

ФОРМА И СОДЕРЖАНИЕ МЕЖДУНАРОДНЫХ КОММЕРЧЕСКИХ КОНТРАКТОВ*

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В последние три десятилетия в России наблюдается рост международного сотрудничества в различных сферах жизни. Соответственно растет и количество судебных дел с участием иностранных предпринимателей и компаний. Законодательным и судебным органам приходится сталкиваться с большим количеством вопросов, требующих решения.

Поскольку внешнеэкономическая деятельность имеет контрактную основу, большое внимание уделяется унификации правового регулирования таких вопросов, как заключение контракта, дополнения и поправки к контракту, прекращение контракта. Много споров возникает по поводу содержания контрактов. Поэтому необходимо исследовать проблему более детально.

Ключевые слова: сделка, стоимость, условия оплаты, гарантия.

Since the foreign economic activity is carried out by means of contracting, the great attention is paid to unification of legal regulations as far as the conclusion, amendment and termination of international contracts is concerned. The bulk of disputes over contracts arises about its content, so it is wise to consider this issue in more detail.

“In drafting the agreement (contract) with a foreign counterpart, one should pay special attention to the applicable law - the right to be used to regulate the relations between the parties. Relationships of the parties are determined not only by the conditions of the contract, but the applicable law. Inconsistency of the contract or any of its provisions, mandatory conditions of the law may result in the recognition of agreement (contract) invalid in whole or in part to certain conditions (eg, non-compliance with contract forms)”¹.

By § 2 of Art. 1209 of the Civil Code, the form of foreign trade transactions, at least one party is a Russian legal entity or individual entrepreneur which submits regardless to the location of the transaction to Russian law. Failure to follow simple written form of foreign trade transactions entails its invalidity (§ 3 of Art. 162 of the Civil Code). Thus, as a general rule form of foreign transactions - simple written, does not require additional notarization.

A written contract may be concluded by drawing up a document signed by the parties and by the exchange of documents by mail, telegraph, telex, telephone, electronic or other ways of communication that allows to reliably establish that the document comes from a party to the contract.

“The content of foreign trade transaction is a set of components of its environment”².

It is necessary to distinguish between required and optional contractual conditions. It must include the conditions, the minimum necessary to control the most important issues related to the execution of the transaction, necessarily contained in the contract, as the lack or incomplete, incorrect statement of at least one of them can make the transaction difficult or even impossible to carry out. At the same time, additional terms and conditions are designed to maximally facilitate the execution of the transaction.

It is possible to include some of the mandatory conditions, based on the current practice of international trade,:

1. Transaction title.
2. Date and place of transaction.
3. Names of the parties.
4. Signers.
5. Subject of transaction.
6. Measure and term of contract.
7. Value.

* Статья представлена на английском языке.

8. Basic conditions of supply.
9. Payment terms.
10. Warranty.
11. Sanctions and Complaints.
12. Arbitration.
13. Signatures.

Additional conditions include: product quality, packaging and labeling, delivery and acceptance of goods, transport conditions, force majeure, etc. As it was already noted, the type and content of the contract depends on the applicable national law of the contract, as well as international treaties. The content of the contract is largely determined by the parties and uses references to the custom of merchants, in particular, INCOTERMS. International commercial practice has developed specific requirements for this kind of contracts. To some extent, the practice in our country is reflected in the Letter of the Central Bank of the Russian Federation № 300 “Recommendations on the minimum requirements for the mandatory details and form of foreign trade contracts” from 15.07.1996³, which considers the requirements for the content of external trade contracts (for example, contracts of sale) in more detail.

In the Introduction of foreign trade contract it is recommended to indicate: a unified contract number, the date and place of signing the contract, full official names of Seller and Buyer, the country of the foreign partner and the country of destination (origin) of goods.

Thus, it is necessary to determine the place of execution of the contract if it is not directly regulated by the contract. Section 1, Art. 1213 of the Civil Code says that in the absence of agreement between the parties on the law applicable to the contract in respect of immovable property, the law of the country with which the contract is most closely connected.

The law of the country with which such contract is most closely connected shall be considered, or if otherwise is required by law, the conditions or the substance of the contract or totality of the circumstances of the case, then the law of the country where the property is situated(?). The same point of contact is contained in international treaties with Russia.

For example, in Art. 11 of the Agreement of the CIS countries, the 20/03/92 on the settlement of disputes relating to the implementation of business⁴.

Place of transaction under Russian law is defined, in accordance with Art. 444 of the Civil Code as the place of residence of the citizen or the location of the legal person who submitted the offer, unless

otherwise is agreed by the parties. Thus, if the application to the law to the deal Russia(?), the court must be guided by Art. 223, 224 of the Civil Code⁵.

Also, a lot of attention is paid to the rest of components of any contract, such as the scope of the contract, price and amount, payment terms, delivery terms, sanctions, force majeure, consideration of disputes and so on.

Thus, the object of the contract includes: product name, range, size, model is complete, country of origin and other data necessary to describe the product, including references to international and / or national standards for products, packaging / packing, marking of goods in accordance with international classifier, volume, weight, quantity, given in accordance with the customs classification of the destination country.

In Russia there is commodity nomenclature, used in foreign trade activity⁶, in accordance with international standards.

In determining the subject of the contract of sale one should specify: full commercial name of the product, its range of products, sizes, models, completeness, country of origin, packing / packaging and labeling of goods, volume, weight, quantity, volume of cargo, the weight of the packaging if there is any.

In “The price and amount” there should be indicated the total amount of the contract and the price per unit in the currency price to bring the abbreviated name of the delivery basis in accordance with international rules of interpretation of the terms of delivery of standard wording “Incoterms 2000”. But based on the fact that under different circumstances the price of one and the same product may not be the same even with all the rest being equal, a reference to the corresponding term of Incoterms should be done thoughtfully, clearly having considered the economic effect of the transaction and it should be remembered that the price structure has a direct relationship to the conditions of supply. If a fixed price can not be determined, then, the Customs authorities of the participants of foreign economic activity, should use the “procedure of conditional release of goods” - that is the definition of a conditional pledge of commodity prices.

In this section, you must specify the name and code of the currency in which the product is priced in accordance with the classifier of currencies used for customs clearance purposes. If the unit price and the amount of the contract can not be clearly established at the date of signing of the contract, then proceed as

follows. Provide detailed pricing formula or the conditions of its definition in such a way that the implementation of all specified conditions can be uniquely set the price of goods and the amount of the contract.

Section "Terms of Payment" shall contain the following:

- name and code of the currency in which the payment will be made in accordance with the qualifier used for customs clearance purposes, as the currency prices can be different from the currency of payment;

- payment terms and installment of date conditions, if any;

- mandatory list of documents transferred by the Seller to the Buyer and confirming the shipping cost and the range of goods shipped.

It is recommended to provide letter of credit or other form of payment that would guarantee unconditional currency proceeds for exported goods and the provision of guarantees for a refund, previously transferred in payment of imported goods, if the delivery is not made. This section contains full names and email addresses of banks (branches) of the parties, account numbers, billing information.

We should not forget that payments between residents and non-residents in foreign currency and in rubles are governed by the currency legislation. First of all, it is important to take into account the requirement of repatriation.

Repatriation-duty residents, unless otherwise stipulated by the Federal Law "On Currency Regulation and Currency Control"⁷ in the terms provided by foreign trade agreements (contracts) should provide:

- 1) receipt of non-residents on their bank accounts in authorized banks of money in foreign currency or rubles due under the terms of these agreements (contracts) for the goods transferred to non-residents, work performed for them or services provided, information and intellectual property;

- 2) return of money to Russian party paid to non-residents for non-imported goods to the customs territory, unfulfilled work, non-rendered services, unsent information and intellectual property⁸.

"Delivery" describes the supply of goods, i.e. the date of completion of supply and (or) the delivery schedule of specific quantities of goods, with the term of the contract, in which it is specified when the delivery of goods should be completed and mutual contract payments made.

Section "Conditions of acceptance of goods in quality and quantity" should contain information on the place and date of the inspection of quality and quantity, the name of an independent expert organization, procedure for making complaints.

In "Force Majeure" it is necessary to formulate the conditions under which the offensive side will be exempt from liability for failure to fulfill the conditions of the contract. Force majeure includes events which cannot be foreseen. These events are natural disasters (floods, fires, earthquakes and other disasters), war, etc. Strikes, military coups, changes in legislation may also be considered force majeure, if the parties agree on it, and will include a list of circumstances that will release the parties from liability when due.

Upon the occurrence of force majeure, the party for which such events occurred, shall notify the other party within a reasonable period of time and give it a documentary confirmation of occurrence of force majeure. In this case, the term of the contract is prolonged for the time during which force majeure lasts.

Duration of the force majeure may be significant and at the conclusion of the contract the parties must provide their duration, after which the parties have the right to cancel the contract.

In the "other conditions and circumstances of the transaction" warranty, license fees, terms of technical assistance, assembly, commissioning and installation of equipment, training, information and other services are specified.

"Adjudication" (arbitration) describes the procedure for submission of claims, the order of payments on claims, the consideration of disputes in arbitration courts, but also indicates which state law will govern the relationship of the parties under the contract. Settlement of disputes between the parties to the arbitral clause contained the parties' agreement to submit disputes to arbitration, or the so-called prorogation agreement, i.e., the parties' agreement to submit disputes to the courts of a State⁹.

"Sanctions" define measures for the improper performance of obligations of the contract, in particular for the delay of delivery or delay in payment for the goods or for supply of goods of inadequate quality.

"Addresses of the Buyer and the Seller" shall contain legal and full postal addresses of the Seller and the Buyer, their telephone numbers, faxes and telexes.

“Signatures of the parties” includes the signatures of persons authorized by the organizations of the Seller and the Buyer to contract, sealed with a mandatory deciphering their surnames, first names, patronymics and positions.

When preparing foreign trade contract in addition to these recommendations you can use the standard forms of contracts as well as a package of standard solutions to help Russian companies to take into account their best interests. “However, at the conclusion of foreign trade contract one must be specific to particular goods and trade in the international market”¹⁰.

Finally it should be noted that the state in the course of participation in foreign trade are trying to come to any regulation of similar relations, uniform requirements. Also the role of regional organizations founded to consider issues related to the implementation of international trade (foreign) activities, is increasing. A striking example of such an organization, which regulates foreign trade is the World Trade Organization. In future the world is likely to come to unified trade and standards at the international level. Also international trade (foreign activities) should not raise any claims and political disagreements.

¹ Shebanova N.A. On preparing for the Arbitration court cases involving foreign persons // Bulletin of the RF. 1997. № 1. P. 98.

² Chudina S.Y. Legal regulation of foreign trade transactions: Summary of the thesis. ... Candidate. Jurid. Science. S.Petersburg, 2004. P. 20.

³ Letter of the Central Bank of 15. 07. 1996 № 300 “On recommendations on the minimum requirements for the obligations of props and form trade contracts” // Bulletin of the Bank of Russia. 1996. 23.07 (№ 33). P. 5.

⁴ Agreement governing the settlement of disputes relating to the implementation of business on March 20, 1992 // Private International Law: A Collection of Documents / Comp. K.A. Bekyashev, A.G. Khodakov. Moscow, 1997. P. 52.

⁵ Shalygina Y.N. Legal regulation of foreign trade transactions with business entities of the Russian Federation // Collection of scientific works of the Faculty of Law NCSTU, 2005. P. 112.

⁶ Government Decree of 22.02.2000 № 148 (as amended on 06.11.2008) “On the Customs Tariff of the Russian Federation - the body of import duties and commodity nomenclature used in foreign trade activity” // Collected Legislation of the Russian Federation. 2000. 28.02 (№ 9). Art. 1036.

⁷ Federal Law of 10.12.2003 № 173-FZ (as amended on 06.12.2011) “On Currency Regulation and Currency Control” // Collected Legislation of the Russian Federation. 2003. № 50.

⁸ Selivanovsky A.S. Features international contracts // Accounting. 2005. № 18, 19. P. 21-22.

⁹ Bazarov A.S., Yatsenko O.V. The concept of external transaction // Accountant and the law. 2006. № 4 (88). P. 25.

¹⁰ Tatarkina K.P. Form of the transaction: the goals, establishing the validity and legal effect // Bulletin of the Tomsk State University. 2008. № 313. P. 126.

Поступила в редакцию 03.05.2014 г.