

Background to negotiation of a purchase agreement

Information known by both parties

The buyer, based in the US, is a transportation company (CSX Transportation Inc). The prospective seller, based in Japan, is an established manufacturer of HGVs. The parties are looking to negotiate an agreement for the supply of HGVs by the seller.

The parties are due to meet in order to negotiate the terms of the agreement between them. In anticipation, the buyer has sent the prospective seller its standard purchase agreement (annexed).

You are expected to negotiate the following conditions:

1. Title and risk of loss (clause 4)
2. Inspection and acceptance (clause 6)
3. Force majeure (clause 16)
4. Laws (clause 22(a))
5. Arbitration (clause 23)

Seller fact pattern

You are willing to compromise on force majeure, laws and arbitration on the proviso that the buyer agrees on a modification to the clauses entitled 'title and risk of loss' and 'inspection and acceptance' (in the purchase agreement).

As a seller, you would like risk to pass when the goods are on board the first carrier. As a seller whilst you are prepared to provide an inspection report to the buyer, you do not want to grant the buyer the right to inspect:

- A sample of the goods at your facilities before full production; or
- Each separate lot of the Goods at your premises upon completion of production