

INTERNATIONAL CONSTRUCTION CONTRACT: KEY CLAUSES

The International Construction Contract has become one of the international models of international contracts used most frequently since in recent years numerous construction projects and infrastructures have been made by Western companies (from Germany, France, Spain) in emerging countries. Due to local contractors' lack of experience, international contractors have carried out construction projects in developed countries and this situation is expected to continue. The same phenomenon has occurred in the house building sector in which there have been many companies that have internationalized their activities by performing real estate projects in foreign markets.

Although a standardized construction contract is unusual in each country, in international markets there is a mostly used **Model of International Construction Contract** that does not arise from the application of international regulations, but as a set of good practices recommended by different professional associations. In this model, besides the general conditions, particular conditions must be included, such as the contractor's economic offer, technical specifications of the project, the schedule of works, etc. We must bear in mind that some clauses of this standardized contract are not always in accordance with the law that the parties declare applicable to the contract and the legal requirements that may be applicable under local law of the place where the project takes place; that can render some clauses of the standard terms and conditions inapplicable or needing to be reinforced by greater demand, for example with regard to environmental, labor, quality or safety in construction, etc.

In any model of international construction contract there is a group of clauses that are considered relevant, including price, variations, delays in work, import of materials, expatriate personnel, currency, dispute resolution, and language.

PRICE

Pricing in international construction contracts can be set according to three systems:

- **Lump Sum System:** the Customer (called Employer) receives only the price set in the contract regardless of the expenses incurred during project implementation. This way the employer significantly reduces the risks that may arise during project implementation as a result of changes in prices of products or services that will be hired.
- **Unit Price System:** the parties agree on a price per unit and total construction contract value will be the sum of the units for the value of the unit. Each unit must include a value clearly representing the value of Contractor remuneration. The employer usually requires the contractor to prepare a list of units and values consisting of a list of work units and the value of each.
- **Cost Reimbursement System:** the price received by the contractor will be resulting from the cost that this has taken on the implementation of the project plus the profit.

VARIATIONS

Most international construction contracts include a clause that allows parties involved in the contract to change the terms of the contract concerning the works to be performed.

Through this clause the employer is entitled to modify the amount of work specified in the contract, the quality of the materials used in construction, the dimensions or size of the work, or the time for executing the work. Similarly, this clause regulates the contractor's obligation to comply with the orders of variation that are delivered by the employer.

DELAYS IN WORK

Each construction project has a work schedule that clearly and specifically determines the sequences and times that should be followed by the contractor during construction. It is appropriate that the contract contains a schedule that sets the order to be followed during construction. This schedule allows efficiently determining the work progress at certain periods of time and the dates of delivery.

It is uncommon to find a construction project that complies 100% with the provisions of work schedule. In most cases unforeseen circumstances occur that alter the normal development of the work. For this reason the contract documents must determine directly, or at least state who is responsible for delays in question and must assume the risk of delays. It should be stated the cases in which the contractor is responsible for delays in work, whether the contractor is responsible at all, and whether the contractor is entitled to a time extension that has been granted for the construction.

IMPORT OF MATERIALS

To carry out the work it is usual to import materials from neighboring countries or from the contractor's country. Imports usually generate a risk, therefore there occurs fluctuation of the market price of such materials and the possible variation of exchange rates if the materials are bought in currencies other than the one used in the contract prices. Additionally the entry of construction materials or equipment necessary for the work is subjected to local requirements such as licenses or customs tariffs. It will thus be necessary to establish in the contract which parties will take care of the formalities and import costs, since due to his contacts and knowledge of the local regulations the employer will often be better suited for dealing with such issues than the contractor.

EXPATRIATE PERSONNEL

Like the import materials, the entry of the contractor's personnel (expatriates) is also often subject to local requirements such as visas. For obtaining these permits and documents the employer will often be better suited than the contractor, so it will be useful to agree that and how the parties will cooperate in this regard.

THE CURRENCY

The exchange rate risk is one of the big questions at the time of pricing in international construction contracts. If the price is established in the currency of the contractor, the risk shifts to the employer and he would have to get enough currency to make payments at the agreed time. However, if the contract price is paid in local currency, it will be an important element of a risk to the contractor, especially in countries with significant fluctuations in the exchange rate or risk of high inflation. Therefore the parties use strategies such as establishing the pricing in a 'neutral' stable currency or the use of a reference currency to which the currency of payment is compared (e.g. establishing the price in US dollars or Euros). It is also common that the party which runs the exchange risk cover this risk through different financial instruments (exchange insurance and currency options).

DISPUTE RESOLUTION

In international construction contracts the clauses about dispute resolution and arbitration are of great importance due to the nature of the activity, the number and complexity of services provided in these contracts, the long time periods necessary to perform the work, and the international nature of the contracting parties. The subjects of litigation in these contracts are generally related to technical problems that are difficult to solve due to the fact that techniques and technologies involved in construction contracts are difficult to understand and always subject to change.

Despite this fact international construction contracts have evolved significantly with regard to conflict resolution and today we can say that these clauses clearly establish the form and procedures that the parties must follow to resolve conflicts arising in the execution of the contract. Contractual procedures become alternative methods of dispute resolution: they can and should be regulated in some way by the internal legislation of the countries.

LANGUAGE

In international construction contracts it is common to draft the contract in a bilingual version when the language of the contractor and the employer is different (English-Spanish; English-French, etc.). The specifics of the legal concepts in one language or another make it essential to determine which version must be predominant in case of doubt or contradiction in the translation; it is important that the language of the contract is consistent with the agreed court for conflict resolution in order to avoid (sometimes significant) translation costs in case of disputes. The language of the contract will not necessarily be the working language in the execution of the project, which should also be determined to ensure better coordination between the parties present on site.

Finally, when negotiating international construction contracts it will be crucial to establish excellent coordination between the technical team and the legal team of the parties involved to ensure that there are no loose ends in the contract to be signed that could generate disputes.



To obtain the Model of International Construction Contract click here: [INTERNATIONAL CONSTRUCTION CONTRACT](#)

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**
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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**
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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
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