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# INTERNATIONAL TRADE

## EXPORT CONTRACT OF SALE

QUICK GUIDE

A contract of sale document should include a clear statement in the language of the confirming party (where precision in use of language is more likely) and include all or most of the following.

### EXPORT CONTRACT OF SALE - TEMPLATE

**Full name and address of seller** and name of person authorised to sign contracts and their position in the selling organisation (director, manager, authorised agent, etc).

**Full name and address of purchaser** and name of person authorised to sign contracts and their position in the purchasing organisation (director, manager, purchasing officer etc).

**Full name and address of overseas agents** of either party.

**A full description of merchandise** including:

- quantity and measure (i.e. 2 metric tons)
- detailed specification of merchandise and its packing, e.g.
  - weight limits and/or measures/density
  - suitability for special purpose
  - variation of quality
  - age limit from manufacturing date to shipment date
  - compliance with Government or trade institute standards – e.g. health laws and safety regulations
  - import/export restrictions
  - stowage per container
  - taste, smell, colour
  - chemical analysis
  - freedom from objectionable material
  - pre-shipment processing, storage life and conditions, including min/max limits of transit temperature
  - permissible preservative appearance
  - trade grading/sorting standards/uniformity
  - sources of supply
  - brand name.

Avoid confusing abbreviations and descriptions of local usage only.

**Determination of weight/measure/quality** – i.e.

- weight certificate – seller's ex store weights with loss of weight franchise clause
- weights/measures by independent authority at destination or transhipment point
- permissible limits of evaporation
- weight-bridge check weights at named point
- methods for analysis, trading, sorting
- pre-shipment survey.

**Warranties/guarantees/exceptions** that apply (i.e. no claims acceptable on hygroscopic goods stored or transported in humid conditions).

**Price** – stating:

- currency unit of price
- packing and marking charges – whether included or not
- terms and relevant place (e.g. Ten United States Dollars per tonne CIF Philadelphia) usually with a clause stating that any variation of exchange rate from that obtained at date of contract shall be for account of one party of the other. Prices should be spelt out and also be shown in figures.

**Form of delivery** – delivery/collection:

- by whom
- by what transport
- at/to what place/s (e.g. seller to ship, liner terms, to named port, or seller to place FAS alongside purchaser's chartered vessel at named port/s).

Usually with a clause for maritime shipments defining the point at which delivery is deemed to be accomplished, apportionment of loading/discharge costs or expenses, and special requirements during transport (e.g. temperature range).

**Time of delivery** – at place/s of shipment/destination, covering:

- spaced shipments, part shipments
- options to defer/accelerate shipments
- penalties for late/early delivery, time of expiry of contract (e.g. shipment by 31 December 2009)
- amendment or cancellation of contract in the event of late or non-delivery.

**Form of payment**

- prepayment
- open account with remittance at specified date
- letter of credit
- payment by nominated acceptable third party such as parent company or guarantor.

Always including a schedule of documents which will be required to authenticate payment (such as are usually required for letters of credit); e.g.

- a) Bill of Lading – should contain details of consignor (if not shipped in name of seller), consignee, notify party, negotiable copies, clean or special clause bill, freight prepaid or payable at destination or by third party 'shipped' or 'received', throughbill, optional transshipment/destination port/s, etc.
- b) Insurance policy or certificate of insurance, declaration/notification for purchasers open policy, required cover. e.g.
  - Institute Cargo Clauses (A) 1.1.82
  - Institute War Clauses 1.1.82
  - Institute Strikes Clauses (Cargo) 1.1.82
  - Particular and General Average Cover
  - Jetty Survey Clause if necessary
  - Diversion Strike Expenses Clause if necessary
  - Also place and procedure relating to surveys/claims for loss or damage, surveyor's name and address.
- c) Invoices – commercial, consular, specially endorsed or certified, etc.
- d) Certificates of evidence required – relating to weight, measure, quality, grading, health, origin, analysis, etc.
- e) Any other documentation required by either party.
- f) Distribution of documentation.

**Licences** – due diligence and responsibility for obtaining relevant authorisation required for performance of the contract.

**Intellectual property** – trade marks, patents, registered designs etc, cover and infringement.

**Enforcement** – terms of any performance/forbearance, bond or guarantee that either party may be required to undertake

**Arbitration** – covering:

- arbitrator or Court of Justice,
- law of country agreed upon by the contracting parties, and
- a clear statement of any agreed penalties/premiums/forfeitures/sacrifices flowing from litigation, apportionment of litigation expenses (e.g. price penalty/rejection for decline in quality standard during transit could be based on the opinion of a surveyor, trade expert, inspector or similar person).

**Force Majeure** – a clause to the effect that neither of the parties will be responsible for total or partial non-fulfilment of the contract because of a case of fortuity of force majeure which they cannot overcome (e.g. shipment ruined by fire and water in dockside warehouse and no replacement stock available for seasonal production reasons).

**Clause Paramount** – neither party to the contract will contravene the laws/regulations of their respective countries or those of countries through which the goods may pass in transit and neither party will suffer penalty or loss as a result of their forbearance in this respect; and it is agreed that things and conditions not foreseen in the contract will be resolved through direct negotiations between the parties or through some mutually acceptable intermediary.

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For further information regarding Contractual Issues for Exporters, or any other aspect of international trade, please contact The Chamber, email [info@cecc.org.nz](mailto:info@cecc.org.nz) or phone 03 366 5096.