

## SAMPLE OF SUPPLY CONTRACT FOR CHINA (ENGLISH AND CHINESE)



### **5. DELIVERY RISK & OWNERSHIP**

#### **交付的风险和所有权**

- 5.1 The Products will be delivered by the Supplier to the Company at the delivery points specified in Schedule 4. This may be changed by agreement.  
供应商按照附表4中列明的方式向公司交付产品，交付方式可由协议变更。
- 5.2 Where the delivery point is at the premises of the Supplier, the Company will be responsible for collection and loading of Products and will from that point be responsible for insurance of the Products.  
若产品的交货地点在供应商所在地，则公司负责收货和装货以及以该地点为起点为产品投保。
- 5.3 When the delivery point is at the premises of the Company or some other location which requires the Supplier to arrange transportation of the Products, the Supplier will be responsible for insurance of Products in transit and responsible for unloading Products from the delivery vehicle at the delivery point.  
若交货地点在公司的所在地或其他需要供应商安排运输的地方，则供应商负责在运输途中的保险和在交货地点从运输车辆上卸货。
- 5.4 All deliveries will be made during normal working hours of the Company, unless otherwise agreed in writing.  
所有的交付需在公司的正常工作时间内进行，除非得到书面同意。
- 5.5 Ownership of and risk in the Products will pass to the Company from the Supplier at the delivery point either when Products are loaded onto the vehicle for which the Company is responsible or unloaded from the vehicle for which the Supplier is responsible, whichever is applicable.  
自供应商在交付地点将货物交付给公司时起，无论此时是公司负责装货还是供应商负责卸货，货物上的所有权和风险都转嫁给公司。
- 5.6 The Supplier will arrange for packaging and labelling of the Products in accordance with procedures agreed in writing with the Company from time to time. The

Supplier will also provide such documentation as may be appropriate to enable the Products to be delivered to the delivery point.

供应商应随时按照公司的书面同意负责产品的封装并贴标签。供应商应提供所有文件以便使产品顺利的在交付地点交付。

- 5.7 If the Company fails to take delivery of Products on the date fixed for delivery, any costs incurred by the Supplier in storing them will be reimbursable by the Company on demand and risk in Products will pass to the Company.

若公司未能在交付日期取货，由供应商引起的任何储藏费用由公司及时补偿，产品上的风险也转移给公司。

## 6. PRICES 价格

- 6.1 Prices of Products at the date of this Contract are shown in Schedule 1. These prices include transportation to the delivery point.

自本合同之日起，产品价格列于附表1中。这些价格包括到交付地点的运输费用。

- 6.2 Prices will be subject to adjustment at the commencement of each new Contract Year.

价格在每一个合同年开始进行修订。

*Alternative A.* A formula to determine new prices is shown in Schedule 5.

*选项一.* 决定新价格的计算公式列于附表5中

*Alternative B.* New prices will be adjusted through negotiation and agreement during ..... [1, 2, 3] months before the commencement of the new Contract Year. In fixing any new prices, the Supplier will provide the Company with details of cost increases and other relevant data. Both Parties will act in good faith in these negotiations.

*选项二.* 新价格应在合同年开始前的 ..... [1, 2, 3] 月通过协商和协议调整。在确定新价格时，供应商应向公司提供关于成本增加的明细和其他相关数据。双方在协商中都应做到诚信。

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This is a sample of 2 pages out of 16 of the **Supply Contract for China**  
(English-Chinese dual version).

**To get more information about this contract click here:**

[CHINA CONTRACTS IN ENGLISH AND CHINESE](#)

# NEGOTIATING CONTRACTS IN CHINA

Although it is true that China has experienced great economic growth in recent years, it is important to bear in mind that until a few years ago China did not have private companies, or hardly any international lawyers firms. Consequently, the legal system and legal procedures and documents are considerably less developed than in the Western world. However, for companies trading in China, it is essential to use draft contracts to help in negotiations with Chinese companies and which can also provide legal certainty.

In this guide, we are going to analyse, first, why foreign companies doing business in China - be it export, import or manufacturing - should have their own clear and simple draft contracts, adapted to commercial practices in China and to its laws; and then, we shall offer guidelines on drawing up and negotiating the main clauses in contracts with Chinese companies such as: Exclusivity, Intellectual Property Rights, Confidentiality, Compensation, Place of Delivery and Form of Payment, Applicable Law, Arbitration, etc.

## **THE CONTRACT AS A NEGOTIATION INSTRUMENT IN CHINA**

There is a belief that in China the agreements set out in contracts are often not complied with, and that the system does not provide sufficient legal guarantees; in this regard, it is widely thought that signing a contract is merely the start of the real negotiations. Therefore, it is essential for foreign companies to have contracts whose essential role is to reduce the risk of conflicts as much as it is possible: Chinese business culture is based on harmony between the Parties.

A contract which is efficient for regulating the relations between a foreign company and its Chinese partner will basically need to have three characteristics: clarity, compliance with obligations and threat of litigation.

### **Clarity**

One of the negotiation strategies used by the Chinese is to answer "yes" to everything, even if they have not really understood the question, or do not agree -and they sometimes blame their interpreters for possible misunderstandings-. To avoid these situations which will compromise compliance with the agreements, contracts must be simple and clear. It is also advisable to have a version in two languages, English and Chinese, which will help the Chinese Party to understand the contract. A clear and simple contract will allow the foreign company to know what it may realistically expect from the Chinese company.

## **Preference in compliance with obligations**

China has become the world's economic centre and its companies have a lot of proposals to do business with foreign companies. This privileged situation allows them to negotiate and reach similar agreements with several foreign companies at the same time. A contract clearly specifying the Parties' obligations and establishing a system of sanctions in the event of a breach of contract will be a competitive advantage for the foreign company. In other words, the Chinese company will honour its undertakings as a matter of priority with foreign companies with which it has signed contracts which are clearly expressed, compared to those with which it has not drawn up contracts, or with which it does have contracts but when these do not clearly specify the Parties' obligations.

## **Threat of litigation**

The Chinese political system is quite authoritarian, and in this regard Chinese companies respect the law. On the other hand, it is important to take into account that in the annual *Doing Business* report carried out by the World Bank, China usually stands around the 20th position in the ranking (16 in 2012) of the 183 countries analysed, in the section of "Enforcing Contracts". Therefore, the threat of the foreign company of starting legal proceedings or using arbitration (depending on what has been stipulated in the contract) in the event of non-compliance by the Chinese Party will reinforce the negotiating position of the foreign company.

## **GUIDELINES FOR DRAWING UP THE MAIN CONTRACT CLAUSES IN CHINA**

Having emphasised the usefulness for foreign companies of having clear and precise contracts to regulate their commercial relations with Chinese companies, we shall now analyse as follows the most important clauses and how they should be negotiated in accordance with Chinese commercial practices and laws.

### **Exclusivity**

Chinese companies, on the strength of their great negotiating power, often demand that the foreign company should grant them exclusivity in all - or part - of Chinese territory, for example in distribution or agency contracts. Foreign companies are advised, however, not to grant this exclusivity, because in addition to not being able to use other distribution channels, in the event of inefficient management by their Chinese partner, their access to the market would be suspended until the contract is terminated.

In any event, the thing to do is to make the exclusivity dependent on reaching a minimum sales target. If the Chinese partner were unable to meet such a target, the foreign company will be able to cancel the contract, or, alternatively, to continue but on a basis of non-

exclusivity so that it might be able to distribute its products in the same territory through other companies.

### **Intellectual Property Rights**

This is an essential point in any contract with a Chinese company in light of the well-known difficulties faced by foreign companies in protecting intellectual property in China. A clause must be included whereby the Chinese partner acknowledges that these rights (patents, trademarks, designs, utility models) are the property of the foreign company, and also undertakes not to apply to register these rights in China or also in other countries. In any event, as well as including this clause in all contracts carried out in China, foreign companies are advised to seek legal advice regarding this matter and to consider the possibility of registering their Intellectual Property Rights in China.

### **Confidentiality**

It is important to include a clause in all contracts stating that the Chinese company shall not be entitled to disclose to third parties technical or commercial information of the foreign company or to use the aforesaid information for proposals other than those set out in the contract, during the validity of the contract or once it is terminated. In negotiating complex contracts (OEM Manufacturing, License, Joint Venture) which may include the supply of technical and commercial information, even before the signing of the contract, it is essential to sign a Confidentiality Agreement with the Chinese company, clearly specifying what confidential information is considered to be, in other words what is called "List of Confidential Information".

### **Quality control**

In China, the concept of quality differs from that which exists in the Western world. Therefore, companies which sign supply and manufacturing contracts in China must include a clause which exhaustively covers possible incidents or breaches which could arise in the quality of the products supplied. This clause must include matter such as the following, inter alia: permission to visit the Chinese manufacturer's installations, sending of samples representing the products which are to be manufactured, inspections during the production process, etc.

### **Required authorisations**

Chinese laws regarding external trade and foreign investments are complex, and sometimes difficult to comply with by foreign companies, so that it is advisable that contracts include a Required Authorisations clause so that the Chinese Party shall be held responsible for requesting, processing and, lastly, obtaining all the necessary documents, such as licenses, certificates, import permits, etc.

## **Delivery and payment period specifications**

In contracts with Chinese companies, it is important to clearly specify the place the goods are to be delivered. It will usually be a seaport which will have to be mentioned in the contract - if it is going to be the usual port - or in the shipment orders, as can happen in the supply and OEM manufacturing contracts.

As far as payment is concerned, the common practice is for the payment period (usually 30 days) to begin on the date the goods are inspected and approved in the port of origin, rather than on the shipping date or acceptance date of the goods at the destination.

## **Subcontracting**

The more competitive Chinese companies often have a large number of proposals by foreign companies for distributing or manufacturing products in China. In these circumstances, it tends to subcontract part of its activities to other companies over which it does not have sufficient control. Therefore, contracts with Chinese companies should include a clause whereby the Chinese company is not allowed to subcontract its obligations to third parties. By this means, when the Chinese company does not have sufficient capacity, it shall subcontract the works of those foreign companies which do not have this clause in their contracts.

## **Compensation**

Chinese law is less protectionist than in countries of the European Union or the United States when dealing with the right of compensation in the event of termination of contract. Thus, in the Compensation Clause the foreign company is recommended to choose the option of compensation in accordance with Chinese laws.

## **Law and jurisdiction**

In accordance with Chinese laws (*PRC Civil Law*), the Parties are allowed to choose the law and jurisdiction they wish to apply in contracts with foreign companies. This has been ratified in a Provision of the Popular Republic of China's Supreme Court (*Provisions of the Supreme People's Court on Certain Issues Concerning the Application of Law for the Hearing of Foreign-Related Civil or Commercial Contractual Disputes - 8 August 2007*).

Nevertheless, in commercial practices Chinese companies refuse to sign contracts in which matters of litigation are not referred to the Courts or Arbitration Commissions of China. The questions of which procedure to choose will depend particularly on the power and influence of the Chinese Party and the prestige of the Court proposed by the Chinese company; as a general rule, it will be preferable to choose the alternative of Arbitration rather than the Court.

## **Arbitration**

In contracts subject to Arbitration in China, it is advisable to act as follows:

- Choose one of the Arbitration Commissions with most prestige and international experience: CIETAC (*China International and Economic Trade Arbitration Commission*) or BAC (*Beijing Arbitration Commission*). Chinese companies will not oppose at this point.
- Regardless of where the central office of the Chinese company is located, it is preferable for the Arbitration to take place in Beijing or Shanghai, the two cities with most experience and the best arbitrators. The Chinese company could possibly propose another city, but they will usually accept one of these two cities.
- At least one of the arbitrators must have a nationality which is not Chinese. Chinese companies will usually not oppose at this point.
- The arbitration will be carried out in the English language. It is important to take into account that if no language is specified in the contract, the arbitration will be in Chinese. At this point, Chinese companies would be expected to object strongly, and might even use it as grounds for not signing the contract.

## **Language**

In China, contracts are usually drawn up either in English or in a dual English-Chinese version. It is not common to sign contracts in other languages such as Spanish, French or German. For the version in Chinese, simplified Mandarin Chinese shall be used.

It is advisable to use the dual English-Chinese version as this will make it easier to negotiate the contract, and also help compliance with obligations and an amicable settlement in the event of conflict.

However, when using the English-Chinese dual version, the Chinese company would try to insist that the Chinese version prevails in the event of conflict.

## **Signatures**

For the Chinese, signing a contract with a foreign company is an important act which is given a certain degree of protocol and which is usually celebrated with a banquet. When contracts are especially relevant, a local authority or national representative of the foreign company (Ambassador, Consul, Commercial Attaché, etc.) is often invited.

The persons who sign the contracts on behalf of each one of the Parties will have to have the same hierarchical range. Furthermore, it is common procedure for a witness to sign on behalf of each Party.

Next to the signatures, the seal of each one of the companies should be stamped - this is because in accordance with Chinese law, contracts without a seal might be invalid.

Lastly, it is important to take into account that China is a huge country: each province has its own laws, rules and uses, which from the standpoint of business are just as important as national laws. In this regard, you are advised to seek assistance from professionals with local knowledge of the businesses, especially in operations with a certain degree of importance, which could give rise to conflicts with serious consequences for foreign companies.

# INTERNATIONAL CONTRACTS TEMPLATES



## INTERNATIONAL CONTRACTS IN ENGLISH

- International Sale Contract
- International Distribution Contract
- International Commercial Agency Contract
- International Sales Representative Agreement
- Intermediary Contract for Trade Operations
- International Joint Venture Contract
- International Strategic Alliance Agreement
- International Franchise Contract
- International Services Contract
- International Consulting Contract
- International Technology Transfer Agreement
- International Trademark License Agreement
- International Supply Contract
- International Manufacturing Contract
- International Buying Agent Contract
- Logistics Services Contract
- Export Contract
- Confidentiality Agreement
- Expatriate Contract of Employment
- Memorandum Understanding International distribution
- Memorandum of Understanding for Joint Venture
- **Pack 10 Contracts in English**
- **Pack All Contracts in English**



## INTERNATIONAL CONTRACTS IN SPANISH

- Contrato de Compraventa Internacional
- Contrato de Distribución Internacional
- Contrato de Agencia Comercial Internacional
- Contrato de Representación Comercial Internacional
- Contrato de Intermediación Comercial Internacional
- Contrato de Joint Venture Internacional
- Contrato de Alianza Estratégica Internacional
- Contrato de Franquicia Internacional
- Contrato Internacional de Servicios
- Contrato Internacional de Consultoría
- Contrato Internacional de Transferencia de Tecnología
- Contrato Internacional de Licencia de Marca
- Contrato Internacional de Suministro
- Contrato Internacional de Fabricación
- Contrato de Agente de Compras Internacional
- Contrato de Servicios Logísticos
- Contrato de Exportación
- Contrato de Confidencialidad
- Contrato de Trabajo para Expatriado
- Memorándum Entendimiento Distribución Internacional
- Memorándum de Entendimiento para Joint Venture
- **Pack 10 Contratos en Español**
- **Pack Todos los Contratos en Español**



## INTERNATIONAL CONTRACTS IN FRENCH

- Contrat de Vente Internationale
- Contrat de Distribution Internationale
- Contrat d'Agent Commercial International
- Contrat de Représentation Commerciale Internationale
- Contrat de Joint Venture Internationale
- Contrat de Franchise Internationale
- Contrat International de Services
- Contrat International d'Approvisionnement
- Contrat International de Fabrication
- Contrat de Confidentialité
- Protocole d'Accord pour Distribution Internationale
- Protocole d'Accord pour Joint Venture Internationale
- **Pack Tous les Contrats en Français**



## INTERNATIONAL CONTRACTS IN GERMAN

- Internationaler Kaufvertrag
- Internationaler Vertriebsvertrag
- Internationaler Handelsvertretervertrag
- Internationaler Vertretungsvertrag
- Internationaler Joint Venture Vertrag
- Internationaler Franchisevertrag
- Internationaler Dienstleistungsvertrag
- Internationaler Liefervertrag
- Internationaler Herstellungsvertrag
- Geheimhaltungsvereinbarung
- Absichserklärung Internationalen Vertriebsvertrag
- Absichserklärung Joint Venture
- **Pack Alle Verträge in Deutscher**

