



# Typical Clauses in International Commercial Contracts

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# Introduction

## Definitions

- “international”
- “commercial”
- “contract”



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# Introduction

## Main issues of Private International Law

- Which law governs the contract?
  - National law of a country
  - Supranational law (for example the CISG)
  - Lex mercatoria (private set of rules or usages in commercial trade)

# Introduction

## Main issues of Private International Law

- How and where are disputes resolved?
  - State court
  - Arbitration
  - Mediation

# Formalities

- Form
  - ...oral, electronic, written (with original signature), certified ?
- Language
  - ...German, Farsi, English, French,...bilingual ?
- Power / representation
  - ...legal representative, empowered attorney ?

# Typical clauses

## Overview

- ❖ Representations / undertakings
- ❖ Remedies
- ❖ Warranties and limitation of liability
- ❖ Force-majeure
- ❖ Price-adjustment clauses
- ❖ Term and termination
- ❖ Non-compete
- ❖ Non-disclosure

# Typical clauses

## Overview

- ❖ Penalties and liquidated damages
- ❖ Securities (e.g. retention of title)
- ❖ Change of control
- ❖ Non-assignment
- ❖ Information and document production duties
- ❖ Choice of law
- ❖ Dispute resolution
- ❖ Boilerplate (severability, non-waiver, entirety, written form etc.)

# Typical clauses

## Choice of law

Principle of party autonomy (freedom of choice)



# Typical clauses

## Choice of law

### Effectiveness of choice

- Material and formal effectiveness
- Clear and unambiguous choice

# Typical clauses

## Choice of law

### Limits to the freedom of choice

- Public policy (“ordre public”)
- Overriding mandatory provisions (“lois de police”)

# Typical clauses

## Penalties / liquidated damages

...often used synonymously, but may have different meaning:

- penalty
  - aims to compel party to perform obligations and is independent from any damage incurred
- Liquidated damages
  - aims to ease burden of proof by predefining the amount of damages typically payable for a certain breach



**Thank you for your attention!**

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