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FINANCING EXPORT - CONTRACTS & PAYMENTS



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April 28, 2017

Ghana Chamber of Commerce AGOA Workshop

Contracts

- **Legally binding** or **valid** agreement between two parties
- Could be **written** or **oral** - emphasis on **written**
- Must be **negotiated**

Keys elements:

- ✓ offer and acceptance
- ✓ an intention between the parties to create binding relations
- ✓ consideration to be paid for the promise made
- ✓ legal capacity of the parties to act
- ✓ genuine consent of the parties
- ✓ legality of the agreement.

Why should business enter into contracts

- To develop, define and solidify business relationships.
- To create, protect and realize value.
- To manage risk.
- To minimize disputes.
- To create predictability and facilitate planning; to avoid surprises.
- To seize and leverage opportunities.
- To create and preserve options.



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Developing terms & conditions

Prior to entering into negotiations, **be prepared.**

- This means that you understand yourself and your business, and you know your limits.



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What should be in contract?

- **Who:** the Parties
- **What:** the rights and duties of parties
- **Where:** the place of performance
- **When:** any relevant background
- **How:** the method of performance
- **How much:** the amount and terms of payments
- **What if:** termination rights and remedies



Steps

Put all agreements in writing.

- Both parties should sign all agreements
- Have your buyer confirm all verbal agreements in writing.

Filing and archiving

- Keep hard and “soft” copies of all emails and contracts.
- These may become useful evidence in case of a dispute.



Develop your own terms and conditions.

Terms of Payment

- Calculate the timing of payments due according to your financial capacity and profitability.
- Always include financial costs in your calculations of all costs in price determination.

Terms of Delivery

- When and how are products to be shipped?
- Who carries which costs of delivery?
- Ownership clause: State that "...All items remain your property until fully paid." This is a crucial safeguard when your buyer files for bankruptcy before paying you in full for your order.

Terms and Conditions

Timing of Payments

- Refer to the time when payment for the goods will be made.
- Payments are based on performance as detailed in the contract:
 - ✓ Cash Advance, or % of Total Billing
 - ✓ Cash on Delivery (COD)
 - ✓ Cash Against Documents prior to physical delivery
 - ✓ Letters of Credit

Payment Delays

Typical Payment Delays:

- ✓ Particularly important if the buyer asks to pay after delivery (60, 90, or 180 days).
- ✓ You will have to carry the costs until payment.

In Africa this generally means:

- ✓ Your 100% collateral is blocked.
- ✓ Your collateral may or may not be earning interest.
- ✓ You are paying effective or real interest charges on overdrafts or other pre-export financing.

Payment Methods

Types of Payment Methods are:

- Cash (Advance/ Delivery)
- Money Transfers
- Cheques & Drafts
- Collections Against Documentation
- Letter of Credits (“L/C”) and Types of L/Cs



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Payment Methods

- **Payment Methods** require an underlying Contractual Agreement represented by a Proforma Invoice
- Payment **Methods** are not Payment **Terms**



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Recommended Method

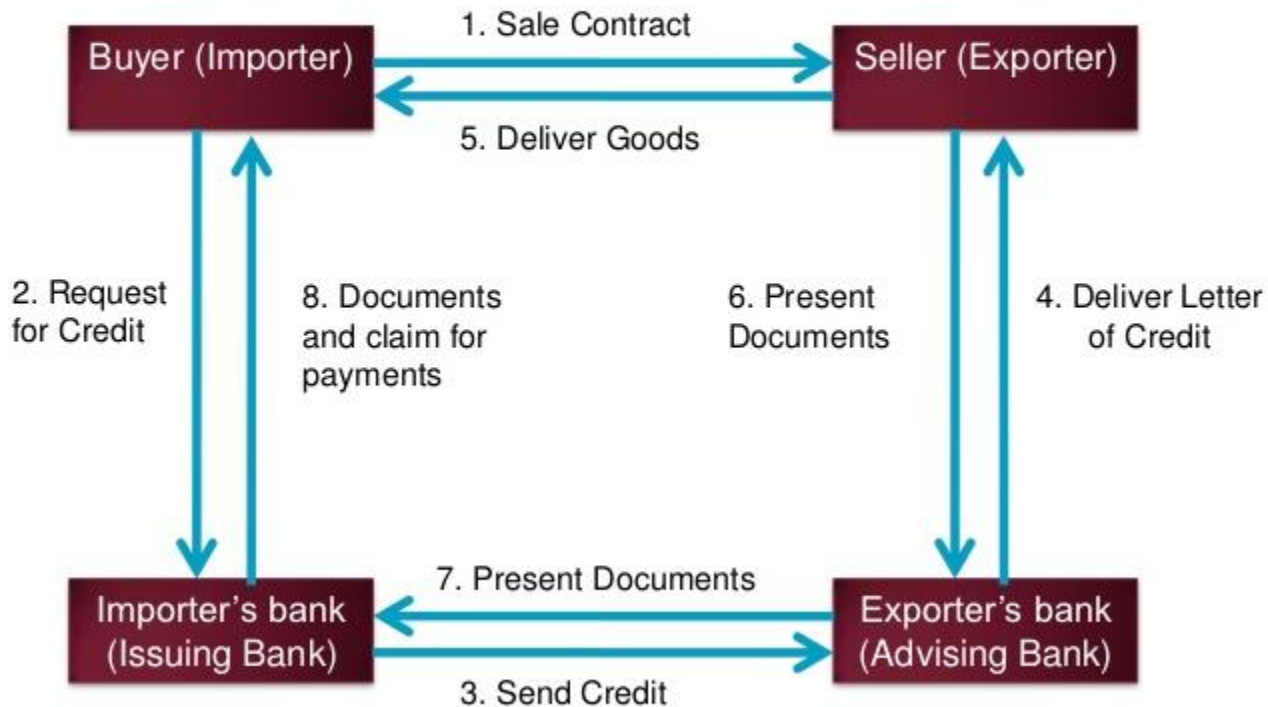
For West Africa, use Letters of Credit. Letters of Credit oblige both parties to comply with the conditions of the contract, principally the need to perform and pay. The bank acts as referee.

DEFINITION: In Simple English:

If an L/C is issued and the supplier ships goods that are in conformity* with the L/C, the supplier will be paid by the buyer. The buyer normally opens the L/C in favor of the seller. The Bank is only a processing agent for their Customer.

L/Cs Procedure

LETTER OF CREDIT: PROCEDURE



Types of L/Cs

Straight Credit

Confirmed Credit

Irrevocable Credit

Periodic Credit

Eastern Advance Bill of Credit

Authority to Purchase Credit

Deferred Payment Credit

Standby Letter of Credit

Negotiation Credit

Revocable Credit

Revolving Credit

Acceptance Credit

Local Credit

Back-to Back Credit

Red Clause Credit

Transferable Credit

Essential L/Cs

Here is what you need most:

✓ Irrevocable Confirmed L/C's

Here is what you strive for:

✓ Red Clause L/C's



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Confirmed Irrevocable L/Cs

Confirmed Irrevocable L/C

- In this case, the bank — under the Uniform Commercial Code (UCC) — may not, on its own will, revoke the L/C. It has been issued by the Buyer's Bank and advised to the Seller's Bank.
- Either the Buyer's Bank or the Seller's Bank may Confirm the L/C. This means the Bank has added its name to the Payment Risk.
 - **Oblige both parties to comply with the conditions of the contract**



Red Clause L/C

- Buyer agrees to pay for the Raw Materials through the L/C, meaning that the Seller may draw against the L/C an amount usually **less than** the face value of the L/C.
- The L/C should be **irrevocable**.
- In the context of good client relationship, **a red clause L/C** permits **partial drawdown** of proceeds to cover working capital requirements.

Key Note

- **Written Contract.** When negotiations are terminated, you must insist on a written agreement that fairly represents the negotiations on every issue
- You do not need to sign the contract immediately.
- You can refer it to your lawyer, partners, or others for examination prior to signing, even if that means returning to West Africa from the U.S.



Key Note

- **Communicate:** Use telephone, email and courier services as necessary.
- **Pro-forma Invoice.** Once signed, the contract should be represented by pro-forma invoice.
- You must verify that the pro-forma invoice conforms to the contract. The pro-forma invoice is the basis for the Letter of Credit.



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Key Note

- Buyer is not doing you a favor! **Nor should you** do the buyer a favor!
- The goal of negotiating for both sides is to ensure that **each party makes a profit!**
- Be sure the product represented can be produced to the **standard, quantity, quality,** and **specification** sought by the buyer, and delivered on time.

Key Note

Be transparent

- Explain how you arrived at your pricing.
- Describe potential production problems.
- State requirements for financial support.
- State issues specifically relating to your country and its laws.

Be sure information is accurate

- Only trust the facts.



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Penalties

Closing Notes: Be aware of penalties

Dates and Timing: Failure to Meet Contract → Penalties

Be sure you know:

- When your raw materials will arrive
- How long your production cycle
- When you can ship
- How long it will take for shipment
- What Constraints are involved
- Who you are shipping to
- What are the Penalties for:
 - ☹ Failure of goods to **Arrive on Time**
 - ☹ Failure of goods to meet **Quality or Quantity**

Sample Contract



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Thank You!

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