



# CONTRACTING WITH EU CUSTOMERS



An initiative brought to you by selected Chambers of Commerce across the UK





# AGENDA

1. Welcome & Brief introduction to Chambers Trade Academy, Susana Cordoba, Head of International Trade at GM Chamber
2. Contracting with EU Customers, Tim Tiverton & Alice Tranter, International Employment and Mobility Experts in partnership with Chambers Trade Academy
3. Q&A Session



# 1. ABOUT THE CHAMBERS TRADE ACADEMY





# 1. ABOUT THE CHAMBERS TRADE ACADEMY

An initiative of selected Chambers of Commerce across the UK to provide free virtual sessions covering the basics of exporting and importing, briefings on latest regulations as well as opportunities to go global.

Combined we represent more than 15,000 businesses of all sizes and sectors.



# INTERNATIONAL TRADE SUPPORT



We support traders of all sizes and sectors and provide services for every stage of your internationalisation journey.

- International Trade Events
- Readiness Assessment
- Export, Import & Customs Training Courses
- Bespoke Advice and Customs Consultancy Services
- Market Identification Services
- Market Research and Entry Services
- Partner Finding Services
- Commercial Debt Recovery
- Foreign Exchange Services
- Letters of Credit Preparation Services
- Credit Checks
- Certification, Legalisation and Apostille Services
- Customs Brokerage Services
- Post-Brexit Information and Support



# 2. EU COMMERCIAL CONTRACTS

Tim Tiverton & Alice Tranter, International Employment and Mobility Experts in partnership with Chambers Trade Academy



# Today's content

- Contracts with EU customers - buying and selling
- Trade in goods vs trade in services
- Direct contracts and supply chains
- Choice of law and enforceability
- Contracts and mobility of workers
- Contracts and tax



# Background

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Since the UK left the EU, we are no longer in the customs union or single market.

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This means that UK employers do not enjoy the automatic right to trade or provide services within either of the above.

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We therefore fall back on the UK/EU Trade and Cooperation Agreement (UK/EU TCA) or individual member state law or the law of the UK.





# Section 1 : Contracts with EU customers - buying and selling #1

- This is not about terms relating to product standards or import or export procedures. Today is solely about commercial terms.
- **Buying**
  - If you're buying into the UK, you're buying on UK terms. That means that UK law will apply.
  - UK standard implied terms should apply (B2B)
  - Jurisdiction should be England and Wales (unless buying from N.I or Scotland)
  - Therefore, we will have the benefit of implied terms as to title, fitness for purpose, quality, reasonable price, delivery etc.
  - More likely if you're buying goods, you will have a specification that you're buying to.
- How do you enforce any of this if you need to?



# Section 1 : Contracts with EU customers - buying and selling #2

- **Buying**

- Bargaining power? If you're dealing with a large EU seller, they will have standard terms that they will only deal on with, in reality, little or no capacity to amend or change.
- Their governing law and jurisdiction is likely to be EU-based.
- Standard boiler-plate terms will be:
  - Entire agreement
  - Exclude all pre-contract representations
  - No variation
  - Exclusion
  - Limitation
  - Risk



# Section 1 : Contracts with EU customers - buying and selling #3

- **Buying– common terms to be aware of**
  - **Entire agreement:** the boilerplate clause simply says that if its not in the agreement, it does not apply. Be aware often, commercial agreements, buying or selling, they incorporate other documents in strict preferential order.
  - **Exclude all pre-contract representations:** boilerplate clause says all excluded. Generally, exclude all misrepresentations but cannot exclude fraudulent misrepresentation.
  - **No variation:** boilerplate clause says no variation to the agreement unless signed in writing by both parties and ideally appended to the agreement.



# Section 1 : Contracts with EU customers - buying and selling #4

- **Buying– common terms to be aware of**
  - **Exclusion:** Excludes liability for various acts e.g. innocent or negligent misrepresentations or defects in quality.
  - **Limitation:** Usually to a numerical number e.g. contract price, raw number, percentage.
  - **Risk:** When does it pass? When it leaves the factory gates or on delivery? What happens in between? When is delivery?
  - **Time of the essence:** General rule is time is NOT of the essence unless it says it is. Means if its marginally late, you have no remedy.





# Section 1 : Contracts with EU customers - buying and selling #5

- **Selling into the EU**
  - Recurring customer or one-off?
  - Sale of goods in the EU – the default is that they will be sold on EU terms as we are selling into the single market
  - The jurisdiction will be the national law for the company that you're selling to
  - Governing law will be the national law of wherever you're selling to
  - Remember they're going to be in the EU so single market rules and EU law in general is going to apply.
  - Presumption is that UK law is not going to apply
  - Presumption but not a rule that you can seek to vary
  - Biggest factor is getting paid
  - Beware regulated sectors vs products that are regulated
    - Regulated sectors: medical, pharma, vet, food, chemicals
    - Regulated products: electrical, mechanical,



# Section 1 : Contracts with EU customers - buying and selling #6

- **Selling into the EU**
  - When you're selling into the EU, the issue will be selling on EU terms. Likely that buyer will not budge on governing law and jurisdiction
  - How do you know what these will be?
  - Terms you will want in the contract:
    - **Risk/Delivery:** passes when product leaves factory gate
    - **Insurance:** our insurance liability lapses/ceases when the goods leave us
    - We make the buyer liable for the defaults of the courier
    - **Time of the essence:** say time is not of the essence otherwise we risk time being of the essence as we don't have the UK general rule
    - **Need an exclusion clause and limit our liability:** this time as high as possible.
  - How do you protect your IP when selling into the EU?



# Section 2 : Trade in goods vs trade in services

- The UK/EU TCA is mainly aimed at companies that trade in goods rather than services. Not aimed at general service providers.
- Only really touches on service provision in people/mobility section.
- Broadly, those providing regulated professional services no longer have access to the single market.
- Customs Union = goods
- Single Market = freedom of movement of goods, services, people and capital.
- Differentiate between broadly three types of contracts:
  - Goods only, sale/purchase. (Contrast supply of end product vs a part of an end product)
  - Goods and services together. (Sale of machinery plus installation and commission)
  - Service only: engaged by seller of goods or standalone engaged by the buyer. (No sale of goods or parts)



# Section 3 : Direct contracts and indirect relationships #1

- **Different contractual relationships:**
- **Direct contract:**
  - Buying or selling a totally finished product.
- **Indirect relationships**
  - **Buying or selling part of a finished product:**
    - Scenario 1: we sell to a final consumer who is buying elements from different manufacturers.
    - Scenario 2: we are selling a part to a manufacturer who will combine the part with other parts to then sell as a finished product to the final consumer.
  - **Reseller:** supply someone with a finished product in the EU who then resells the product to the final consumer.





# Section 3 : Direct contracts and indirect relationships #2

- **Different contractual relationships:**
- **Indirect relationships**
  - **Agents:** Agent for whom? Usually it will be your agent, and you can dictate the terms. Typically, standard UK agency agreement under UK law.
  - Some agents will want the agency agreement to be their national law if you're selling. Providing that the payment is direct from the customer to you, you're fine. However, beware what the agent is selling. The agency agreement may be UK law but the sale agreement may be EU law. In which case, you will be liable for what the agent says and does.
  - **Franchise:** Need to check the precise terms of the franchise agreement.
  - You could be selling to a franchise holder as an independent business
  - Or, the person who has granted the franchise.



# Section 4 : Choice of law and enforceability #1

- **EU Judgements enforceable in the UK**
  - In general, an EU judgement can be enforced in the UK.
  - In general, the UK court will recognise a “choice of court” clause in a contract. E.g. France, Germany etc.
  - Only exclusive choice of court clauses are recognised
  - In general, no time limit for enforcement. The general rule is that there should be no delay.
  - The court that makes the judgement order must be the court that exercises jurisdiction.
  - Alternatively, UK courts can under common law, enforce foreign judgements within 6 years of the judgement.
  - This only applies to monetary judgements.
  - In general, the above only applies if the UK company was present in the foreign jurisdiction or agreed to the clause in the contract.



## Section 4 : Choice of law and enforceability #2

- **UK Judgements enforceable in the EU**
  - The UK only signed the relevant agreement in January 2024.
  - In general, EU courts recognise UK judgements, subject to exceptions. E.g. fraud.
  - Only contracts with an exclusive jurisdiction clause are covered
  - The relevant agreement does not come into force until July 2025.
  - This means that as of now, you will be relying on national rules.



# Section 5 : Contracts and mobility of workers #1

- This section only applies to contracts for goods and services or standalone service provision, not goods only.
- The UK/EU TCA is simply a framework agreement with EU member states having the liberty to adopt the contents in full, only partial elements or ignoring it in its entirety.
- EU member states have done a combination of the above.
- The TCA has a definition of a UK “contractual service supplier” as an employee who can provide a service to an EU client, provided they have been employed with their current UK employer for at least a year, are compliant with the EU client’s national labor law (e.g. minimum wage, working time) and are being sent under a direct commercial contract.





## Section 5 : Contracts and mobility of workers #2

- This means that if the EU member state where your client is based has adopted this definition, you need a direct contract with the final consumer.
- The default position is that you cannot send employees if you don't. E.g. supply chains, part-finished products etc.
- If the particular EU member state that you're dealing with has not adopted the CSS definition, then you fall back on the member state's national law. The national law takes precedence over the TCA in any case.
- Member states' national law varies hugely and even if you have a direct contract, you may still need work permits or visas.



# Section 5 : Contracts and mobility of workers #3

- **Individual member state national law**
- Normally, if you have sold the product and you are sending employees to install, maintain or commission and there is an after-sales or warranty agreement in place, this is generally allowed and does not normally require a work permit or visa.
- If you haven't sold the product and you are a third-party providing standalone services, then you will not be able to send employees without having a contractual link to the final consumer. This is often a tri-partite contract between you, the buyer and the seller of the product.
- Some countries only allow an initial visit of installation and thereafter, you cannot travel to provide a service.
- Some countries require work permits and visas even with a direct contract.



# Section 6 : Contracts and tax #1

- **Corporation tax**
- In general, UK companies will want to pay their corporation tax in the UK and not in the EU.
- EU member states, each individually, have their own corporation tax regimes.
- In general, corporation and other taxes are not a matter of EU competency.
- In general, EU member states will levy corporation tax upon revenue generated in their jurisdiction
- Sales generated from the UK will attract UK corporation tax only.
- Using agents, intermediaries, franchisees or locating sales staff in the EU risks generating liability in the jurisdiction where the sale is generated.
- It does not matter where payment is made.



# Section 6 : Contracts and tax #2

- **Withholding tax**
- To ensure that CT is paid in the EU, EU member states may withhold tax.
- This means that their payment to you will be net of tax due.
- You will see on your remittance a withholding tax line representing the tax paid to the EU based jurisdiction.
- The UK has individual tax treaties with each individual member state.
- You may therefore be able to off-set your UK CT tax liability with the withholding tax due in the EU
- The reclaim rate in the UK is not necessarily the same as the withholding tax rate in the EU.
- This means that even if you can off-set the EU withholding tax, this may not represent all the withholding tax deducted.





# Section 6 : Contracts and tax #3

- **Income tax**
- In general, those visiting the UK for more than 183 days each tax year are liable to UK income tax.
- In general, tax also has to be paid from income outside the UK as well.
- The UK has double taxation agreements with each individual EU member state.
- Similarly, this may cover partial or full relief of tax paid in the EU or, a refund.
- In addition, employers with employees in the EU for more than 183 days may be liable to pay a local social security contribution.
- Employers can avoid this by applying to HMRC for an A1 certificate.
- Employees may therefore pay tax in the EU but social security in the UK.
- Those outside the UK for more than 183 days a year are not generally UK tax residents.
- Those in this category will need a UK non-resident/NR tax code.



## Section 6 : Contracts and tax #4

- **VAT**
- UK businesses will need to register for EU VAT if they:
  - Make taxable supplies to an EU member state
  - Import goods into an EU member state
  - Hold goods in warehouses in the EU for customers
  - Supply/install equipment in an EU member state.
  - You may be able to reclaim VAT from the EU member state if you are not established there.
  - In some cases, to apply for certain work permits, employers will need to register on the EU member state's VAT register.



# 3. QUESTIONS AND ANSWERS



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# THANK YOU

*We look forward to working with you*



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# Contact your local chamber for further support

