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## **International Trade Agreements – a Guidebook**

### **Client Updates**

Every day, transactions worth hundreds of billions of dollars occur across industries such as electronics, food, transportation, textiles, medicine, and defense. While these transactions may seem simple and straightforward, they involve a complex nexus of processes, including development, production, distribution, and supply.

These transactions require careful regulation – not just of basic commercial terms like product specifications, delivery conditions, pricing, and payment, but also a range of legal aspects. These include regulatory obligations, intellectual property rights, antitrust restrictions, liability and indemnity arrangements, risk allocation, insurance, import and export regulations, international taxation, and customs issues. In the world of trade, a poorly executed transaction can result in damages far exceeding the original deal's value. Well-drafted agreements can streamline execution, reduce uncertainty and disputes, save costs, and mitigate risks.

This client update is the first in a series addressing key issues in international trade transactions. In this client update, we will outline the basic terms and arrangements in international trade agreements, and the subsequent client updates will focus on specific aspects.

### **1. The Structure of the Transaction and Parties Involved**

At the outset, the parties must clearly define the structure of the transaction – whether it is a service agreement (such as an agency agreement), a distribution deal, or a supply agreement. The title of the agreement often belies its true nature, which can result in unintended rights, obligations, and exposures. For example, confusion often arises between distribution and agency agreements. A distribution agreement involves a manufacturer or supplier selling products to a distributor in a certain territory, who then assumes ownership and risks, and sells the goods to third parties independently (“buy-sell” arrangement). In contrast, an agency agreement authorizes a commercial agent to negotiate sales on behalf of the manufacturer, with ownership and risks remaining with the manufacturer. Misclassifying these agreements can lead to unintended legal consequences, so it is essential to ensure the transaction structure aligns with the parties’ intentions.

### **2. Understanding Incoterms**

Terms like DDP, FCA, FOB, and EXW are common in international trade, but their significance lies in the allocation of responsibilities and risks between the seller and buyer. Published by the International

Chamber of Commerce (ICC), Incoterms define who is responsible for transporting, insuring, and documenting the goods, when risk transfers from seller to buyer, and who bears specific costs. Choosing the appropriate Incoterms is crucial, as even minor modifications can significantly alter risk and cost allocations.

### **3. Product Pricing Considerations**

Pricing in international trade involves more than just setting a product price. It requires consideration of hidden costs and exposures, particularly tax implications. For instance, does the agreement create an unintended fiscal presence in the target country? Who bears indirect tax costs from importation? What are the withholding tax requirements? Additionally, pricing arrangements must comply with antitrust laws, considering factors like minimum pricing, exclusivity, and purchase quantity requirements.

These are just a few key issues to consider when entering international trade transactions. In future updates, we will delve deeper into these and other topics, such as intellectual property arrangements to protect significant rights. Stay Tuned!

Our firm advises companies in Israel and abroad on various trade agreements, including manufacturing, development, supply, distribution, support, and service contracts. We invite you to reach out with any questions or for consultation on these matters.

This client update was prepared with the assistance of Ms. Shira Even-Chen.

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This update is intended to provide general and concise information only. It does not constitute a full or complete analysis of the issues discussed, does not constitute a legal opinion or legal advice, and should not be relied upon as such.

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