



Drafting an international commercial contract

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Abstract:

Fulfilling the desires of the parties to an international commercial contract and ensuring the proper implementation of contractual obligations requires good drafting of the contract. This requires that this drafting be under the supervision of a competent legal advisor who is familiar with the controls for drafting international trade contracts, both in terms of form and content

This study aims to identify these controls in order to draft a sound contract and avoid future disputes in international trade contracts.

Keywords: commercial contract, International, Legal drafting.

Introduction :

Drafting is the tool or means by which legal thought is transferred from the internal sphere of the human soul to the external sphere. It is simply a tool for expressing an idea latent within the soul so that it becomes a tangible, realistic reality, on the basis of which dealings are conducted. In this context, drafting a contract means expressing what the parties to the contract want in a way that conveys the intended meaning completely and accurately in writing, so that disputes do not arise between them in the future, hoping to avoid the need to resort to dispute settlement.

Drafting a contract means writing down the rights and obligations of the parties in a document that is signed by the parties and is binding on them. For an international commercial contract, it must be drafted correctly in terms of form and content. Therefore, the drafter of an international commercial contract must respect both formal and substantive conditions when drafting the contract, which ensures the contract is implemented without the need to interpret the parties' desires when a dispute arises.



Given the practical importance of drafting contracts, the United Nations Commission on International Trade Law (UNCITRAL) prepared a legal guide to drafting international trade contracts in 1987, which was published in 1988.

Based on the above, this study aims to shed light on how to draft an international commercial contract, both in terms of form and content, by focusing on the important legal points and controls that the drafter of a commercial contract needs, especially in light of the differences in laws, concepts and objectives between the parties to the contract.

That is, for an international commercial contract to be a model, it must be drafted correctly. How are international trade contracts formulated in terms of form and content?

To answer this problem, we relied on the analytical approach by reviewing international agreements that deal with the subject of drafting international trade contracts, analyzing them and deducing the important legal controls in the drafting, as well as the descriptive approach to explain some elements of the subject and clarify its concept.

The research paper was divided into two main sections. The first section addressed the formulation in terms of form, while the second section addressed the formulation in terms of content.

THE FIRST TOPIC : Drafting an international commercial contract in terms of form

Proper contract drafting requires the ability to express the parties' desires in a clear, comprehensive, and accurate manner. This means presenting the contractual content in a format that ensures clear communication between the contracting parties. To achieve this, certain legal controls must be followed, whether related to writing and linguistic formulation (Requirement 1) or to the language and signature of the contract (Requirement 2).

FIRST REQUIREMENT: Legal controls related to writing and drafting international commercial contracts

According to the Vienna Convention, the international commercial contract is considered a consensual contract and writing is not required for it. However, if the state law requires writing, the contract must be written. Also, the common practice in international trade contracts is to write and draft them so that it is easy to refer to their provisions whenever the parties need to do so. Through this requirement, the writing of the international commercial contract (first) and its formulation (second) will be studied.

Firstly: Writing an international commercial contract

The principle of freedom to form and prove commercial transactions is considered one of the principles recognized in various legal systems. Although the Vienna Convention deals with the international sale of goods and explicitly states that the sale does not have to be commercial in order to be subject to its provisions, it is established that the provisions of this Convention are primarily directed to international commercial sales. Therefore, it was not surprising that the Convention established the principle of freedom of both the formation and proof of a contract for the international sale of goods.



Article 11 of the Convention states: "It is not necessary for a contract of sale to be concluded or proven in writing. The contract is not subject to any formal condition. The contract may be proven by any means of proof, including intention".

From this text it is clear that the international sale of goods contract is considered, according to the Vienna Convention, a consensual contract and not a formal contract. The Convention does not stipulate that this contract must be drawn up in a specific form.

On the other hand, the Convention also decided that proof of this contract is not subject to a specific form, as it is subject to the principle of freedom of proof. It may be proven by all means of proof, including witness testimony. Article 11 of the Vienna Convention came in this manner and to respond to the needs of international trade, which is freed from the restrictions of form when concluding an international sales contract.

If the principle of freedom of formation and proof of the contract of international sale of goods is the basis according to the provisions of the Vienna Convention, the Convention took into account that the laws of some countries may require a specific form for the formation of the contract of sale. Therefore, the Convention placed a reservation on the principle of freedom of contract form, allowing countries that adopt it to apply the rule adopted by their national law when it must be applied to the contract according to the rules of conflict of laws, if this law requires writing as the form of the contract.

Good contract drafting requires the ability to express the wishes of the parties in a correct, clear and complete manner, i.e., to put the subject of the contract in a format that ensures clear communication between the contracting parties.

The rule in commercial laws is the principle of consent and freedom of proof. However, in some cases, writing is required as a formal element for the conclusion of contracts, such as commercial companies and commercial documents.

According to the texts contained in the Vienna Convention on the Form of Contract, the principle is freedom in the form of the sales contract, and the exception is that some countries take the reservation contained in Article 96 of the Convention and apply the provisions of their laws that require writing as a form for concluding the sales contract or as a condition for proof.

The impact of international application in the field of international trade relations and the work of international organizations concerned with this field imposed the necessity of the written embodiment of what the will of the contracting parties intended, All stages of negotiations between the parties, from the expression of the desire to negotiate, are recorded in the form of documents, which may be a preliminary agreement, a final contract, an agreement protocol, or a formal pledge¹.

Writing means any written instrument issued by the contracting parties and signed by them. The meaning of writing in the field of international trade law, according to the modern trend, does not only include any written instrument issued by one of the contracting parties and signed by him, but also includes any instrument that is proven to have been sent by one party to the other, even if it is not signed, for example: telegram and telex. This is what is stipulated in Article 13 of the Vienna Convention.

Secondly : Linguistic formulation of international commercial contracts

It means expressing what the parties to the contract want in a way that conveys the intended meaning completely, accurately, and in writing so as to avoid future disputes.



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The ambiguity and lack of clarity of the text leads to multiple interpretations that open the way to future disagreements and disputes. Therefore, the clarity of the wording must be taken into account as much as possible. One of the reasons for the ambiguity of the wording and the lack of clarity of the intended meaning in commercial contracts in general is the incorrect use of grammatical restrictions, demonstrative pronouns, and conjunctions. Although the contract is not a piece of literature, its formulation in a grammatically correct linguistic manner is essential to clarify the intended meaning. This is because errors in grammar or spelling may lead to ambiguity that changes the meaning².

Another reason for ambiguity in formulation is not placing the demonstrative pronoun in the correct position in the sentence. If the pronoun is in a sentence position far from the thing it refers to, it may lead to a difference in interpretation and a dispute between the parties, Which may lead to a delay in the implementation of the agreement. All of this can be avoided by placing the pronoun as close as possible between the word and the phrase to which it refers or refers³.

Therefore, it is often necessary to mention the name to which the pronoun refers when the context requires it, because failure to mention this may create a large gap that leads to a change in the meaning in a way that makes the intended meaning unclear or completely different from what is written, In such a case, it is preferable to replace the pronoun with the name of the person or thing it refers to, or to modify the wording to make the intended meaning clearer and more precise. For example, using the term “company” in a contract without mentioning its name or the nature of its business may be sufficient when there is only one company known to the contracting parties⁴.

It is very important to ensure that every word or phrase in the contract has been used carefully so that it reflects the meaning understood by the parties to the contract, as well as Avoid using a passive voice, for example: contracting with a carrier without specifying the carrier's identity.

Appropriate words must be used, especially since the Arabic language is rich in terms and meanings. Legal terms also have meanings that affect the meaning of contractual obligations, for example: nullity, annulment, termination, etc.

Avoid using words with multiple or unfamiliar meanings. If you do, a glossary of terms should be attached to the contract and include the meaning.

Do not use phrases that oblige the customer to do something that the other party does not want, for example: imposing on him a means of transporting the goods.

Avoid using loose words, for example: commitment to insure against familiar risks.

Avoid using vague phrases, such as if the contract stipulates that the first party is obligated to insure against familiar risks, Such expressions may lead to ignorance of the obligation placed on the first party. ⁵ Even if the contract includes an acknowledgment from the contracting party of his knowledge of the technical advantages of the products, the means of their use, and the system for their assembly, packaging, and use, this wording prevents the claim that the contracting party made a fundamental error that would cause him to retract this acknowledgment⁶.

One of the ways to clarify the intended meaning when drafting international trade contracts is to use short, easy sentences and avoid unnecessary, excessive prolixity, Clarity of formulation requires arranging and organizing the paragraphs and conditions of the contract in a practical manner that facilitates the process of understanding. This requires the person undertaking the task of drafting to avoid, in arranging and organizing the contract, conditions that refer in their content to other conditions in it or a part or paragraphs of it. It is also advisable to put titles for



each section of the contract in order to facilitate the task of referring to the provisions of the contract⁷.

In order to draft well, it is necessary to avoid as much as possible pre-prepared models or rigid contract templates, which many lawyers and legal advisors rely on and sometimes cause the parties to the contract to fall into unjustified problems⁸.

SECOND REQUIREMENT: Legal controls related to the language of the international commercial contract and its signing

In order for the drafting of an international commercial contract to be sound and to avoid disputes between the parties after signing the contract, the language used in the contract must be determined (first), and then the parties to the contract must confirm everything stated in the content of the contract by signing the contract document (second).

Firstly: The language adopted in drafting international commercial contracts

The language used in the contract must be specified. Usually, the two parties to an international trade contract are of different nationalities and speak two different languages. They may agree to write the contract in one language, whether it is the language of one of them or a foreign language. The problem arises when the same contract is drafted in both languages. In order to avoid problems in interpretation, they must not neglect to specify the approved language and determine it in the contract⁹.

In reality, the contract is drafted in the language of both parties, English and Arabic, for example, and this is the normal situation. However, given that the meaning of some terms may differ in each language, it is better from the beginning of negotiations to agree on choosing a specific language and consider it the official or original language of the contract. This option allows, in the event of a dispute between the two parties regarding the interpretation of the meaning of a particular term, to refer to the chosen language and search for the meaning of the term therein without referring to the other language¹⁰.

The appropriate words and correct language must be chosen. This means that the words of the contract must be linguistically correct and not have two possible meanings or be interpreted in more than one way.

To avoid disputes or disagreements between the two parties, the legal advisor responsible for drafting the contract must address all of these conditions. His primary task is to understand the client's desires and express them in simple, understandable terms.

Secondly: Signature of the parties on the international commercial contract document

As a general rule, a contract is not concluded unless the document is signed. The signature is considered proof and is considered evidence against the person who signed it.¹¹ Therefore, after the contract is drawn up, the parties must sign it, because the signature is what attributes the document's author to the two parties. The signature requires

- .The traditional signature is done by hand -
- .The signature usually comes at the end of the writing -
- .The signature of the person authorized to sign is required-
- .Initials are usually signed, followed by full names-
- .In electronic contracts, the signature is electronic -



THE SECOND TOPIC : Drafting an international commercial contract in terms of content

The contract document consists of one or more pages, containing all the terms and conditions of the contract. In international transactions, the contract document is divided into the preamble, the contract provisions, and the appendices.

Thus, all these elements will be studied through two requirements. The first requirement includes a study of the preamble to the international commercial contract and the definitions (the first requirement), while the second requirement includes a study of the provisions of the international commercial contract and the appendices (the second requirement).

FIRST REQUIREMENT: Preamble to the International Commercial Contract and Definitions

Through this requirement, the preamble to the contract, which is considered an introduction to the international commercial contract, will be addressed (first), as well as the study of definitions that help to accurately determine the concept of some legal and technical terms (second).

Firstly: Preamble

It is an introduction that appears at the beginning of the contract and represents a set of general principles that clarify the objectives of the contract, the reasons and circumstances for concluding it, and the initial negotiations and agreements.

The parties are keen to embody the legal value of the preamble and it is often stipulated that it is considered an integral part of the contract and therefore has binding force.

The preamble plays an important role in revealing the intent of the contracting parties when the apparent text of the contract does not reveal it, thus facilitating the process of interpretation and implementation. This is in addition to the preparatory work, letters of intent, and exchanged documents, which are the basis for interpreting obligations and determining the objectives sought behind the contract.

Secondly: Definitions

The contract sometimes includes a list of definitions to specify the linguistic meanings of technical and legal terms that may be ambiguous about determining their content.

The parties shall be careful to clarify the meaning of the main terms used in the contract.

Definitions are placed in the introduction to the contract or preamble, or in an independent appendix, which is called the definitions bar. They may also be drawn from groups of definitions prepared by specialized bodies such as the International Chamber of Commerce, which has prepared a guide to international commercial terms (Incoterms).



SECOND REQUIREMENT: Provisions of the International Commercial Contract and its Annexes

The provisions of the international commercial contract are considered the main part of the contract and are the part that includes the rights and obligations of the parties (first), and sometimes the parties attach appendices to their contract that include some detailed or technical provisions (second).

Firstly: Provisions of international commercial contract

It is the core of the contract itself, its text or its subject matter. It is the main section of the contract, in which the terms and conditions of the contract are set out, expressing the mutual rights and obligations between the two parties, as well as the parties and characteristics of the contracting parties, the applicable law, and the competent court to consider the dispute or the arbitration body.

The contract also specifies various guarantees, which depend on what the contractor wants, if the contracting party is the importer, it is in his interest to impose on the supplier what guarantees his implementation in accordance with what is stated in the contract. For example, he is required to obtain an inspection certificate or a certificate of origin, while this certificate does not constitute any advantage for the supplier, who has an interest in not being bound to have the goods in a specific country¹².

International trade contracts are characterised by the fact that they include a clause on how to resolve disputes arising from these contracts, and the presence of such a clause is common. One of the most important provisions of this clause is referring the dispute to international commercial arbitration, as it is considered one of the important sources of international trade law.

Secondly: Appendices

These are documents attached to the contract that include some detailed provisions or regulate some technical issues related to its subject, such as drawings, designs, dimensions, catalogs, and technical specifications¹³.

These documents are usually prepared by technicians and there is no doubt that these appendices are considered an integral part of the contract and have the same binding force as the contract¹⁴.

Conclusion:

Drafting an international commercial contract is the tool by which legal thinking is transferred from the internal sphere of the human soul to the external sphere. It is simply a tool for expressing an idea latent within the soul so that it becomes a tangible, realistic reality, on the basis of which transactions are conducted. In this context, drafting a contract means expressing what the parties to the contract want in a way that conveys the intended meaning completely and



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accurately in writing, so that disputes do not arise between them in the future, hoping to avoid the need to resort to means to settle them.

To draft an international commercial contract, several rules and regulations must be followed. The basic step to ensure the success of the drafting is to determine the intentions of the contracting parties, and in particular the true objectives of each of them, in order to establish appropriate conditions to achieve the desired goals and guarantee rights and their connection to the implementation of obligations.

Through this study, a set of results were reached, the most important of which are:

In international trade contracts, controls must be followed in terms of form and content.

International commercial contracts include several basic elements that contribute to their formation, which are represented by the preamble or introduction to the contract, which plays an important role in revealing the intentions of the contracting parties. It also clarifies the objectives to be achieved by the parties, the descriptions of the parties, their names and place of residence, while specifying the date of entry into force of the contract or the date of its signing.

International commercial contracts include the most important terms agreed upon between the parties, which determine the duration of the contract, the territorial scope of its implementation, and the conditions related to amending and renewing the contract.

Among the most important conditions is the applicable law in the event of a dispute between the parties and the agreed upon method of resolving the dispute. In addition, there is also a condition specifying the price and the date of payment.

The drafter of an international commercial contract must possess the following qualifications: competence and sufficient experience in the local and international rules applicable to the contract, in addition to good knowledge of the language or languages in which the contract is drafted.

The World Trade Organization and the United Nations Commission on International Trade Law (UNCITRAL) seek to enact legal texts in a number of areas such as the settlement of international commercial disputes, international contract practices, transportation, and others, with the aim of creating a suitable legal environment.

Based on these results, the following suggestions can be made :General terms and conditions or standard contracts must be drawn up in such a way as to ensure the protection of the various interests involved. This protection can be ensured if the general terms and conditions or standard contracts are drawn up on certain foundations.

The most important objective of an international commercial contract must be achieved, which is the unity of the international commercial transaction.

Footnotes:

¹ -Mahmoudi Massoud, "**Methods and Techniques of Concluding International Contracts**," University Publications Office, Algeria, 2006, p. 171.

² - Abu Al-Ala Ali Abu Al-Ala Al-Nimr, "**The Role of the Legal Advisor in International Trade Contracts**," Dar Al-Kotob Al-Qanuniah, Egypt, 2002, p. 38.



³ - Saleh bin Abdullah bin Attaf Al-Awfi, **“Legal Principles in Drafting International Trade Contracts,”** King Fahd National Library Catalog, Riyadh, Saudi Arabia, 1998, p. 156.

⁴ - Saleh bin Abdullah bin Attaf Al-Awfi, previous reference, p. 157.

⁵ - Tariq Al-Hamouri, **“Drafting and Concluding International Trade Contracts, A Simplified Reading of International Trade Contracts,”** a symposium presented at the Arab League Summit, Sharm El-Sheikh, Egypt, December 25-29, 2007, p. 9.

⁶ - Talib Hassan Musa, **“Drafting International Trade Contracts,”** Mutah University, Deanship of Scientific Research, Karak, Jordan, 2000, p. 7.

⁷ - Abu al-Ala Ali Abu al-Ala al-Nimr, previous reference, p. 40.

⁸ - Hussein Al-Douri, **“Arbitration in International Trade Contracts,”** Dar Al-Manzomah, Egypt, p. 20.

⁹ - Tariq Al-Hamouri, previous reference, p. 9.

¹⁰ - Abu Al-Ala Ali Abu Al-Ala Al-Nimr, previous reference, p. 42.

¹¹ - Muhammad Hussein Mansour, **“International Contracts,”** Dar Al-Jamia Al-Jadida, Alexandria, 2009, p. 139.

¹² - Talib Hassan Musa, previous reference, p. 74.

¹³ - Talib Hassan Musa, previous reference, p. 74.

¹⁴ - Muhammad Hussein Mansour, previous reference, p. 138.

Bibliography List :

First: Legal texts

- United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980).

Second: Books

- Abu Al-Ala Ali Abu Al-Ala Al-Nimr, **“The Role of the Legal Advisor in International Trade Contracts,”** Dar Al-Kotob Al-Qanuniyah, Egypt, 2002.
- Hussein Al-Douri, **“Arbitration in International Trade Contracts,”** Dar Al-Manzomah, Egypt.
- Mahmoudi Masoud, **“Methods and Techniques of Concluding International Contracts,”** University Publications Office, Algeria, 2006.
- Mohamed Hussein Mansour, **“International Contracts,”** New University House, Alexandria, 2009.
- Saleh bin Abdullah bin Attaf Al-Awfi, **“Legal Principles in Drafting International Trade Contracts,”** Catalog of the King Fahd National Library, Riyadh, Saudi Arabia, 1998.
- Talib Hassan Musa, **“Drafting International Trade Contracts,”** Mutah University, Deanship of Scientific Research, Karak, Jordan, 2000.

Third : Seminar article

- Tariq Al-Hamouri, **“Drafting and Concluding International Trade Contracts, A Simplified Reading of International Trade Contracts,”** a seminar presented at the Arab League Summit, Sharm El-Sheikh, Egypt, December 25-29, 2007.