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# SHETRADES MENA GUIDEBOOK TRAINING MATERIALS

## HOW TO EXPORT GUIDE: EXPORT CONTRACTS



This exporting guide has been produced by SheTrades MENA  
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# **EXPORT CONTRACTS**

## The Type of Contracts to be Used

A written contract helps to solve disputes that may arise during the execution of a business transaction ensuring that the rights and duties of the parties involved in the trade deal are safeguarded. To guarantee the smooth running of the business transaction, it is necessary to draft the contract carefully by including comprehensive and precise terms and conditions on all important aspects of the trade deal.

The obligations arising out of a contract for the sale of goods might differ according to the law which will apply to the contract. For this reason, some internationally accepted contracts and forms have been prepared by the United Nations (UN) and the International Chamber of Commerce (ICC). Selecting these forms therefore make it easier for the exporter to handle the contractual part of export and avoid conflicts of law that are always cumbersome.

ICC has developed standard terms of delivery (Incoterms 1990) which can be incorporated into contracts for the international sale of goods. Each Incoterm provides clear obligations for each party. It must be said, however, that some countries will apply their own law. In this respect, the United Nations Commission for International Trade Law (UNCITRAL) has prepared a model law for international sale goods, which is known as the Vienna Sales Convention which has been ratified by many countries. It is a very clear and simple instrument. The convention will automatically apply if the buyer and the seller are nationals of countries which have ratified the Convention. The Convention can also apply if the parties agree upon its application in the contract.

## Aspects to be Included in a Contract

It is difficult to draw up a comprehensive contract that can be standardised for all export transactions. However, the exporter and the importer should be aware of certain minimum general requirements when drawing up an export contract. The clauses covering these requirements will make up the basic elements of the contract and are outlined below:

**Name and addresses of the parties:** The parties involved should be clearly stated in the contract.

**Product, standards, and specifications:** The export contract should explicitly state the product name, as well as technical names if there are any; sizes, in which the product is to be supplied (if this is required); the applicable national or international standards, and specifications; specific buyer requirements; and sample specifications.

**Quantity:** The quantity should be clearly stated in figures and words. The units of measure should be specified.

**Inspection:** Although a number of goods are now subject to pre-shipment inspection by designated agencies, foreign buyers may stipulate their own inspection agencies and conditions for inspection. Therefore, the parties must clearly state the nature, manner and focus of the inspection envisaged as well as the inspection agency.

**Total value of the contract:** The total value of the contract should be put in both words and figures, and the currency should be specified.

**Terms of delivery:** One of the Incoterms 2000 should be stated in the contract. For Example: EXW (Ex Works). The seller's obligation is fulfilled when the buyer has been notified, and the goods (suitably packed for export) are available to the buyer, at the named place within the time specified. The buyer is responsible for all costs and risks, including the loading of the goods from the named/specified point.

**Taxes, duties and charges:** The prices quoted by the seller may be inclusive of taxes, duties, and charges. Levies if any, in the country of importation, may be the buyer's responsibility. Responsibility for payment of all such taxes should be clearly specified in the contract.

**Period of delivery, shipment, etc.:** The place of dispatch and delivery should be clearly specified, and also whether the period of delivery will run from the date of the contract or the the date of notification etc.

**Part-shipment, trans-shipment and consolidation of cargo:** The contract should explicitly state whether the parties to the contract have agreed on part-shipment or trans-shipment. The contract should also indicate the port of trans-shipment and the number, if any, of partial shipments agreed. If the goods are likely to be shipped under a "consolidation of export cargos" scheme, this should be mentioned in the contract.

**Packaging, labelling and marking:** Packaging, labelling, and marking requirements should be clearly stated in the contract.

**Terms of payment: amount, mode and currency.** When quoting different payment terms, the exporter should specify whether the prices are based on the current rate of exchange of UAE Dirham, or on the basis of another currency (e.g., US \$). Fluctuations in the rate of exchange should be quoted as well.

**Discounts and commissions:** The contract should specify the amount of discount or commission to be paid and by whom (i.e. by the exporter or by the importer). If required, the basis of calculation of commission and rate to be applied should also be clearly stipulated. Discount or commission rates may or may not be included in the export price agreed upon by the exporter and importer.

**Licences and permits:** Import licences may be difficult to obtain in the buyer's country. Parties to the contract should therefore clearly state whether the export transaction will require any export or import licenses, and whose responsibility and expense it will be to obtain them.

**Insurance:** A contract should provide for the insurance of goods against loss, damageduring transportation. The contract should specify the type of risk covered and the extent of coverage.

**Documentary requirements:** Documents required for international trade transactions can be divided into four broad categories:

- Documents required for exportation and subsequent importation of goods.
- Documents needed by the buyer for accepting delivery of the goods.
- Documents relating to payment.
- Special documents required by the nature of the goods, and conditions of sale (e.g., certain engineering goods may involve documents relating to erection, repair, and maintenance). Common export documents include the bill of exchange, commercial invoice and other invoices, bill of lading or air way bill, insurance policy and letter of credit.

**Product guarantee:** The period of time in which the guarantee is valid should be fixed.

**Delay in delivery:** The contract should define the damages due to the buyer from the seller in the event of late delivery owing to reasons other than *force majeure*.

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

**Remedial action:** As defaults in contractual obligations by any of the parties can occur, it is always advisable to include in the sale or purchase contract certain specific remedial actions. These remedial actions should reflect the mandatory provisions of the law applicable to the contract.

**Applicable law:** The contract should state the law of the country, which is to govern the contract.

**Arbitration:** The contract should include an arbitration clause to facilitate the amicable and quick settlement of disputes or differences that may arise between the parties.

**Signature of the parties:** The signing of the contract indicates the agreement of both parties to the terms and conditions of the contract.

The passing of ownership is still a matter of uncertainty in international trade. It is not as many believed, linked to the transfer of bill of lading when shipment is by sea. In the case of road, rail or air transport, a bill of lading is not provided. It would therefore be prudent to have a reservation of ownership clause in the sales contract, to the effect that the exporter reserves ownership of the goods sold until he has received the purchase price.



# Incoterms

Incoterms (International Commercial terms) is to provide a set of international rules for the interpretation of the most commonly used trade terms in foreign trade. Thus, the uncertainties of different interpretations of such terms in different countries can be avoided or at least reduced to a considerable degree. The scope of Incoterms is limited to matters relating to the rights and obligations of the parties to the contract of sale with respect to the delivery of goods. Incoterms deal with a number of identified obligations imposed on the parties and the distribution of risk between the parties.

Incoterms are most commonly used in international contracts, thus reflecting on the sales invoice. It ensures that the buyers and sellers understand each other's expectations and responsibilities. They are created by the ICC International Chamber of Commerce, and protected by ICC copyright. Also the contracts are reviewed every 10 years and regularly updated to keep pace with the ever-changing world of international trade.

## Contract of Carriage

The Incoterm utilized in a transaction will dictate which party is responsible for each transportation segment and its corresponding contract of carriage. The Incoterm that is utilized can affect the title passage in foreign trade. As a general rule, Pre-Carriage, Main-Carriage and On-Carriage should be utilized in connection with the Incoterms.

## Incoterms – Contract of Carriage

**Pre-Carriage:** the transportation segment from the seller's location to the point where the cargo would leave from the seller's side. For example, to arrange for pre-carriage, you would make a contract with an inland carrier to make delivery to a port or airport.

**Main-Carriage:** the transportation segment from the seller's side to the buyer's side. For instance, to arrange for main-carriage, you would contract for ocean or air carriage.

**On-Carriage:** the transportation segment from the point of arrival (on the buyer's side), to the designated ultimate receiver. Example, to arrange for on-carriage, you would contract with an inland carrier to make delivery from the port/airport of arrival to the ultimate receiver. In total 13 Incoterms have been defined, which are grouped into four diverse categories, applicable for sea and inland waterway transport or for all modes of transport.

## Usually used Incoterms

- EXW : Ex Works (named place)
- FCA : Free Carrier (named place)
- FAS : Free Alongside Ship (named place)
- FOB : Free On Board (named port of shipment)
- CFR : Cost and Freight (named port of destination)
- CIF : Cost, Insurance and Freight (named port of destination)
- CPT : Carriage Paid To (named place of destination)
- CIP : Carriage and Insurance Paid To (named place of destination)
- DAF : Delivered at Frontier (named place)
- DES : Delivered Ex Ship (named port of destination)
- DEQ : Delivered Ex Quay (named port of destination)

DDU : Delivered Duty Unpaid (named place of destination)

DDP : Delivered Duty Paid (named place of destination)

## General Groups of Terms Incoterms –

**'E' Term:** seller's obligation (& control of shipment) is at its minimum

**EXW (Ex Works)** The seller's obligation is fulfilled when the buyer has been notified, and the goods (suitably packed for export) are available to the buyer, at the named place within the time specified. The buyer is responsible for all costs and risks, including the loading of the goods from the named/specified point.

**'F' Terms:** require the seller to deliver the goods for carriage as instructed by the buyer.

**FCA (Free Carrier):** Seller's obligation ends when they deliver the goods, cleared for export, to the carrier (any mode of transport) nominated by the buyer at the named place. The buyer must contract at his own expense the carriage of the goods from the named place.

**FAS (Free Alongside Ship)** Seller's obligation and risk to deliver the goods alongside the vessel at the named port of shipment.

Seller must clear the goods for export. Term used for sea or inland waterway transport only.

**FOB (Free On Board):** The seller's obligation is fulfilled when the buyer has been notified and the goods have passed over the ship's rail on board the vessel, at the named port.

**'C' terms:** require the seller to contract carriage on usual terms at his own expense

**CFR (Cost and Freight):** The seller's obligation is fulfilled when the goods are delivered to a carrier, pass the ship's rail, and the contract of carriage is arranged, freight prepaid to the named port.

**CIF (Cost, Insurance and Freight):** The seller's responsibility is fulfilled when the goods are delivered to a carrier, pass the ship's rail, the contract of carriage is arranged, freight prepaid to the named port, and insurance is obtained on the cargo.

**CPT (Carriage Paid To):** The seller's responsibility is fulfilled when the goods are delivered to a carrier, pass the ship's rail, the contract of carriage is arranged, freight prepaid to the named place of destination.

**CIP (Carriage and Insurance Paid To):** The seller's obligation is fulfilled when the goods are delivered to a carrier, and the contract of carriage is arranged, freight prepaid to the named place of destination, and insurance is obtained on the cargo.

**"D" terms:** seller's obligation & control at its maximum

**DAF (Delivered At Frontier):** The seller's obligation ends when they have delivered the goods to the disposal of the buyer on the arriving means of transport not unloaded, cleared for export, but not cleared for import and the named point and place at the frontier but before the customs border of the adjoining country.

**DES** (Delivered Ex Ship):The seller's obligation ends when they have delivered the goods to the disposal of the buyer on board the ship, cleared for export, not cleared for import but delivered at the named port of destination before discharging.

**DEQ** (Delivered Ex Quay):The seller's obligation ends when they have delivered the goods to the disposal of the buyer on board the ship, cleared for export, however not cleared for import yet delivered at the named port of destination after discharging goods off the vessel at the quay (wharf).

**DDU** (Delivered Duty Unpaid):The seller's obligation is fulfilled when the goods have been made available to the buyer at the named place of destination –uncleared for importation.

**DDP** (Delivered Duty Paid):The seller's obligation is fulfilled when the goods have been made available to the buyer at the named place of destination – cleared for importation.

All Incoterms must specify a place (port of shipment, port of destination etc.). Some Incoterms (notably FOB, CFR and CIF) are reserved for sea or inland waterway transport only. They should not be used for air, road or rail transport (the equivalent terms for these modes of transportation are FCA, CPT and CIP).



## Invoices

There are a number of different invoices the most common ones are:

### Commercial Invoice

It is the most widely used invoice in commercial transactions. It is the statement of account of sale rendered by the seller to the buyer and is prepared on a new aligned document format. The invoice is usually made out for the full realisable amount of goods as per trade terms, the exception being the balance which is not withdrawn nonetheless is shown as a deduction from the full amount. If the export documents are drawn under a letter of credit (L/C), unless otherwise stated in the L/C, commercial invoice must be made out in the name of the applicant for the credit and the description of the goods in the commercial invoice must correspond with the description in the credit. Similarly, it should be noted that unless otherwise stipulated in the credit, banks may refuse commercial invoice issued for amount in excess of the amount permitted by the credit. The invoice should be strictly according to the contract of sale and should be on the paper of the seller and must be signed by him or by the person acting on his behalf. The general rules for **preparing an invoice under a L/C** are:

- It should be duly dated and manually signed by him and in sufficient copies as per the L/C terms.
- It should be made out in the name of opener of the L/C (buyer) unless otherwise stated.
- The description of the goods must strictly correspond to that stated in the L/C. The invoice may show additional description of the goods which could be in conflict with the description as per the L/C.
- In all other documents, the goods may be described in general terms, but not inconsistent with the description in the L/C.
- Terms of shipment, e.g. CIF/C&FIFOB etc. should be as called for in the L/C.
- Other particulars such as shipping marks, quantity measurement details, gross and net weights, port of shipment destination, name of the vessel, bill of lading, number and date stated in the invoice should strictly match with the details given in other documents, especially the shipping documents.
- It should be certified by bodies like Chamber of Commerce, Consulate, buyer's local representative, etc.
- Invoice value should not exceed the L/C amount and should be on the basis of agreed price and quantity. The currency should also be mentioned in the L/C. These particulars of the invoice should also agree with the draft.
- Should quote import licence number, sale contract number. etc. where required as per L/C terms.
- Invoices should contain the various certifications from the seller, if the L/C so specifies.
- The invoice should not show any deduction or addition not authorised by the credit.

### Consular Invoice

Consular Invoice is the document required by certain countries and needs to be submitted for certification to the Embassy of the Country concerned. The exporter has to pay to the Embassy concerned a fee for the certification of this invoice. A consular invoice is required to be prepared in a prescribed format and it should be signed and certified by the consul of the importing country located in the country of export. The main purpose of a consular invoice is to enable the

importer's country to collect accurate and authenticated information about the value, quality, source etc. of the import for assessing import duties and for other statistical purposes. It helps the importer to get clearance of the goods through the customs, without any undue delay. The consular invoice forms are generally available at the importing country's consuls and is certified against payment of some fees.

Consular invoices should be made in multiple copies as per the buyer's requirements.

### Customs Invoice

It is generally devised on a special form presented by the customs authorities of the importing country and helps for allowing entry of goods in the importing country at preferential tariff rates. The invoice forms are generally available at the consular office of the importing country and are required to be signed and witnessed.

## Unacceptable Delivery

Generally, the exporter is likely to face two types of disputes with the buyer:

- The buyer refuses to pay - to prevent this, a letter of credit should always be used.
- The buyer complains about the quality of the goods - to avoid this, a certificate of quality should be obtained before shipping the goods. Although this does not totally eliminate quality disputes between the buyer and seller, it does serve as a preliminary quality check.

It must be emphasised that once the goods have been shipped and the appropriate documents given to the bank, under a letter of credit L/C arrangement, payment will be made. In any international sale, the exporter should make sure that the proper documentation is complete and correctly made out to ensure problem free payment by the bank. In most cases of disagreement, it is left to the buyer to sue for reimbursement. In this respect, it is recommended that the contract provides for either a jurisdiction clause or an arbitration clause.

Where a dispute is referred to jurisdiction by a national court, the contract can stipulate that in the event of a dispute, the case will be brought to a court in the country of either the buyer or the exporter. If the parties agree that a dispute will be dealt with by an arbitration procedure, there are international systems of arbitration recognised in most countries. As opposed to court proceedings, arbitration provides an economic and expedient settlement of commercial disputes with the added benefit of privacy. The arbitrator is usually an expert in the subject matter of the dispute.

The ICC international Court of Arbitration issues rules that ensure the smooth conduct of arbitration hearings and the validity of the arbitral awards rendered. Its latest rules came into effect on 1 January 1998. Other international rules can be adopted such as those of the United Nations Commission on International Trade Law (UNCITRAL), which has been widely used since their adoption in 1976. Once an arbitration award has been made, the decision must be enforced in the country where the condemned party has assets.

## Dispute Resolution

Due to the important roles that commercial conciliation and arbitration serve in the resolution of disputes arising from transactions in the various aspects of economic activity and with the soaring global costs of civil litigation, more and more businesses are opting for a varied range of dispute resolution strategies. As a cost effective and expeditious approach guaranteed by law, arbitration has become a popular dispute resolution alternative for conflicting parties.

When a business suddenly finds itself in the midst of a conflict, the logical answer would usually be to find the quickest and cheapest way out. Hence, pursuing the litigation route in this respect, may not always be a wise decision, as in most cases this will entail a long winding process of countless court appearances and the drafting of endless legal documents. This tempestuous scenario, which has the added danger of further friction erupting between the parties, can easily be avoided through the means of arbitration. As one of the fastest growing dispute resolution mechanisms in the world, arbitration is highly compatible with the fast pace trend of the modern-day business world. With its quick and economical qualities, arbitration is the smart choice to solving a wide range of commercial disputes. Parties have a greater degree of freedom over the proceedings and unlike judges; arbitrators come from a variety of professions and trades. A far cry from the harsh publicity surrounding court hearings, arbitral proceedings allows parties to resolve their disputes privately and in confidence. Once an arbitration proceeding is complete and an award has been issued, it brings concludes the issue. Parties do not have to suffer the repercussions of further appeal proceedings based on the merit of the award.

All disputes or differences whatsoever arising between the parties out of or relating to the construction, and operation or effect of this contract or the branch thereof shall be settled by arbitration in accordance with the rules of International Council of Commercial Arbitration. The award made in pursuance thereof shall be binding on the parties. (or any other arbitration clause that may be agreed upon between the parties)

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