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The contracting process - A workshop about the construction of contracts

All purchases are contracts. Therefore, the construction of contracts is a necessary component in every business transaction. It follows – or should at least follow – a given sequence where the treatment of each issue is based on earlier decisions. After an introduction about the role of contract law in commercial relationships, the workshop continues with presentations and discussions of different legal issues in a logical order, presented in eight modules. Each module deals with one or more legal issues that need to be addressed in order to enable a contract to function efficiently. The modules start with a presentation of the issues involved and how they are dealt with in non-mandatory law and continue with discussions of alternative ways to deal with them.

The workshop will provide you with *tools*, i.e. a process for the construction of contracts and *knowledge* to enable you to in that process construct contracts in an efficient way. Its overriding purpose is that contracts that you enter into after the workshop shall be better and more profitable than before the workshop.

The workshop is primarily made for sellers and purchasers. It requires two days and costs SEK 90 000.

The workshop is led by Jon Kihlman, LL.D.

Content

1. Introduction, the role of law in business transactions.
2. Choice of law.
 - National and international contracts.
 - National law in international contracts.
 - Alternatives to national law.
 - Choice of law based on the object of the contract.
 - Choice of law based on language.
3. The object of the contract.
 - The need to make a breach of contract possible.
 - Results and best efforts.
 - Goods and services.
 - Functions and technical specifications.

- The rules about non-conformity in sales legislation.
 - The connection to the passing of risk (or to another time).
 - Warranties and the burden of proof.
 - Limitation periods for non-conformity.
4. Choice of type of relationship (a single contract or an ongoing relationship).
For long term relationships:
- Choice of to what degree parties shall be bound.
 - Time of validity and cancellation.
 - Call offs, automatic call offs and VMI.
 - Authorities.
 - Delivery plans etc.
 - Lead times / Time for delivery.
5. Analyzing the supply chain.
- Goods.
 - i. Delivery and the passing of risk – Important issues in all sales law.
 - ii. Examination after delivery.
 - iii. Notices of non-conformity.
 - iv. Contracts of carriage and insurance issues.
 - v. Incoterms 2010.
 - vi. Division of costs.
 - vii. Division of responsibility for contacts with authorities, export and import formalities etc.
 - Functions.
 - Best efforts.
 - Services.
6. Analyzing the parties' liquidity etc.
- Payment terms.
 - i. The seller's alternative cost for additional cash.
 - ii. The buyer's need for additional cash.
 - iii. Payment terms as incentive for final delivery.
 - The need for collateral in case of the other party's insolvency.
 - i. The seller's use of the goods as collateral.
 - ii. The seller's other options to create security.
 - iii. The buyer's use of money as "collateral".
 - iv. The buyer's other options to create security.
7. Analyzing the importance of the contract. Choice of remedies for breaches of contract.

- Definitions of breaches of contract and other grounds for liability.
- Evaluation of the impact of a breach of contract on the buyer's business.
- Evaluation of the seller's margin from the contract.
- Evaluation of the seller's importance for the buyer (is the seller easily exchangeable?).
- Evaluation of the buyer's importance for the seller (is the buyer easily exchangeable?).
- Evaluation of the need to be able to avoid (terminate) the contract.
- The need to demand repair or delivery of substitute goods.
- Evaluation of time before the right to terminate.
- Synchronization of liquidated damages and the right to terminate.
- The need for a right to claim damages.
- Limitations of liability.
- Foreseeability.
- Direct and indirect losses.
- Gross negligence.

8. Resolution of disputes.

- "Soft or hard" resolutions of disputes?
- Court or arbitration?
- The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- Arbitration institutes or ad hoc arbitration?
- Choice of institute.
- Choice of place for the arbitration.
- Choice of language for the arbitration.

9. Other issues. Useful and not useful clauses.

- Definitions.
- The validity of offers.
- NDA.
- Integration clauses.
- Contracted formal requirements.
- FAT.
- Acceptance of delivery.
- Duty to insure.
- Force majeure.
- Regulations of product liability.
- Duty to communicate.

- Specific grounds for termination of the contract.