

Purchase Contract
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[Aims of this class]

- Information you need
- Structure of purchase contract
- The most important provisions
- Tips for drafting
- Evaluation of HW (Feedback)
- Summary

[Negotiating & Request for Draft]



Which one is more likely?



[The most typical one:]

„Hi, I need a draft of purchase contract for Gravel pack Equipment, Quotation No. 08-24175rev.1 dtd. 07. October, 2009, Seller Baker Hedges, ASAP.

Br, James“



- Do you have all info you need to draft?

[Info Check-list:]

- Contracting parties (details)
- Goods specification – purchase order reference
- Payment terms
- Delivery details
- Passing of risks, passing of title
- Warranties
- Use of standard terms? - Integration, battle of forms
- Risks you have to deal with? Eg. Contractor's delay, subcontractor delay, the buyer won't be able to pay
- Sanctions and remedies
- Hardship, force majeure

[Let's start!]

Ok, but how?



[The Contracting parties]

- Which info should be / must be in the heading?
- Where to get and verify them?
- <http://portal.justice.cz/Justice2/uvod/uvod.aspx>
- http://ec.europa.eu/taxation_customs/vies/lang.do?fromWhichPage=vieshome&selectedLanguage=EN
- <http://wwwinfo.mfcr.cz/ares/ares.html.cz>

[Preamble]

- What is it good for?
- What shall be written there?
- How to formulate it?



[Subject of the Contract]

- Describe as precise as possible!
- Reference to other documents? Eg. Purchase order?
- Dangers of such reference?
- Battle of forms
- How to minimise?

[Price & payment terms]

- How much, with or without VAT?
- In words?
- Payment terms, cash, bank deposit, letter of credit, documentary collection
- Term of payment
- In advance, hire purchase
- Invoicing details



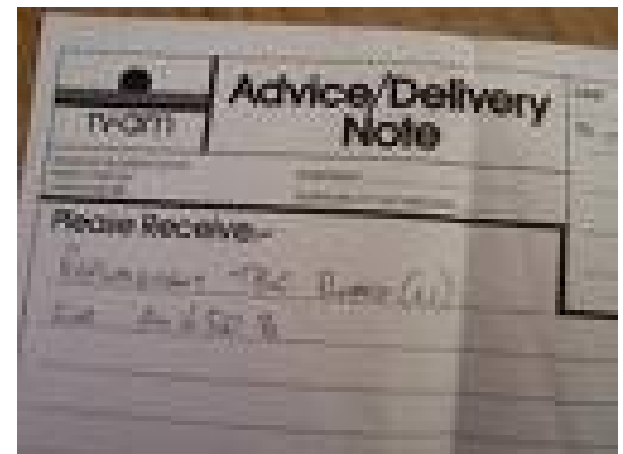
[Terms of delivery]

- Delivery dates
- When is the shipment delivered?
- Passing of title & passing of risk
- International terms?
- Shipping documents



[Handover/ takeover & quality]

- Quality requirements
- Packing requirements
- Handover and inspection
- Content of the handover certificate

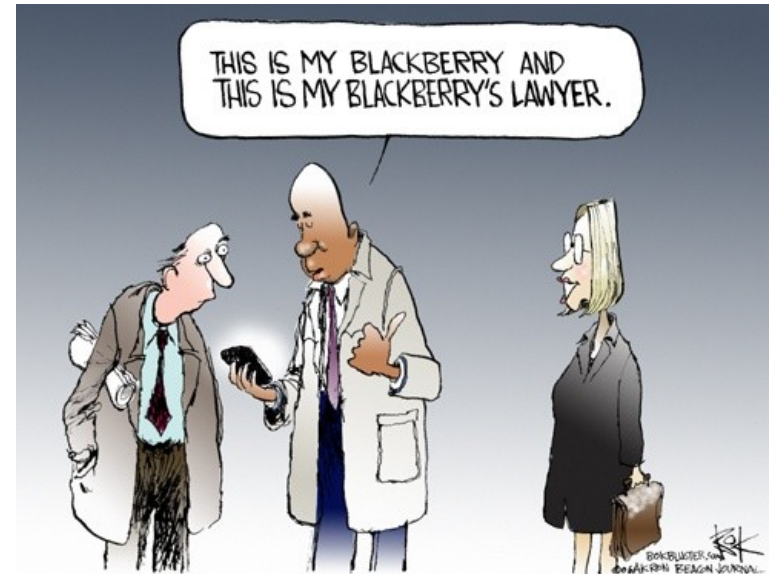


[Warranty]

- Contractual warranty or implies terms?
 - Length
 - Content? Responsibility for....
 - Warranty claims? Notification requirements
 - Duty to remove defects

Liquidated damages, penalties

- Differences?
- Amount?
- Choose the better one?
- Which duties are essential?
- Be careful with the translation of terms like “liquidated damages” or contractual penalty



[Force majeure]



[Other & Conditions]

- Validity of contract
- Confidentiality
- Changes
- Jurisdiction
- Choice of law
- Predictability of damages
- Ineffective provision
- Signatures

[Feedback]

- Deadline!!
- Is the contract as whole compatible?
- Are you sure that every clause in the contract has its sence? Do NOT just copy provisions!
- Have you evaluated the impact of the provisions you have included into the contract?
- Either protect your client or formuate balanced provisions
- Parties definition
- Define the purpose
- Stipulate precise the payment terms
- Passing of risk and title must reflect the need of the parties

[Frame Purchase Contract]

- Why do we negotiate Frame contracts (FC)?
- Which clauses would you include into FC?

[Partial Contracts Regulation]

- Partial Contracts or purchase orders?
- Would you describe the way of negotiation in the FC?
- How can you be sure that the partial contracts are governed by the FC?



[Frame Contract Clauses]

Consider each situation as unique!

- The way of negotiation of partial Contracts
- Price & Payments
- Delivery & Packing
- Passing of risk and title
- Warranties
- Liquidated Damages
- Confidentiality
- Force majeure
- Governing law & Arbitration

[Other Useful Clauses]

- Entire Agreement Clause
- Withdrawal or Cancellation of the contract
- Restriction of validity
- Transfer of rights and duties



[Contract for Work]

Contract for Work v. Purchase Contract:

- What are the main differences?
- How do you recognise this Contract?



[Performance - Work]

- Do NOT forget the aim of the contract!
 - Describe the work! Expressly or by reference
 - Specify the applicable technical standards (CSN, ISO, result you expect etc.)
 - Use plans, pictures

[Other Useful Clauses]

- Advisable not to use Entire Agreement clause
- Right of inspection and/or right to correct the way of performance
- Sanctions for delays in performance
- In case of repair:
 - Handover and takeover of the goods
 - Transportation costs
 - Spare parts

[Price for Work]

- Additional work – how you deal with it?
 - Fixed price - no adjustment allowed
 - Amendment to contract or at least approval of Client
 - % acceptable and included in the price for work



[Similarities with Purchase Cont.]

- Payment terms Delivery details
- Passing of risks, passing of title
- Warranties
- Risks you have to deal with? Eg. Contractor's delay, subcontractor delay, the buyer won't be able to pay
- Sanctions and remedies
- Hardship, force majeure
- Final provisions



Thank you for your attention!