# Export Contracts, top 10 legal terms to include

Here are the most common legal terms we include in export contracts to protect UK exporters and questions The Legal Partners team are asked.

**1 Find out who is the customer in the export contract?**

It may seem obvious but from the outset of negotiations it is important to know whether the UK exporter is dealing with the direct end customer or via an agent or distributor in the country where the goods are to be sold.

**2 Is the UK exporter or the Asian importer insuring the goods?**

The export contract will need to state clearly who is insuring the goods and from what point in the export process. Any specified Incoterm incorporated into the export contract may need to be amended for the UK exporter's insurance coverage and what can be offered to the Asian importer.

**3 Can an export contract legally and validly exclude liability?**

Yes it can.

The export contract will need to clearly state if and to what extent the UK exporter accepts liability for loss subject to upper limits, or loss caused to third parties. Any liability which is excluded by the UK exporter should be limited only to those circumstances covered by the insurance policy and up to the level of that policy.

4 Should the UK exporter also get legal advice from the local lawyer in the country where the goods are to be imported?

Yes. There are usually local laws which will affect the Asian importer so it is worth checking during the negotiation process with one of our partner law firms in China (PRC), Singapore or Malaysia. If the UK exporter and Asian importer agree that the local law will govern the export contract then it will critical to get local law advice.

**5 Are the Incoterms suitable to be incorporated into the export contract?**

Yes they can be.

Each of these standard 3-letter descriptions eg EXW (ex Works London) prescribe set terms into the sales contract about who pays for transport & export/import licences/duties and who bears the risk of damage to the goods at what point in the export process.

If the UK exporter is uncertain which of the Incoterms to choose or if the Incoterm does not correctly describe what has been agreed with the Asian importer, then the detail for delivery including who pays for transport, insurance and any export and/or import licences should be written into the export contract.

See How to use Incoterms to de-risk your exports

**6 Will the UK exporter be responsible for obtaining an export licence?**

Each type of good which can be exported is assigned by the UK Government a commodity code. With the correct code, the Trade Tariff lists the other things that a UK exporter may need to import or export its, for example:

- import/export licences or any special regulations for goods (called 'measures').
- duty to pay.
- VAT to pay.duty and tax reliefs.
- exemptions from licences etc in certain countries.
- customs procedures that apply to the goods

For more information see Gov.uk which has helpful advice to find commodity codes

The export contract should state who will obtain the export licence and import licence – the UK exporter or Asian importer.

**7 What payment method is to be used (such as documentary credits or collection arrangements)?**

Should the Asian importer give security for payments under the export contract?
Do due diligence on the importer and decide whether:

- the Asian importer should provide a bank guarantee or performance bond; or
- the UK exporter supplier should obtain credit insurance in respect of the Asian importer buyer.

Will payment be made in sterling or some other hard currency?
Because of exchange rate risks, the payment currency must be clearly stated in the export contract.
Consider also answers to these questions:
What deposit is required from the Asian importer?
What will be the time for payment (for example, 30 days after invoice date)?
To encourage prompt payment will the export contract state:

- interest on late payments?
- and/or a discount for early settlement?
- and/or in an instalment contract, the entire price to become due if a single instalment is paid late?

The export contract should exclude the Asian importer's right to make deductions or withholdings from any payments to be made.

**8 Will insurance or financial backing be arranged through the Export Credits Guarantee Department?**

The Export Credits Guarantee Department (ECGD) is part of UK Export Finance. It is the UK's export credit agency, helping UK exporters and investors by providing credit insurance policies, political risk insurance on overseas investments and guarantees on bank loans.
For more information see: UK Export Finance

**9 When should legal title for the goods pass from the UK exporter to the Asian importer?**

It is important to explain in the contract what the Asian Importer has to do to pay for the goods at the time they legally pass to the importer (called the point when "title to the goods passes"). If the goods are not perishable (eg food), a retention of title clause can be included in the export contract so the UK exporters keeps title (ownership) of the goods until full payment is received .
The UK exporter can reserve (keep) title to goods until it has received payment in full if the Export contract is written under English law.

**10 What governing law and court jurisdiction or arbitration is best for the export contract?**

It is important to propose a governing law which is internationally recognised like English law.
The next question to ask is: who is likely to need to sue, litigate or start legal proceedings under the export contract?
If it is the UK exporter, then a decision will need to be made about the best way to enforce any English law judgment against the Asian Importer and any assets depending where they are located.
Is arbitration better than a court hearing in an export contract dispute?
It can be easier to state that the dispute will be decided by an arbitrator (rather than a court) under London Court of International Arbitration (LCIA).
In international disputes, the enforcement of an arbitral award under the New York convention of the United Nations Commission on International Trade Law (UNCITRAL) is often easier than the enforcement of a national court's judgment. This means that countries who are signatories to the convention will enforce an arbitration award from another country who is also a signatory to the convention.
For more information on UNCITRAL see A Guide to UNCITRAL: Basic facts about the United Nations Commission on

International Trade Law. The UK, China, Singapore, Malaysia and many ASEAN countries are members of UNCITRAL.

For more information please contact Richard Mullett on 0208 334 8049.

For more general help information about exporting please see The Department for International Trade Export services for UK Business.

The Legal Partners are a Member of the Trade Advisory Network.