



International Terms Review



More time, more expense.

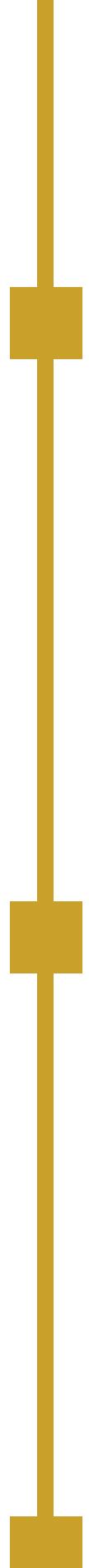
Many international businesses are leaving themselves vulnerable to the risk of longer enforcement times, additional translation work and more expensive legal action. Unless your terms are correctly drafted for the territory in question, you could find that your customer's law applies in any dispute, to your detriment.

Where and how?

As well as stipulating the applicable law and jurisdiction, agreements ought to express the relevant jurisdiction. You may find that some of your standard terms, as they are currently drafted, are simply unenforceable in your customer's territory.

Enforce.

Just because your claim has been successful in your home country, does not mean that the judgement will be enforceable in your customer's country. It is commercially meaningless in these cases. It is therefore important to ensure terms are drafted with the end goal in mind - speedy, enforceable action as and when needed.



Step 1

We review international terms and advise on the risks & mitigation possible.

Step 2

We formulate an overarching international terms company policy

Step 3

We draft/redraft terms and monitor of changes required on an ongoing basis.

Baker Ing International Terms Review

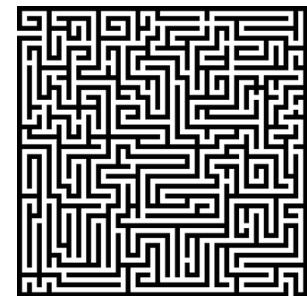
A simple service to greatly reduce your risk. Our country-specialist lawyers will review, redraft and monitor your international terms to ensure you have the protection you need, where you need it.

Is this your approach?

Your debtor is subject to an exclusive jurisdictional clause which states your contract is governed by the laws of England & Wales and that any court action must be taken in the Courts of England and Wales.

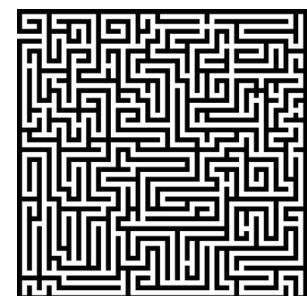
STEP 1

Creditor would have to issue court action in England/Wales and apply to service out of jurisdictional territory, in the country of the debtor.



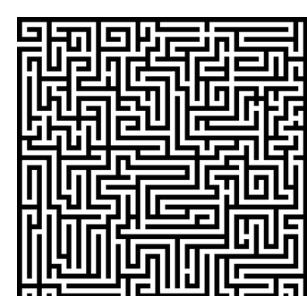
STEP 2

The court documents, plus invoice/contract, would all need to be translated into the Debtor's local language.



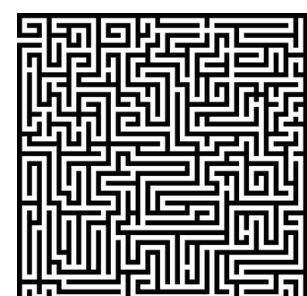
STEP 3

The court documents would then need to be issued by process servers in the Debtor's country.



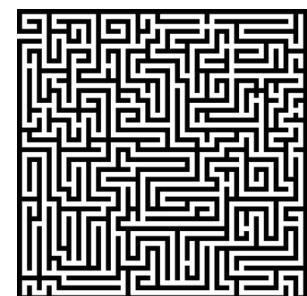
STEP 4

Once a Judgment is granted, the Creditor then has to apply to have the Judgment enforced.



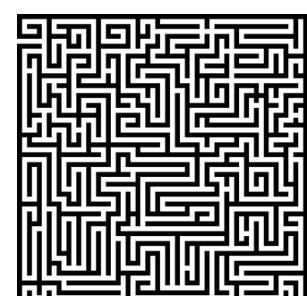
STEP 5

If the debtor is in Europe, the Creditor would need to apply for a European Enforcement Order.



STEP 6

If the debtor is in not Europe, the Creditor would need to issue another set of court proceedings in-country.

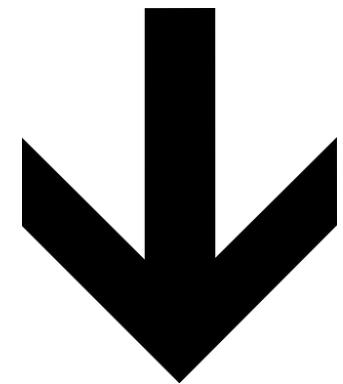


Simpler. Quicker. Cheaper.

The contract between the client and the debtor has a non-exclusive clause which states you can issue court action in any country/does not have any clause like this at all.

STEP 1

The client is free to issue court action direct in the country the debtor is located.



STEP 2

The judgment is enforced by the justice system in the debtor's country.



Case Study: Poland



We strengthened our client's position whilst keeping the original intention and structure of their terms. At the same time, we changed most of the wording and adjusted it to Polish legal language requirements. The final document still reflected the concept of the original T&Cs, even if some of the original clauses could not be incorporated as they were explicitly inconsistent with the civil law.

Key amendments were as follows:

We specified the moment at which the purchase becomes a sales contract per Polish civil law; detailing what the exact terms of such a contract are. This is an important change, that clarifies what the claim is and what this claim is based on, in case of a potential dispute.

The seller may deny the order at the time when it's placed, as well as later after accepting it, the seller may resign from completing the order. The Buyer does not have any such right, unless otherwise approved by the Seller. There is generally no obligation on the side of the Seller to deliver.

Another significant issue was the exclusion/reduction of liability of the Seller. In some cases it was not consistent with Polish law; especially as regards the responsibility for a product defect that causes injury. Such a responsibility may not be excluded contractually and may not be legally effective.

Similarly, one of the clauses in the original T&Cs concerned refusal of the Seller to sell products to an entity who is endangered with insolvency - such a clause is simply not enforceable. We removed all such provisions.

We also changed some terms of payments in accordance with Polish law and legal language. The wording of the clauses regarding VAT invoice were not correct. The moment at which the seller is obliged to issue a VAT invoice is strictly regulated by VAT law. It may not be regulated by a contract.

We kept a clause about retention of the ownership title. However, according to Polish Civil Code, such a general clause may not be enough to protect against third party creditors (i.e. bailiff proceeding or bankruptcy). In order to make use of this, it is necessary to obtain a stamp on every invoice (including a retention of title clause) from a public authority to prove that the retention of title document existed at a certain date (and was not antedated). We provided guidance on how to comply with this.



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