

Fauri Law

Key Business Issues in Supply Agreements

Business Law
Presentation 2022



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Specified Conditions must be met.

Identifications of Goods

What goods are being sold?



01

Identifying the Goods

The goods to be sold must be set out in the agreement, either in:

- The body of the agreement
- An exhibit

This may include any combination of the brand name, model number, product identification number (SKU or UPC), commonly known name of the goods, or a general or detailed description of the goods.



Identifying the goods- Continued



The parties must consider how to handle:



1

Newly ordered goods or newer versions of goods



2

Goods that have been discontinued



3

Goods that are no longer available because the seller can no longer purchase them from its supplier.

Pricing Terms

Prices to be specified with payment terms.

02



Pricing Terms

Establishing Pricing Terms



Prices specified in the Agreement

Prices specified in the agreement (typically fixed and for a specified period) are usually subject to price adjustment provision, which is triggered:

- By the seller with notice due to cost increase.
- Periodically, for example, every year or renewal term.

Prices in a stand-alone sheet

A stand-alone price sheet (ex: included in the seller's website) can facilitate a floating price, allowing the seller to change the price from time to time in good faith without having to amend the agreement.

Buyers can respond by negotiating:

- Buyer's right to veto price increase.
- Buyer's right to terminate the agreement.
- A percentage cap on price increase.

What Is Included in the Price?



01

The cost of shipping

03

Any sales or other taxes

02

The cost of insurance during transportation

04

Risk of loss or damages to the goods



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Pricing Terms Tied to Shipping Terms

- Pricing terms are closely related to shipping terms because the shipping term establishes which party:
 - ◆ Pays for shipping costs.
 - ◆ Bears the risk of loss during transportation.
 - ◆ Pays the cost of insurance during transportation.
- Parties must ensure that pricing terms and shipping terms are consistent with each other

In international transactions, parties commonly rely on Incoterms® rules, which are various shipping terms published by the International Chamber of Commerce (ICC). Discussed in next slides, chapter 04.



Payment Terms

Payment terms provisions set out a buyer's payment obligations.



Payment Terms



Type of Payments

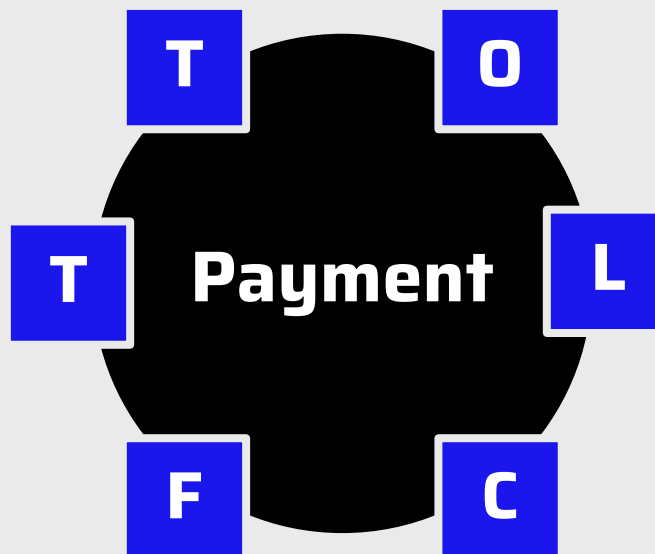
Cash on delivery (COD), advance or extended.

Type of Transactions

Single transaction, multiple shipments or long-term contracts

Factors

Payment terms depends on various factors such as buyer's creditability.



Obligations

Payment obligations are triggered upon the occurrence of specific events

Late Payment

Terms include damages or remedies for overdue payments.

Credit consideration

Letter of Credit, security interests, or payment guarantee

Quantity

Strict, Forecasts and Minimum
Purchase Quantities

03



Quantity

Quantity is typically set out in:

- The body of the contract or exhibit if the quantity is known at time of contract.
- In buyer's purchase order if multiple orders are contemplated under the contract.

Buyer typically tries to negotiate strict quantity provisions.

Seller typically tries to negotiate quantity provisions that leave room for error, for example, requiring buyer to accept the delivery of slightly more or less than the specified quantity.

Forecasts and Minimum Purchase Quantities:

Buyer sometimes agrees to make non-binding or binding forecasts of purchases.

- Buyers sometimes agree to purchase minimum purchase quantities for:
 - ◆ A specified period (for example, a quarter or year).
 - ◆ Each purchase order.



Shipping Terms

Standardized terms governing the shipping mode, costs, risks and other practical arrangements related to the movement of goods.



04

Incoterms® Rules - 3 most common



	Description	Comments
EXW (Ex Work)	Under this Incoterm, buyers are responsible for everything- picking up the items at the seller's warehouse all the way through delivery.	Although this may be the cheapest, at the end of the day, it may end up costing you more. Why? The buyer is taking all the risk plus cost from uploading to delivering the goods.
DDP (Delivered Duty Paid)	This is the opposite of EXW. The seller agrees to take care of all the costs in getting the goods to the location, including paying duties involved.	This is probably the most expensive option but involve the least amount of logistics on the buyer's part.
CIF (Cost, Insurance and Freight)	Only applies to sea transport. The seller will deliver the goods to the vessel and get it loaded on board, pay the ocean freight and insurance .	Once the vessel arrives in port, the buyer is responsible for the costs including the unloading of the goods from the ship.



Acceptance and Rejection of Orders

Contracts contemplating multiple orders typically set out provisions regarding seller's right to accept or reject buyer's purchase orders.

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Acceptance and Rejection of Orders



Pro-buyer provisions

- Provide that buyer's order is deemed accepted (and individual contract formed) if seller does not explicitly reject the order within the specified time.
- Allow buyer to rescind its order (and cancel the individual contract) without penalty for any reason prior to seller's confirmation or delivery of goods.

Pro-sellers provisions

- Allow seller to reject orders with or without cause.
- Provide that the buyer cannot cancel or amend its order after seller dispatches either its confirmation or the goods.
- Allow the seller to terminate accepted orders with or without a cause.

Acceptance and Rejection of Orders- Continued

The buyer is likely to disagree with pro-seller provisions.

- For example, the buyer will likely not allow the seller to terminate accepted orders without cause. If the buyer agrees to that provision, it will likely insist that seller pay a termination fee if it terminates an order without cause.

The parties must consider the effect of termination of any individual contract.

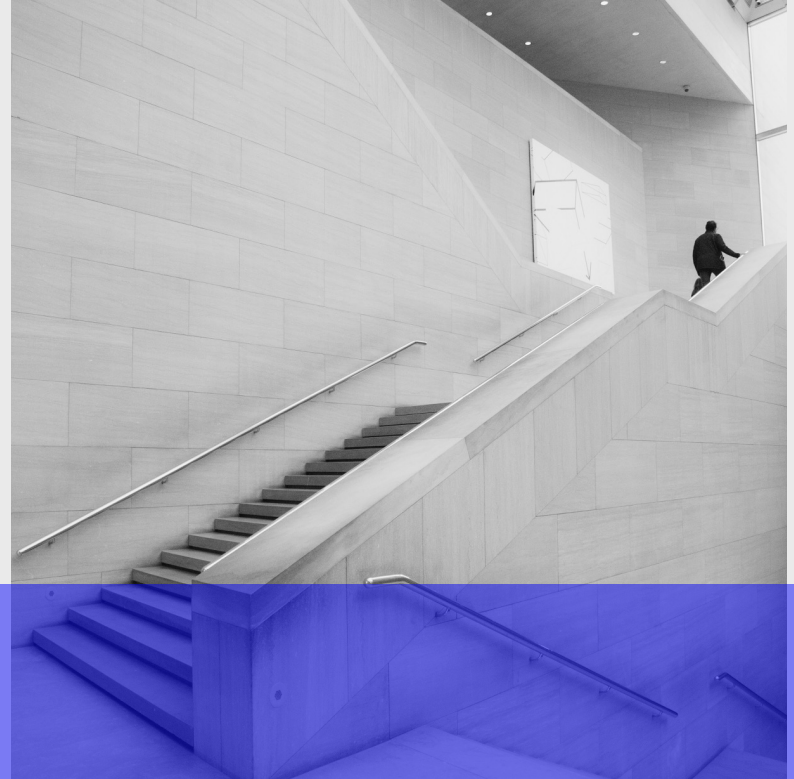
- For example, the seller must consider how it will recoup from the buyer any costs incurred by the seller if the buyer cancels its order after the seller takes steps to:
 - ❖ Manufacture the goods.
 - ❖ Acquire the goods from its upstream vendor.





Acceptance of Goods

Parties can negotiate the parameters for acceptance of goods and override legislative sale of goods default rules



Acceptance of Goods- Continued



	Buyer prefers provisions that:	Seller prefers provisions that:
Inspection	Allow it a long amount of time to inspect the goods, with the option to choose the inspection venue either at the point of dispatch or delivery of goods.	Include a limited inspection period, and deem buyer's failure to reject the goods during limited inspection period as buyer's acceptance.
Determine conformity of goods	Allow it to reject excess goods and non-conforming goods and return such goods to seller at seller's expense and risk of loss.	Require documented evidence of defects and non-conformities, and give the right to exercise its discretion to determine when the goods are non-conforming
Remedies	<ul style="list-style-type: none">▪ Repair or have a 3rd party repair rejected goods.▪ Purchase replacement goods from a 3rd party manufacturer or supplier.	Give it the right to select exclusive remedy, for example repair, replacement or refund.



Thank you !

Questions ?

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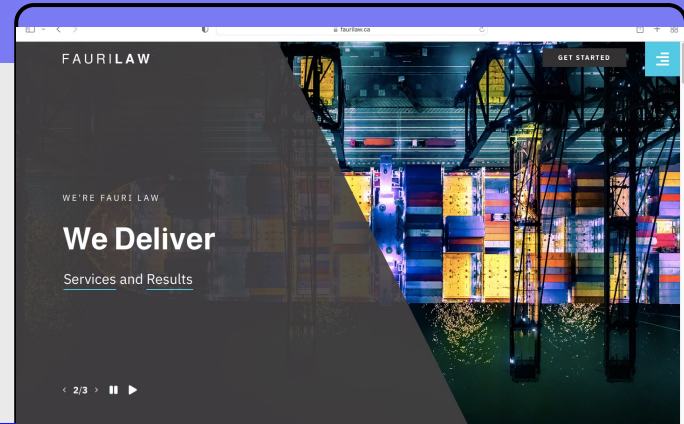




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