's Address: _____

Distributor's Address: _____

TRADEMARKS: _____

EXHIBIT C
SUGGESTED INTERNATIONAL WHOLESALE PRICES

FIELD GUIDE CONTRIBUTING AUTHORS

This Field Guide has been made possible only through the generous contributions of a number of dedicated members of the International Sales and Franchising Committees of the International Bar Association when doing the first edition of this Field Guide (then called “Checklist”) in 2002, 2003 and when updating and expanding the renamed Field Guide in 2011. Their names and contact details are listed below. If you would like to contribute to the next update of the Field Guide, furnish a specimen document for use in the Field Guide or provide country-specific or other commentary or any of its components, please contact either the Special Projects Officer of the International Sales Committee Riccardo Cajola or the Co-Chairs of the International Sales Committee Barton Selden and Sönke Lund, as identified below.

EDITORS AND AUTHORS 2015

Barton Selden
Co-Chair International Sales Committee
Taulia Inc.
201 Mission Street, Suite 900 San Francisco, CA 94105 - USA
T: +1-415-376-8280 x7071
E: bart.selden@taulia.com

Sönke Lund
Co-Chair International Sales Committee
Monereo Meyer & Marinello Abogados
Passeig de Gràcia 98 - 08008, Barcelona, Spain
T: +34 (93) 487 5894
E: slund@mmmm.es

Riccardo G. Cajola (editor 2015 version)
Special Projects Officer International Sales Committee
Cajola & Associati
Via Gioacchino Rossini, 5 – 20122 Milan, Italy
T: +390276003305
E: rgc@cajola.com

Dominik Ziegenhahn
Special Projects Deputy Officer International Sales Committee
Rasche von Knobeldorff Heiser Rechtsanwälte
Wexstraße 16 – 20355 Hamburg, Germany
T: +49 (0)40 866 433-0
E: ziegenhahn@rrkh.de

Dirk Schwenn
Website Officer International Sales Committee
Schomerus Rechtsanwälte
Deichstrasse 1 - 20549 Hamburg, Germany

T: +49 (0)40 37601-00
E: dirk.schwenn@schomerus.de

Dalton Albrecht
Website vice Officer International Sales Committee (co-author)
Couzin Taylor LLP
Ernst & Young Tower, 222 Bay Street
P.O. Box 143, Toronto ON – Canada M5K 1H1
T: +1 416 943 3070
E: Dalton.Albrecht@ca.ey.com

Pieter Tubbergen
Chair Regional Developments Sub-committee (co-author)
Schaap Advocaten Notarissen
Parklaan 17, PO Box 23052
Rotterdam, The Netherlands 3001 KB
T: +31(0)10 277 03 91
E: tubbergen@schaap.eu

EDITORS & AUTHORS 2013:

Steven M. Richman, Esq.
Co-Chair International Sales Committee
Duane Morris LLP
1540 Broadway NY-10036-4086 New York, USA
T: 609-631-2426
E: smrichman@duanemorris.com

Nicole Van Crombrugghe
Co-Chair International Sales Committee
LVP Law
6 Drève des Renards / Vossendreef box 1
1180 Brussels, Belgium
T: +32 (2) 373 0910
F: +32 (2) 375 4525
E: nicole.vancrom@lafili-law.be

Special Projects Officer
International Sales Committee
Barbara Helene Steindl (editor 2013 version)
Brauneis Klauser Prändl Rechtsanwälte GmbH
Bauernmarkt 2, 1010 Vienna Austria
T: +43-1-5321210
E: b.steindl@bkp.at

Javier Canosa
Website and E-Bulletin Officer International Sales Committee

Canosa Abogados
Montevideo 711, C1019ABO Buenos Aires, C.F., Argentina
T: +54 (11) 5252 2462
F: +54 (11) 5252 2463
E: jc@canosa.com.ar

Christie Helmer
Membership Officer International Sales Committee
Miller Nash Graham and Dunn LLP
111 SW Fifth Avenue, Suite 3400
Portland, Multnomah – OR, 97204 USA
T: +1 (503) 205 2464
F: +1 (503) 224 0155
E: chris.helmer@millernash.com

Merril Keane
Newsletter Deputy International Sales Committee
Miller Nash Graham & Dunn LLP
Suite 3400 US Bancorp Tower, 111 SW Fifth Avenue
Portland – OR, USA
T: +1 97204-3699
E: merril.keane@millernash.com

Walter Lion
Chair Commodities and Derivatives Sub-committee
International Sales Committee
McLaughlin & Stern LLP
260 Madison Avenue New York, NY 10016, USA
T: (212) 448-1100
E: wlion@mclaughlinstern.com

Sönke Lund
Vice-Chair International Sales Committee
Monereo Meyer & Marinello Abogados
Passeig de Gràcia 98 - 08008Barcelona, Spain
T: +34 (93) 487 5894
F: +34 (93) 487 3844
E: slund@mmmm.es

Cristina Martinetti
Chair Agency and Distribution Sub-Committee
International Sales Committee
Elexi
Corso Galileo Ferraris, 71 – 10128 Turin, Italy
T: +39 011 0342222
F: +39 011 0341531
E: cristina.martinetti@elexi.it

Robin Philip
Vice-Chair Complex Acquisitions Sub-committee
International Sales Committee
Bruun & Hjejle
Nørregade 21, 1165 København K, Denmark
T: +45 33 34 50 00
E: rp@bruunhjejle.dk

George Ribeiro
Chair Complex Acquisitions Sub-committee
International Sales Committee
Ribeiro Hui
1303-05 13th Floor, Wilson House
19-27 Wyndham Street – Central, Hong Kong SAR
E: g.ribeiro@ribeirohui.com

Dirk Schwenn
Chair International Conventions and Trade Agreements Sub-committee
International Sales Committee
Schomerus Rechtsanwälte
Deichstrasse 1 - 20549 Hamburg, Germany
E: dirk.schwenn@schomerus.de

Barton Selden
Vice Chair International Sales Committee
Gartenberg Gelfand Hayton & Selden LLP
220 Montgomery Street, 15th Floor
San Francisco, CA 94104
T: 415-788-6230
E: bselden@gghslaw.com

Pieter Tubbergen
Chair Regional Developments Sub-committee
International Sales Committee
Schaap Advocaten Notarissen
Parklaan 17, PO Box 23052
Rotterdam, The Netherlands 3001 KB
E: tubbergen@schaap.eu

Carlos Valls
Treasurer International Sales Committee
Iuris Valls Abogados, Barcelona
T: +34 (93) 368 0420
F: +34 (93) 237 5555
E: carlos.valls@iurisvalls.com