Tools of the Trade
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Things to Consider

- **Know your Customer**
  - Due Diligence Regime
  - Office of Foreign Asset Control
- **Compliance**
  - Regulations
  - Documentation
  - Training
- **Market Identification/Research**
  - Harmonized Tariff System (HTS) Understanding
External Tools
U.S. Government Programs

- USTDA
- OPIC
- EXIM
- USDA
  - Foreign Agricultural Service
- Department of State
  - ITAR
  - Embassy System
- Department of Commerce
  - Bureau of Industry and Security
  - Foreign Commercial Service
  - Market Access and Compliance
  - Office of Business Liaison
External Tools

Non-U.S. Government Programs

- **Multilateral Development Banks**
  - European Bank of Reconstruction and Development (EBRD)
  - World Bank Group
    - IFC
    - MIGA
  - Asian Development Bank (ADB)
- **Africa Development Bank (AfDB)**
- **Inter-American Development Bank (IDB)**

- **Private Banks**
- **Private Insurance Companies**
- **American Chambers of Commerce**
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Contract Basics

• Must clearly specify

  • THE BUYER
  • THE SELLER
  • DESCRIPTION OF GOODS/SERVICES SOLD
  • TOTAL PRICE, INCLUDING UNITS & QUANTITY
  • DELIVERY DATE AND TERMS
A Few Specifics….

- Payment Terms - Must be tailored to each customer and transaction and clearly specify what it takes to get paid and when, for example:

  - PAYMENT IS TO BE MADE AT SIGHT BY CONFIRMED IRREVOCABLE LETTER OF CREDIT, ISSUED BY ______ AND CONFIRMED BY ______ PAYABLE AS FOLLOWS:
    - A. An amount equal to _______ payable upon presentation of
      » Air Waybill
      » Commercial Invoice
      » Packing List
    - Payment shall be due net thirty (30) days following date of invoice
A Few Specifics….

• **Contract Effectivity and Completion**

  – Defines when the Contract begins – critical to your delivery schedule obligations

  – Example:
    • This Contract is effective when the last of the following events has occurred
      – Contract is signed by both parties
      – Acceptable CILC is received (if appropriate)
      – Advance Payment is received (if appropriate)

  – Specify what constitutes contract completion – when you have fulfilled all obligations under the contract (eg., delivery, acceptance, etc.)
A Few Specifics….

- Delivery Terms (Incoterms 2010):
  - Defines when Risk of Loss Passes from Seller to Buyer
  - Be sure you understand Incoterms
  - Defines Importer of Record and responsibility for Loading/Unloading, final destination of goods, duties, etc.
  - Very important to understand potential seller tax impacts

- Example:
  - Delivery terms of CIP Airport Mexico City, Mexico. Risk of Loss passes to Buyer at shipping point (Rochester ???) but we deliver to Mex. City.
Warranty

• Specify when warranty begins and ends
  – Upon delivery?
  – Upon acceptance?

• Be clear about your repair and return obligations
  – Who pays for transportation each way / Timeframe responsibility to complete the repair
  – Sample clause:

  For a period of xx months from the date of shipment of equipment, Seller warrants that it shall repair or replace equipment manufactured by it which is shown to be defective in material and workmanship at the time of delivery, provided Purchaser gives Seller prompt written notice of such defect. Seller’s sole responsibility with respect to any equipment is to supply a repair part FCA Seller’s factory within the stated warranty period. Seller shall not be liable for any expense whether for repairs, material, service or otherwise, incurred by Purchaser or modifications made by Purchaser to the equipment without prior written consent of Seller.
Other important clauses...

- Excusable Delay (Seller not responsible)
- Force Majeure (neither party is responsible)
- Dispute Resolution
  - Arbitration
  - Litigation
- Applicable Law and Jurisdiction
  - In the US preferably
- Limitation of Liability (in the event of default or loss)
  - Example: *In no event shall Seller be liable for any special or consequential damages including, but not limited to, loss of anticipated profits or revenue, cost of substitute equipment, downtime costs, or loss of goodwill*
Foreign Corrupt Practices

• Prohibits the payment of bribes to foreign government officials and political figures

• *Corrupt intent is defined as any payment made with the purpose of influencing an act or a decision*

• Includes offers, promises or authorization to pay, gifts, or to give anything of value (promises of future employment, discounts, entertainment, etc., etc.)

• Civil and criminal penalties
Methods of Payment in International Trade

**TRADE TERMS**

- Open Account
- Documents Against Acceptance
- Documents Against Payment
- Time Letters of Credit
- Sight Letters of Credit
- Payment in Advanced

**EXPORTER RISK**

- HIGH
- LOW

**IMPORTER RISK**

- LOW
- HIGH

**Trade Terms as a Spectrum of Risk**
Some operational risks: ownership, transport/logistics, loading/unloading, passing customs, handling and putting into storage.
Payment Methods in International Trade

- **Payment Options**

  - Most Risky to Exporter
    - Open account
    - Documentary Collection
  - Least Risky to Exporter
    - Confirmed LC
    - Unconfirmed LC
  - Least Risky to Importer
  - Most Risky to Importer
    - Cash in advance