

4 Important Contract Considerations When Transacting Business Internationally

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When conducting transactions involving the sale of goods in the U.S., it is generally the case that a version of the Uniform Commercial Code (“UCC”), as adopted by a particular state, will govern the transaction. In similar international transactions, there may be much less certainty in which laws govern and there may be significant differences between the US and international standards. As such, the below highlights important differences between US and international laws that parties should be aware of when transacting sales of goods on an international scale.

1. CISG

- The Convention on Contracts for the International Sale of Goods (“CISG”) is the international corollary to the UCC. The CISG generally governs the terms of international sales of goods transactions.
- While there are similarities between the CISG and the UCC, the CISG often contains more lenient standards. In particular, the CISG (a) does not require that a contract be in writing, (b) adopts a different “battle of the forms” standard, and (c) allows the introduction of evidence outside the four corners of in the event of a contract dispute.

2. Opt Out of CISG?

- If determined that the CISG would govern a contract for the sale of goods on an international scale, identify whether it is most beneficial that the CISG govern or whether to opt out of the CISG and identify a different law to govern the transaction. The CISG allows parties more leeway than the UCC modify the terms of applicable rules.
- If determined that the UCC (or applicable alternative law) would be more beneficial and the contracting parties subsequently desire to opt-out of the CISG, the contract must specifically and clearly state (1) that the parties intend to opt-out of the CISG and (2) which law the parties intend to govern the agreement.^[1]

3. Incoterms

- International Commercial Terms (“Incoterms”) is a series of pre-defined commercial terms which not considered to be substantive law, but which may be invoked and agreed upon by parties to govern international trade transactions. Each Incoterms rule specifies (1) the obligations and responsibilities of each party, and (2) the point at which the risk of loss transfers from a seller to a buyer.

- Contracting parties may invoke Incoterms within the terms of a contract to govern an international trade transaction. That said, while the courts have ruled that parties may modify the effect of an Incoterm in the process of invoking such terms, the parties must include very specific and detailed language with clear intent to do so.^[2]

4. Risk of Loss

- Risk of loss is one of the most important terms in an international sale of goods transaction. The UCC, CISG and Incoterms all have slightly different default rules that govern risk of loss. Therefore, fully understanding the terms governing your transaction and/or ensuring the clarity of contractual language regarding risk of loss is critical because the default risk of loss shifting may affect (1) control of the goods and a seller's right to stop in transit, (2) levels of required insurance, and (3) limits on a carrier's liability.

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