



- Overview
- The global economy
- International Laws of commercial transactions
- Discussions

#### Overview

- Inadequate manufacturing capabilities
- Role of State in contracts with private parties
- Applicability of laws

## Stages of procurement

- Perspective planning
- Request for Information (RFI)
- Service Qualitative Requirements (SQRs)
- Acceptance of Necessity (AoN)
- Request for Proposals (RFP)
- Evaluation of offers Technical, field and financial

## Stages of procurement

- Technical Oversight Committee
- Contract Negotiation Committee
- Competent Financial Authority approval
- Contract/ Work Order/Supply Order

## Procurement strategies

- Buy (Indian IDDM) Indigenous design and IC ≥ 50%
- Buy (Indian) In case of Indigenous design ≥ 50%, otherwise ≥ 60%
- Buy Make (Indian) Initially assembled procurement and then local manufacture
- Buy (Global Manufacture in India)
- Buy (Global)

## Procurement strategies

- Make & Innovation Internal agencies
- Design & Development State agencies
- Strategic Partnership Model Indian firms with OEMS under "Make in India"
- Leasing Operating and Finance
- Repairs and maintenance

## The Global Economy

- Geo political developments in the last decade
- Economic development roadmap of the nation
- State tacit support to defence industry
- Arm twisting by nations

#### International Laws of Commercial Transactions

- UNCITRAL Contracts for the International Sale of Goods
- The UNIDROIT Principles of International Commercial Contracts
- The EU & European Contracts Law
- International Commercial Terms (INCOTERMS)
- UNCITRAL Model Law on Electronic Commerce
- The UN Centre for Trade Facilitation & Electronic Business (UNCEFACT)
- ICC Model of Commercial Agency Contract
- ICC Model of International Franchise Contract
- FIDIC
- Transport related laws
- Liability related laws

#### UNCITRAL Contracts for the International Sale of Goods

- United Nations Commission on International Trade Law's Convention on Contracts for The International Sale of Goods was accepted in 1980
- Ratified by 11 countries and came into effect in 194
- As of 2022, 195 countries have ratified the framework
- Applies to sale of goods between parties in different states
- Ambiguity on application to defence products and software
- India not a signatory to the CISG

## The UNIDROIT Principles of International Commercial Contracts

- International Institute for the Unification of Private Law (UNIDROIT) passed the Principles of International Commercial Contracts in 1994 and latest version is of 2016
- Soft Law instrument with 211 rules. Optional to adopt in transactional contracts
- Harmonizes provisions of international commercial laws by supplementing them including national laws
- Generic provisions which parties to contract can build upon

#### International Chamber of Commerce

- Founded in 1919, with over 100 member nations, supporting UN and WTO
- Rule setting, dispute resolution & policy advocacy
- <u>International Commercial Terms</u> (INCO Terms). Nine revisions and the latest being 2020.

## Cost allocation

Incoterm 2020	Loading at origin	Export customs declaration	Carriage to port of export	Unloading of truck in port of export	Loading on vessel/airpl ane in port of export	Carriage (sea/air) to port of import	Insurance	Unloading in port of import	Loading on truck in port of import	Carriage to place of destinatio n	Import customs clearance	Import duties and taxes	Unloading at destination
EXW	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
FCA	Seller	Seller	Buyer/Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
FAS	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
FOB	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
СРТ	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer/Seller	Buyer/Seller	Seller	Buyer	Buyer	Buyer
CIP	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer/Seller	Buyer/Seller	Seller	Buyer	Buyer	Buyer
CFR	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
CIF	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
DAP	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer
DPU	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller
DDP	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer

#### The International Federation of Consulting Engineers (FIDIC)

- Fair application of conditions on all parties to the contract
  - Owners
  - Engineers
  - Contractors
  - Sub Contractors
- Settle disputes amicably, and if not possible, track disputes from start to end

#### The International Federation of Consulting Engineers (FIDIC)

- Model Contract document created in 1999
- Revised in 2017, following models available
  - Conditions of Contract for Construction, 2<sup>nd</sup> Edition 2017 (Red Book),
  - Conditions of Contract for Plant and Design Build, 2<sup>nd</sup> Edition 2017 (Yellow Book),
  - Conditions of Contract for EPC/Turnkey Projects, 2<sup>nd</sup> Edition 2017 (Silver Book),
  - Conditions of Contract for Underground Works, 2019, (Emerald Book).

## **Transport Related Laws**

- International Civil Aviation Organization (IACO)
- UN Convention on the Carriage of Goods by Sea, 1978
- UN Convention on the Liability of Operators of Transport Terminals in International Trade
- United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 2008) (the "Rotterdam Rules")

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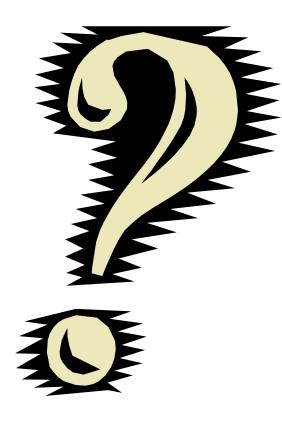
## **Drafting International Contracts**

- Applicability of laws
- Choice of Remedy, venue and Arbitral Institutions
- Prices & Terms of payment
- Terms of delivery, Inspection and claims
- Force Majeure
- Termination of contracts

## Challenges

- Legal competency
- Documentation lapses
- Negotiating Contracts
- Institutional Support







# धनयवाद



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