

# Supply of goods Q&A: United Arab Emirates

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Country Q&A | Law stated as at 29-Feb-2020 | United Arab Emirates

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United Arab Emirates-specific information concerning the key legal and commercial issues to be considered when drafting a supply of goods contract.

This Q&A provides country-specific commentary on *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border* and *Practice note, Supply of goods: Cross-border overview*.

This Q&A forms part of *Cross-border commercial transactions*.

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## General contract law framework

1. What are the requirements under national law for a valid contract to exist? When does an agreement take effect?

The UAE is a civil law jurisdiction. The principal legislation governing contract formation is found in the Federal Law No. 5 of 1985 (*Civil Code*).

Under the Civil Code, the conditions for there to be a valid contract are that:

- The parties must mutually agree to the basics of the contractual arrangement.
- The subject matter of the contract must be something which is possible and defined or capable of being defined and permissible to be dealt in.
- The obligations arising out of the contract must be for a lawful purpose.

(*Article 129, Civil Code*.)

There must be an offer and acceptance (*Article 130, Civil Code*). Any acceptance must correspond to the offer. Crucially, if the acceptance exceeds the offer or restricts or otherwise varies it, the "acceptance" is deemed as a rejection which includes a new offer (*Article 140, Civil Code*).

Technically, there is no requirement for the payment of consideration. However, payment of money is regarded as evidence that the contract has become final and irrevocable (*Article 145, Civil Code*).

An agreement takes effect when an offer from one contracting party is met with acceptance by the other, and their agreement results in a binding obligation on each party in consideration of the obligation of the other party which will give effect to the object of a contract (for example, one party agreeing to provide goods and the other party agreeing to pay for the goods will result in a contract of sale) (*Article 125, Civil Code*).

2. Are there any limitations on the legal capacity of a company to enter into a supply of goods contract?

Generally, there are no statutory limitations on the legal capacity of a company to enter into a supply of goods contract.

It is good practice for agreements signed in the UAE to ask for a power of attorney granting authority to the signatory and to include a general warranty and representation that those signing on behalf of a corporate entity hold the required authority to do so.

The Civil Code sets out various limitations on capacity to contract in relation to a natural person, but not in relation to a corporate body.

3. Is it necessary for a contract for the sale of goods to be in writing for it to be valid? Are any formalities necessary?

Under the Civil Code, contracts can be made verbally or in writing (*Article 132, Civil Code*). However, in practice contracts are usually written for record keeping purposes.

4. How does national law treat acceptance of an offer which attempts to impose new terms?

An offer must be unambiguously accepted. A purported acceptance which attempts to impose new terms is not an acceptance, but may be treated as a counter offer, which the other party can freely choose to accept or reject (*Article 140, Civil Code*).

5. Does national law require that special notice be given of any contract terms for them to be incorporated in a contract?

The terms must be provided at or before the time of contracting. It is too late to incorporate terms into a contract once the contract has been formed, unless this is agreed to by both parties.

In day-to-day practice, it would be prudent to give sufficient prominence to any unusual exclusion clauses. The more unusual or onerous the provision, the more prominence it should be given, although there is no statutory requirement for such provisions to be capitalised or otherwise highlighted.

6. Is the concept of a party acting in "good faith" recognised in your jurisdiction?

Parties are required to perform a contract in good faith (*Article 246(1), Civil Code*). The term "good faith" is typically given a broad interpretation by the UAE courts.

7. Is the concept of using "best endeavours" recognised in your jurisdiction?

As mentioned in [Question 6](#), the UAE Civil Code implies the duty to act in good faith. In practice, this means that parties are required to act reasonably and moderately, using "reasonable endeavours" to perform their obligations or mitigate losses.

8. Is the concept of "material breach" recognised in your jurisdiction?

The parties to a contract can agree that in the case of non-performance of certain obligations under the contract, the contract can be deemed rescinded (*Article 271, Civil Code*), or the contract can be rescinded after the non-breaching party has served a formal notice demanding performance or rescission on the breaching party (*Article 272, Civil Code*). The parties to a contract are therefore able to identify material and non-material breaches.

## Incorporation of standard terms of business

9. How can a seller or buyer incorporate its standard terms of business in its contracts?

Standard terms can be incorporated in a contract either by express or implied agreement. Agreement will arise out of the operation of the principles of offer and acceptance under Article 125 of the Civil Code, and it may be that one party agrees to terms without being aware of their contents, simply by accepting an offer which contains those terms (usually in the "small print").

Standard terms and conditions may also be incorporated through a course of dealing (or trade custom) between the parties, that is where, as a result of their consistent use in previous transactions (or trade custom), the reasonable expectation of the parties is that those terms will apply to the transaction in question.

10. If the supplier's standard terms of business are being used, is it acceptable to limit the supplier's liability for late delivery and/or non-delivery to the costs and expenses incurred by the buyer in obtaining substitute goods on the open market as set out in *Supply of goods agreement (with contract details cover sheet): Cross-border, clause 7.5*?

Clauses excluding or limiting contractual (but not tortious) liability are generally valid under UAE law, including when the supplier's standard terms of business are being used, provided they do not attempt to restrict liability for acts such as fraud and wilful misconduct. This is based on the principle of freedom of contract.

As such the limitation of liability under *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 7.5* is permitted under UAE law. However, the parties must be aware that limitations or exclusions are always subject to judicial review or arbitrary exemptions as per (for example) the Civil Code and the UAE Employment Law

Any clause attempting to provide an exemption from responsibility for a harmful act is void (*Article 296, Civil Code*). It is the view of local advocates in the UAE that this rule also applies to the limitation of tort based liability.

## Pre-contractual misrepresentation

11. Can a seller be held liable for pre-contractual misrepresentation?

The Civil Code lays down general and specific rules for "misrepresentation" and "gross cheating".

**Misrepresentation.** It is important to note that from a UAE standpoint, only fraudulent behaviour constitutes misrepresentation. "Misrepresentation" is when one of the contracting parties deceives the other by means of fraud, by word or deed which leads the innocent party to consent to something that they would not normally have consented to (*Article 185, Civil Code*). It includes "deliberate silence" concerning a fact or circumstances concerning the subject matter of the contract (*Article 186, Civil Code*).

Where a misrepresentation has been made, the contract may be rescinded (*Article 187, Civil Code*).

**Gross cheating.** This involves things done or statements made by one of the contracting parties concerning a transaction which no ordinary person (as the recipient) would contemplate as reasonable (*Article 188, Civil Code*). If one of the contracting parties makes a misrepresentation to the other, and it later transpires that the contract was concluded due to gross cheating, the innocent party may rescind the contract.

12. Can statements made by sales staff or in promotional literature be construed as terms of a contract for which a seller may be held liable?

The seller is unlikely to be liable under such circumstances.

Displays of goods and services showing the consideration are treated as an "offer". However, any publications, advertisements, price lists, or any other statements concerning offers directed to the public are treated as an "invitation to enter into a contract" (*Article 134, Civil Code*).

A well drafted agreement from a seller is likely to contain an "entire agreement" clause preventing the parties from claiming that statements made during contract negotiations, and which are not included in the final agreement (that is, pre-contractual statements), constitute additional terms of the agreement or some kind of side agreement (for example, a collateral warranty).

Under the Civil Code, only fraudulent behaviour constitutes misrepresentation, it does not include statements made innocently or negligently, unlike the common law system whereby both an innocent or negligent misstatement constitutes misrepresentation (see [Question 11](#)).

Entire agreement clauses can exclude liability for statements made innocently or negligently, but not for fraudulent misrepresentation. Any reference to misrepresentation in an agreement governed by UAE law should therefore be carefully considered in light of this key difference.

13. Are parties entering into a contract under any legal obligation of disclosure? Can silence constitute misrepresentation?

Under UAE law, there is no general legal obligation on either party to disclose what it knows about the subject matter of the contract. In a commercial arrangement, the buyer must make all the necessary enquiries and should seek appropriate assurances from the seller in the form of contractual warranties or indemnities.

However, "deliberate silence" concealing a fact or circumstances can constitute misrepresentation (*Article 186, Civil Code*). Where a misrepresentation has been made, the contract may be rescinded (*Article 187, Civil Code*).

## Main terms of a supply contract

14. Does national law imply any terms into business-to-business contracts for the supply of goods?

Contracts must be implemented in accordance with the provisions of the Civil Code.

In particular, a contract must be performed in accordance with its own provisions and in a manner consistent with the requirements of good faith, so as not to abuse the other party's rights or cause unjustified damage (*Article 246, Civil Code*).

The parties to a contract must agree on the essential elements of their respective obligations, but certain matters of detail can be determined at a later date (*Article 141, Civil Code*). If a dispute arises, a judge may make a ruling on the absent terms in accordance with the other provisions of the contract and UAE law. However, it must be clear that the parties intended to contract, even if they have not finalised all of the details. This departs from the usual position under common law which provides that agreements to agree in the future are generally not capable of being enforced.

In certain circumstances, if the parties fail to agree on the details left to be determined at a later date, the UAE courts may find a breach of the implied obligation to act in good faith (and, therefore, a breach of contract), for example, where one party fails to make reasonable efforts to reach an agreement, or enter into concurrent negotiations with a third party.

15. In your jurisdiction, what terms may be implied by law in relation to a sale of goods by sample?

If a sale is by sample, it is sufficient that the sample is seen and that the item sold conforms to the sample. If the property sold does not conform to the sample, the buyer has the option to accept or reject it (*Article 492, Civil Code*). In the event that there is a dispute over whether the product sold conforms to the sample, this may be resolved by an expert (*Article 493, Civil Code*).

See [Question 14](#) for additional implied terms.

16. What liability exists for breach of an express term of a contract?

The following is an overview of damages recognised under UAE law.

UAE law recognises the concept of **direct damages**. A claim for contractual breach in the UAE is intended to compensate for the non-performance of the contract and the loss which the claimant has suffered as a result, that is, direct losses which were foreseen at the date of contracting. Damages are calculated in relation to the seriousness of the loss rather than the breach itself.

Where the amount of compensation is not fixed by either contractual provision (liquidated damages) (*Article 390, Civil Code*) or the law, the UAE courts will assess damages based on the harm suffered (*Article 389, Civil Code*).

The UAE courts recognise the concept of **consequential damages** in relation to tortious liability but not contractual breach. Therefore, loss of profit and loss of opportunity will not fall under an award for direct damages for breach of an express term of a contract.

In relation to tortious liability, loss of profit and loss of opportunity have been upheld by the UAE courts. However, such damages will only be awarded in relation to loss that is certain and not speculative or hypothetical.

**Moral damages** are damages associated with harm to liberty, dignity, honour, reputation, social standing or financial condition (*Article 293(1), Civil Code*). Although this provision deals with tortious liability, it is our understanding that the UAE courts have recognised the payment of moral damages arising out of contractual liability too.

The concepts of punitive or exemplary damages do not exist in the UAE.

Parties also have the option to rescind a contract, for example, if there has been breach of a material term (see [Question 8](#)) or if there has been misrepresentation (see [Question 11](#)).

17. What liability exists for breach of an implied term of a contract?

The damages and remedies noted in [Question 16](#) are also applicable to implied terms.

## Performance obligations

18. Does national law imply any terms into a contract in relation to price? Can a seller increase the price after the contract has been made?

Goods may be sold with a view to making a profit, a loss or at cost price if the value of the item to be sold is known at the time the contract is concluded and the amount of profit (in the case of a sale at a profit) or loss (in the case of a sale at a loss) is specified (*Article 506, Civil Code*). If the value of the item to be sold is not known when the contract is concluded, the buyer may rescind the contract when it learns of it, and the same applies if the seller conceals a matter affecting the item sold or the value.

Parties are generally free to agree price, whether this is higher or lower than the value of the goods (*Article 503, Civil Code*) or can agree to have the price fixed at market value (*Article 504, Civil Code*). In the event that the parties declare a price other than the agreed price, the true price will prevail (*Article 505, Civil Code*).

In addition, only the buyer may increase the contract price (subject to the seller's consent) after the contract has been made, and only the seller may reduce the contact price (subject to the buyer's consent) after the contract has been made (*Article 507, Civil Code*).

19. What import licences or other consents may be required when:

- (a) importing goods into your jurisdiction?
- (b) exporting goods from your jurisdiction?
- Which party usually bears the costs of obtaining these (*Supply of goods agreement (with contract details cover sheet): Cross-border, clause 6.8*)?

## Importing goods into the UAE



To import goods into the UAE, a company must have a valid Trade Licence (issued from any licence issuing authority in the UAE) and must be registered with Dubai Customs.

The importer will be required to obtain the following original documents from the exporter:

- Bill of lading.
- Commercial invoice.
- Packing list.
- Certificate of origin.

The importer must also submit the bill of lading and settle any payments with the shipping agent, in exchange for which the shipping agent issues a Delivery Order to the importer. The importer is required to clear all cargo clearance formalities before the expiration of the delivery order. This includes:

- Import Declaration Application for Dubai Customs clearance, with the following documents attached:
  - commercial invoice from the exporter to the importer detailing the quantity, description and total value for each item;
  - original certificate of origin approved by the Chamber of Commerce in that jurisdiction;
  - packing list relating to the weight, method of packing and HS Code (Harmonised System) of the goods; and
  - arranging import permits for any restricted goods or duty exempt cargo with the relevant authorities.
- Payment of fees to Dubai Customs, DP World, and a transport company to deliver the cargo once the same is discharged.

## **Exporting goods from the UAE**

To export goods from the UAE, the exporter will be required to:

- Obtain an order for the sale of goods and enter into an agreement with a shipping agent to carry the cargo from Dubai to the port of destination.
- The shipping agent must submit a request to DP World to release an empty container to the exporter for the purposes of fulfilling the order. In addition, a hauler will be nominated to pick up and deliver the empty container.
- The exporter will arrange for the cargo to be loaded into the container and the hauler will return the same to DP World.
- DP World will ensure all compliances are met and off-load the container for loading on the subject vessel.

- In parallel, the exporter must submit an export declaration which sets out the cargo and invoicing information. This will be verified by Dubai Customs, and the exporter will have to complete inspection formalities (as required depending on the type of cargo).
- Finally, the exporter will pay DP World for the export of the container, and will also be required to obtain a certificate of origin from the Chamber of Commerce (and any additional permits depending on the type of goods being exported).
- DP World will then ensure compliances, such as the passing of the export declaration and availability of containers, before loading the goods on the vessel for export.

The shipping agent will issue the bill of lading to the exporter.

20. In the absence of a specific clause in the contract, will the price of goods be inclusive or exclusive of any VAT or service tax, see *Supply of goods agreement (with contract details cover sheet): Cross-border, clause 11.2?*

Under UAE Federal Decree Law No. (8) of 2017 on Value Added Tax (VAT), which came into effect on 1 January 2018, VAT will be collected on taxable supplies of goods and services in the UAE at a standard rate of 5%. In the absence of a specific clause in a contract and provided that VAT is applicable, the price must be inclusive of VAT.

21. Can the parties include a clause in the contract that provides for the seller to be able to invoice the buyer at any time after the seller is ready and willing to deliver the goods as set out in *Supply of goods agreement (with contract details cover sheet): Cross-border, clause 11.3?*

As a general rule, price will be payable in advance unless agreed otherwise by the parties, or if it is customarily practiced that the payment be deferred or completed in instalments over a definite period (*Article 508, Civil Code*).

As such, the parties have the option to agree to invoice the buyer at any time as noted in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 11.3*.

22. Does national law imply any obligations into a supply of goods agreement in relation to payment by the buyer?

As noted in [Question 21](#) above, the buyer is required to pay the purchase price in advance unless otherwise agreed by the parties.

23. Does national law permit a seller to charge interest on late payment as set out in [Supply of goods agreement \(with contract details cover sheet\): Cross-border, clause 11.5\(a\)](#)?

UAE law specifically permits the payment of interest in commercial dealings. In particular:

- There is a 12% cap on interest ([Article 76, Commercial Transactions Law \(Federal Law No. 18 of 1993\) \(Commercial Code\)](#)).
- A debtor is obliged to pay interest as compensation for delay in paying its due debt ([Article 88, Commercial Code](#)).

In practice, the Dubai courts have typically awarded interest at 9% unless otherwise mutually agreed by the parties to the contract.

In Abu Dhabi, the courts have typically followed the approach of applying either the interest rate mutually agreed by the parties (not to exceed 12%) or a maximum of 12% for commercial transactions and 9% for non-commercial transactions.

24. Does the seller have the right under national law to sue the buyer for the price of the goods if they are not paid for by the payment date specified in the contract ([Supply of goods agreement \(with contract details cover sheet\): Cross-border, clause 11.4](#))?

The Civil Code gives parties the right to rescind or dissolve the contract in the event of a breach (see [Question 8](#)). In addition, the non-breaching party can claim damages, see [Question 16](#).

25. Is set-off permitted in your jurisdiction (see [Supply of goods agreement \(with contract details cover sheet\): Cross-border, clause 11.6](#))? If not, is there any concept which is broadly similar or equivalent and could be referred to in the contract?

Set-off is generally permitted in the UAE. If a contract is dissolved, it is permissible for a party to detain what they have received so long as the other party has not returned what they have received from the former, or provided security for such return (*Article 275, Civil Code*).

26. Please state how delivery is defined under the laws of your jurisdiction?

Delivery of an item sold can be by actual delivery, or by allowing the buyer to take it, without any hindrance to their coming into possession of the item (*Article 525, Civil Code*). Delivery occurs in accordance with the nature of the item, the agreement or custom.

Items are considered delivered when in the possession of the buyer, unless the parties agree otherwise (*Article 530, Civil Code*). In some instances delivery is completed by registration of ownership of the item in the buyer's name (*Article 528, Civil Code*).

Constructive delivery is deemed to have taken place in the following situations:

- If the seller retains the goods sold in its possession at the request of the buyer.
- If the seller gives notice to the buyer to pay the consideration and take delivery of the goods sold within a fixed time period, and the buyer fails to do so.

(*Article 529, Civil Code*.)

27. Does national law imply any obligations into a supply of goods agreement in relation to delivery of the goods by the seller?

The seller is obligated to deliver the item sold at the place where such item is located at the time of the contract (*Article 530, Civil Code*). Alternatively, the seller may need to dispatch the item to the buyer, in which case delivery is not effective until the item reaches the buyer.

28. Please set out what laws in your jurisdiction may apply to the sale and supply of goods with delivery by instalments (*Supply of goods agreement (with contract details cover sheet): Cross-border, clause 7.8*).

The Civil Code does not specifically set out rules in relation to delivery of goods by instalments, and parties are generally free to contract. However as noted in [Question 33](#) below, the Civil Code gives the buyer the right to cancel a sale if part of the good (an instalment) perishes.

29. Is the concept of "time is of the essence" understood in your jurisdiction? Please also consider the validity of *Supply of goods agreement (with contract details cover sheet): Cross-border, clauses 7.4* and *clause 11.4/16.2* in relation to this question.

As noted above, the Civil Code generally sets out when a contract is to be performed, for example delivery of an item should take place at the time the contract is made (*Article 530*), and also provides recourse to buyers in the event that goods perish or are damaged before delivery (*Article 531*). However, there are no specific provisions referring to the concept of "time is of the essence".

The parties can in principle agree that time is not of the essence as noted in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 7.4*, however they should be aware that in the event of a dispute, the court may apply Article 530 noted above.

Equally, the parties are also free to stipulate that payments need to be made at a certain time as per *Supply of goods agreement (with contract details cover sheet): Cross-border, clause 11.4* and *clause 16.2*, but should be aware of the basic position under the Civil Code as the courts may revert to this in the event of a dispute (for example, payment being required in advance unless agreed otherwise, see [Question 21](#)).

30. In relation to contractual obligations (that is, the buyer paying for the goods and the seller delivering the goods) even if the contract does not expressly state it:

- (a) Is time for performance normally considered to be fundamental to the contract?
- (b) Can a party terminate the contract for failure of the other party to perform the obligations within a specified time?

As noted above, parties have freedom to contract and can also identify terms which they consider to be material. Therefore, if the parties consider the time of performance to be fundamental this can be noted in the contract.

In practice, the Civil Code does include certain provisions in relation to timing (as noted above in [Question 22](#)) and performance time is considered to be fundamental in practice, for example a rent contract will state timing of payments, and a construction contract will include provisions relating to the handover date.

31. What remedies are available to a seller where the buyer fails to accept delivery under the laws of your jurisdiction? Would [clauses 7.6](#) and [11.3](#) be permitted in your jurisdiction?

*Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: [clause 7.6](#) and [clause 11.3](#)* are permissible in theory, however as before the parties should be aware of the principles of the Civil Code. For instance, as noted in [Question 26](#), delivery will have been deemed to have taken place in certain circumstances including where the buyer fails to collect an item after receiving notice to pay and take delivery within a specified time period (Constructive Delivery). Further, if title to the goods has passed to the buyer, the seller will not be able to resell the goods.

In the absence of any such issues, the seller can make a claim for breach of contract if the buyer does not accept delivery in accordance with the contract.

32. Under the laws of your jurisdiction what remedies are available to a buyer against a seller for any delay in delivery? Would [clause 7.5](#) be permitted in your jurisdiction?

See [Question 8](#). The parties can agree to terminate a contract or demand performance in the event of a breach. A clause such as *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: [clause 7.5](#)* would be permitted in the UAE.

33. Under what circumstances does national law permit a buyer to reject goods? Can the right to reject be lost?

National law permits a buyer to reject the goods in the following situations:

- In a sale by sample, goods which fail to meet the sample can be rejected (*Article 492, Civil Code*). If perishable goods perish before delivery, the loss is attributable to the seller, the buyer can cancel the sale and recover the price (*Article 496, Civil Code*).
- If part of the item is damaged, the buyer can cancel the sale or take the remaining quantity for its portion of the purchase price (*Article 531, Civil Code*).

However, if a good perishes due to a fault of the buyer, the buyer will be considered to have taken delivery and will still be obligated to pay (*Article 532, Civil Code*). Therefore, should the buyer be at fault for any damage to the goods, the right to reject will be lost.

34. Does national law allow a seller to provide tolerance limits, permitting the seller to deliver less (or more) than the contract quantity?

If the supply contract specifies the quantity of the goods sold and there is a shortfall or an excess, and provided there is no agreement or trade custom regulating the contract, the Civil Code states that:

- If the goods sold would not be "harmed" by being divided, the excess will belong to the seller who may recover the same in specie (that is, recover the goods in their current form). Any shortfall is to the seller's account, whether the price is determined per unit of measurement or for the whole item sold.
- If the goods would be "harmed" by being divided (and the price has been determined on the basis of unit of measurement), the excess will belong to the seller who will be entitled to the price of the same. Any shortfall will be to the seller's account. However, if a price has been stipulated for the goods as a lot, the excess will belong to the buyer, and there will be no change in price if there is a shortfall.
- If the excess or shortfall places a greater obligation on the buyer or amounts to a different bargain, the buyer will have the option to rescind the contract (unless the amount is trivial). However, if the buyer takes delivery of the goods sold knowing there is a shortfall, the buyer will lose the right to rescind the contract.

(*Article 523, Civil Code*.)

## Title

35. When does national law provide that title to and risk in goods will pass? Is a seller able to separate the passing of title and the passing of risks in the goods as set out in *Supply of goods agreement (with contract details cover sheet): Cross-border, clause 9.1 and clause 9.2*?

Article 511 of the Civil Code provides that "ownership ... shall be transferred to the purchaser as soon as the sale is concluded, unless there is a provision in the contract or at law to the contrary."

Therefore, title and risk normally pass at the same time, save for circumstances where the parties agree otherwise under the terms of the contract.

36. Can a seller elect to transfer title in the goods as set out in clause 9.5 so that the seller may sue the buyer where title has passed or the date for payment has passed but no payment has been made by the buyer?

The parties to a contract are generally free to negotiate the terms of the contract. Therefore the parties can include a provision such as *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 9.5* or treat the same as a "material breach" (see *Question 8*).

37. To what extent is a retention of title clause as set out in *Supply of goods agreement (with contract details cover sheet): Cross-border, clause 9.2* and *clause 9.3* (which seeks to provide protection to the seller for the price of the goods) valid under national law?

The Civil Code provides that:

- If the contract price is deferred or payable in instalments, the seller may stipulate that the transfer of title to the buyer be suspended until it pays the entire contract price, even if the relevant goods have been delivered to the buyer. *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 9.2* follows this principle and is permissible under UAE law. In addition, there is no prohibition on the parties agreeing to impose further obligations on the buyer to take care of the goods in accordance with the seller's requirements until payment is made as per *clause 9.3*.
- If the contract price is paid in full, the transfer of title to the buyer operates retrospectively to the time of the sale.

*(Article 513, Civil Code.)*

38. Can the parties include a clause in the contract such that the supplier is granted a licence to enter the customer's premises to recover the goods where the customer has not paid for them as set out in



*Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 9.4?*

The Civil Code requires the buyer to pay the price when the contract is made and before delivery of the item sold, unless the parties agree otherwise (*Article 556*). Therefore, in practice it is unlikely that delivery will occur until the seller has received full payment for the goods.

In addition, the seller has the right to retain property until the purchase price is paid (*Article 557*) and the parties are free to include further protections for the seller (under the principle of freedom to contract). Therefore, recovery of unpaid goods as per *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 9.4* would be permissible under UAE law. However, the parties must remain cautious of other Civil Code obligations such as acting in good faith and reasonably in such circumstances and take advice before taking such actions.

39. Would the seller still be able to obtain possession of the goods from the customer as set out in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 9.4* if the customer was in financial difficulties or became insolvent?

The parties may agree to include non-payment by, or insolvency of the buyer, as a material breach and include protections allowing the seller to recover the goods if the buyer is in financial difficulties (see [Question 38](#)).

As a general rule, the Civil Code allows a seller to retain property until the price due is paid, notwithstanding the fact that the buyer may have paid a pledge or guarantee (*Article 557(1), Civil Code*), although is not explicitly stated whether this relates to circumstances where the goods have already been delivered to the buyer.

The parties should note however that in the event that the seller agrees to defer the price, the seller's right to retain the property will lapse and the seller must deliver the property to the buyer (*Article 557(2), Civil Code*).

## Termination

40. In your jurisdiction, can the parties terminate the agreement for all the reasons set out in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 16*?

The parties can agree to terminate a contract in the event of a breach, see [Question 8](#). A clause such as *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 16* would be permitted in the UAE.

41. What other rights of termination, if any, could the parties have under the laws of your jurisdiction in addition to those set out in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 16*?

See [Question 40](#).

## Excluding liability

42. To what extent does national law permit the use of terms which limit or exclude the liabilities of a party to a business-to-business contract for the sale of goods? Consider in particular the following and *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 14*:

- Excluding or limiting liability with respect to a breach of an express contract term.
- Excluding or limiting liability with respect to a breach of an implied contract term for example, description, quality, fitness for purpose title.
- Excluding or limiting liability for a particular type of loss, for example, death or personal injury.
- Setting out an overall cap on liability (see [clause 14.2\(b\)](#)).
- Restricting remedies or imposing procedural and evidential restrictions.
- Excluding or limiting liability for defective products under product liability laws.
- Excluding or limiting liability for misrepresentation (if applicable).
- Excluding or limiting liability to third parties.

There are no limitations or exclusions which specifically apply to business-to-business contracts.

Further, as noted in [Question 10](#) above, clauses excluding or limiting contractual (but not tortious) liability are generally valid under UAE law, provided they do not attempt to restrict liability for acts such as fraud and wilful misconduct. *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 14* explicitly notes that liability for such harmful acts cannot be excluded contractually and as such it is in line with the principles of UAE law.

43. Is there any reasonableness test or other requirement for any exclusion or limitation of certain claims or liabilities under the laws of your jurisdiction as set out in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 14*?

The parties are required to act in accordance with the principles of good faith and handle their dealings in a reasonable manner (see [Question 7](#)).

44. In your jurisdiction, are losses separated into (a) direct and (b) indirect or consequential losses? Can loss of profits be a direct and indirect loss (*Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 14.2(a)*)?

See [Question 16](#).

45. In your jurisdiction, are there legal obligations to inform the relevant authority when a defective product has been identified (*Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 10*)?

The UAE Consumer Protection laws give the Ministry of Economy and other related authorities such as Dubai Municipality the right to recall defective products. Consumers have the right to make complaints to the Consumer Protection Department, and in the event of a formal investigation, the supplier of a product has the opportunity to make its own investigations, but will be required to comply with the authorities.

## Warranties and indemnities

46. Does national law draw a distinction between protection by warranty and protection by indemnity? How does national law control the use of indemnities in supply contracts as set out in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 12*? Are any indemnities implied into supply of goods contracts?

UAE law does not make a distinction between warranty protection and indemnity protection, and does not imply any specific indemnities into sale of good contracts. As a result, it is open to the parties to specify remedies for breach of warranties and indemnities in the contract itself (as done in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 12*). For example, the contract may allow the buyer to refuse to complete if the warranties are breached before completion, for instance if a product is advertised as including a specific function which it does not in fact include. The warranties may also be given on an "indemnity basis" (that is, the contract specifically sets out the losses, costs and expenses recoverable for breach).

The UAE courts exercise wide discretion in their awards of damages and tend to be conservative when assessing losses, requiring a close causal link between a breach and any subsequent loss for that loss to be recoverable. In addition, under UAE law, there is no clear distinction between assessing damages on an indemnity basis as opposed to a breach of contract basis. Judges always retain discretion to determine damages under Article 389 of the Civil Code which provides that: "if the amount of compensation is not fixed by a law or by the contract (liquidated damages), a judge shall assess it in an amount equivalent to the damage in fact suffered at the time of the occurrence thereof."

47. Are there any laws in your jurisdiction governing indemnities in relation to the infringement of third party IP rights by a party that causes loss or damage to the other party (see *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 6.2 and clause 12.1*)?

The UAE has a number of laws protecting IP rights such as Federal Law No. 44 of 1992 for the Organisation and Protection of Industrial Property for Patents, Designs and Industrial Models, and the GCC Trade Mark Law. It is also party to international treaties such as the Patent Cooperation Treaty 1970, the WIPO Paris Convention for the Protecting of Industrial Property 1883, and the Paris Convention.

The issue of warranties and indemnities is not specifically addressed in the UAE's intellectual property laws, however it is common practice to include warranties and indemnities relating to intellectual property in contracts (for example, the seller owns the intellectual property rights relating to the good sold, or if they are simply a reseller). As noted in *Question 46*, parties have flexibility to specify remedies for breach of warranty in contracts.

48. Does national law imply a duty on the indemnified party to mitigate their losses as set out in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 12.3*?

Article 246 of the Civil Code includes the requirement to perform contracts in good faith, and Article 389 includes a duty similar to the duty to mitigate losses.

Under Article 389, if the amount of compensation is not fixed by law or a provision of a contract, "the judge shall assess it in an amount equivalent to the harm in fact suffered at the time of the occurrence thereof". In practice, the courts have assessed compensation to include all damage and loss of earnings, provided that it is a natural result of the non-performance or delay in performance. Further, damage is regarded as being a natural result if it was not within the power of the injured party to avoid it by making reasonable efforts. This in effect amounts to a duty to mitigate loss where reasonably practicable to do so.

49. Can express remedies be included in the contract for repairing or replacing the goods instead of offering a refund to the buyer for breach of warranty as set out in the first option in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 8.2*?

If a good perishes or is damaged before delivery, the Civil Code gives the buyer the option to cancel the contract and recover the price (*Article 531*). In addition, as noted in *Question 46*, parties have flexibility to specify remedies for breach of warranty in contracts.

50. Could the pre-conditions in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 8.2* and the exclusions in *clause 8.3* affect the enforceability of *clause 8* as a whole?

Parties are generally free to contract in the UAE. In addition, the Civil Code includes provisions for testing and examining goods.

As noted in *Question 15*, the Civil Code provides for sales by sample, and gives the option to use an expert to resolve disputes if the item sold does not confirm to the sample (*Article 493, Civil Code*). In addition, sales can be made

conditional on testing a product within a period of time agreed by the parties, or a reasonable period of time. The seller will also be obliged to give the buyer the opportunity to test goods (*Article 494*).

Therefore, the preconditions set out in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 8.2* are permissible under UAE law. In addition, the exclusions noted in *clause 8.3* are also reflected in the Civil Code. Under Article 495, if a buyer remains silent after having the opportunity to test goods, the silence will be deemed as acceptance and the sale will be considered valid. If the buyer makes use of a good in excess of testing, then the sale shall become binding (*Article 500*).

51. Does national law allow a seller to exclude their liability for failure to comply with warranties such as delivering damaged goods or for failure to deliver as set out in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 8.3*? Can the buyer be prevented from claiming damages for breach of warranty as set out in the first option of *Standard document, Supply of goods agreement: Cross-border: clause 8.2*?

*Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 8.2* and *clause 8.3* are generally acceptable and the buyer can indeed be prevented from claiming damages for breach of warranty as set out in the first option of *clause 8.2*.

Whilst *clause 8.2* and *clause 8.3* are generally acceptable and while parties are generally free to contract, parties should be mindful that the Civil Code gives the buyer the right to cancel the sale if goods are damaged, or are not in accordance with a sample. However, such right of rejection will be lost if such damage is the fault of the Buyer. Therefore, a contract should stipulate how a product will be tested and under what circumstances damage to a product would be considered the fault of the buyer and therefore fall outside the scope of any breach of warranty claims.

On the other hand, there are certain circumstances where a buyer is deemed to have accepted a product, for example if they continue to use a product after a testing period.

52. Can a supplier's warranty in a contract also apply to any repaired or replacement goods supplied by the seller as set out in *Standard document, Supply of goods agreement: Cross-border: clause 8.4*?

As noted in *Question 46*, the parties are generally free to agree warranties and indemnities, including in relation to repaired or replacement goods. The principles of the Civil Code continue to be applicable in any further dealings between the parties and in practice, warranties and indemnities extend to cover repaired or replacement goods.

## Force Majeure

53. Are there any legal controls on the use of force majeure clause in a supply contract as set out in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 17.1*?

The UAE courts may vary or adjust the provisions of the contract as a result of force majeure, in the case of "exceptional events" which could not have been foreseen and which result in circumstances making the performance of contractual obligations "even if not impossible... oppressive", and lead to the threat of a "grave loss" (*Article 249, Civil Code*).

If part of a contract becomes impossible to perform that part will be "extinguished" and the contract terminated (*Article 273(2), Civil Code*). If the impossibility is temporary, the relevant obligations will be suspended until such time as services are capable of being performed again.

## Entire Agreement

54. Is it common to have an 'entire agreement' clause (under which, typically, a seller excludes liability for any representations or warranties made during the course of negotiations that are not included in the agreement) as set out in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 17.4*? Are there any circumstances in which an entire agreement clause may be unenforceable?

Yes. However, an exclusion of liability for fraudulent misrepresentation is not permissible, so an entire agreement clause should expressly exclude liability for fraud from its scope (see [Question 12](#)).

## Competition law

55. Do supply contracts give rise to any competition law issues in your jurisdiction?

The Federal Law No. 4 of 2012 (Competition Law), which came into force on 23 February 2013, applies to all entities in relation to:

- Economic activities carried out within the UAE.
- The utilisation of intellectual property rights within and outside the UAE.
- Any economic activity outside of the UAE and having an effect on competition inside the UAE.

The following entities and sectors have been expressly exempted from the application of the Competition Law:

- Federal and local government entities and entities which they own or control.
- Small and medium size entities (not defined in the Competition Law or its regulations).
- Entities operating in the following sectors:
  - telecommunications;
  - financial;
  - media (prints, audio, and visual);
  - oil and gas;
  - production and distribution of pharmaceutical products;
  - postal services (including express mail, electricity and water production and distribution);
  - sewage and waste disposal; and
  - land, sea and maritime transportation (including transportation by rail and related services).

The Competition Law prohibits restrictive agreements between entities that may contravene, limit or prevent competition. In addition, an entity with a dominant position in the local market (or a significant part of it), is prohibited from abusing its dominant position by acting or dealing in such a way that would prevent, limit or weaken competition.

In practice, the restrictions are such as to effectively limit the issue of competition law to a small percentage of business undertaken in the UAE.

56. Do suppliers often ask for a minimum purchase commitment from the customer as set out in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 3?*



A minimum purchase commitment is typically seen in supply contracts, with the buyer receiving a form of cost reduction as a result. However, there is no set pattern and this requirement varies from contract to contract depending on the specific requirements of the parties.

## General

57. Are there any compliance obligations on either party under your local laws in relation to the supply of goods?

There is no specific legislation relating to anti-bribery and corruption in the UAE. However, suppliers need to be aware that bribery and corruption are prohibited under several Federal and Emirate laws including, without limitation, the UAE Penal Code (*Law No. 3 of 1987*).

In addition, as of January 2018, suppliers will need to consider the implications on their business of the new VAT legislation (*Federal Decree No. 8 of 2017*). For example, suppliers will need to clearly note whether their prices are inclusive of VAT and note the VAT amount on all invoices as required.

58. How does this agreement need to be executed in order to ensure that it is valid and enforceable? Does it need to be registered with any authority in your jurisdiction?

## Execution formalities

As a general rule, written contracts have a key role in evidencing an agreement between two parties in civil law jurisdictions (although the Civil Code does recognise verbal agreements).

Typically, the manager of a company will have the authority to bind the company under a contract. However the authority of the manager is subject to any restrictions in the company's constitutional documents, any powers of attorney granted to such manager, shareholder resolutions or other contract.

## Registration formalities

It is good practice for agreements signed in the UAE to ask for a power of attorney granting authority to the signatory, and to include a general warranty and representation that those signing on behalf of a corporate entity hold the required authority to do so.

Notarisation of contracts may be necessary in certain circumstances, particularly if government or authority filings are required. Although not typically relevant for supply contracts, this may be needed for certain actions, for example if there is a transfer of real estate involved, or the company is entering into agreements with a branch agent.

In addition, any contract executed and notarised abroad must be legalised before it can be used in the UAE.

59. Are there any clauses in the supply of goods agreement that would not be legally enforceable or not standard practice in your jurisdiction?

No.

60. Are there any other clauses that would be usual to see in a supply of goods agreement and/or that are standard practice in your jurisdiction?

No.

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