Supply of goods Q&A: Brazil

by Erika Donin Dutra, Luiza Coelho Guindani and Matheus José Silva Rios, Souto Correa Advogados

Country Q&A | Law stated as at 31-May-2021 | Brazil

Brazil-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*.

General contract law framework

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

A valid contract must present three fundamental elements:

- Legal capacity of the parties to the agreement.
- Lawful purpose.
- Valid form, which can vary according to the purpose.

(*Article 104, Brazilian Civil Code* (BCC).)

Legal capacity is regulated by the BCC, which governs all matters concerning capability (*sections 3, 4 and 5, BCC*), according to which the legal capacity of an individual is complete after 18 years old, as a general rule. Legal capacity is also possible before age 18 by means of:

- Marriage.
- Graduation from university.
- A parental declaration from 16 years old.
- Full exercise of a public position.

- Full exercise of an economic activity after 16 that allows the individual to be economically independent.

Even if a party is 18 or over, they will not be considered to have capacity if they are:

- Addicted to alcohol or drugs.
- Prodigality (that is, someone who is excessively willing to spend money in an uncontrolled manner).
- Not in a state of mind able to express their own will.

With regards to legal entities, regular incorporation implies legal capacity and, therefore, the ability to enter into a valid contract (*section 104, BCC*).

A lawful purpose, broadly speaking, means the absence of any legal prohibition. However, the purpose of a contract must also be possible, certain or ascertainable, which means that the good, service or right must be feasible in physical and legal terms (*sections 104 and 166, BCC*).

The form of the contract is usually at the parties' discretion, unless there is an express legal provision otherwise. As a general rule, the contract does not need to be in writing. Brazilian law adopts the principle of *consensualism*, according to which for a contract to exist it is only necessary to have a mutual declaration of the parties' will. Therefore, when there is an offer and a corresponding acceptance, both made validly and effectively, there is an agreement (*sections 427 – 435, BCC*). As a general rule, the acceptance, as well as the offer, should be express.

However, the law can establish that silence is a valid implicit manifestation of will. This is only possible in exceptional cases, as provided by the law. As a result, the parties may select one of the options, oral or written. If the written form is selected, it can be executed by private or public instrument (before a notary public) (*sections 104, 107, 108, 421 and 425, BCC*). In some cases, the law expressly establishes the public instrument form as the only one valid for certain types of transaction (for example, real estate transactions with a value of more than 30 times the local minimum wage (*section 108, BCC*).

An agreement will take effect as of:

- Its signature date, in the absence of any specific provision to the contrary (for example, a suspension condition, according to which the contract is suspended until a future and uncertain event takes place (*section 121 and following sections, BCC*)).
- Any date (present, past or future) stated by the parties.

It is possible and valid for an agreement to regulate transactions that have already occurred, as long as it is not used to defraud third-party rights (*section 167, BCC*).

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

For legal entities, a regular incorporation implies legal capacity and, therefore, the ability to enter into a valid contract. The regular incorporation is created by the inscription of the constitutive act in the respective register with, when necessary, the authorization of the executive power (*sections 45 and 985, BCC*).

In certain situations, the law can specifically forbid a person to enter into a contract, for example under antitrust law. In these cases, it is not a matter of legal capacity, but a matter of lawfulness of purpose. Legal capacity remains the same: what occurs is a circumstantial and particular prohibition to enter into a specific contract.

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

There are no formalities required to enter into a valid sale of goods contract. Requirements of that kind are usually made by fiscal or administrative law (enrolments, permits and so on) and, therefore, not required by contractual law. It is usual, however, to adopt the written form for contracts, in order for the parties be able to alter the general regime provided by the law, tailoring the agreement to the parties' requirements.

A written agreement also provides an evidential instrument in any future dispute resolution. National law, including procedural law, does not accept witness evidence alone for contracts with a value of more than ten times the local minimum wage (*section 227, BCC*).

However, formalities can arise when certain provisions are inserted in a contract, such as some types of guarantee or collateral, and must be assessed on a case-by-case basis. Examples are pledge agreements (*section 1.431 and following, BCC; registration of the instrument is required by section 1.432, BCC*) and mortgage deeds (*section 1.473 and following, BCC;* registration of the agreement is required by section 1.492, BCC).

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

The proponent is bound by the terms of their proposal (*section 427, BCC*). Therefore, inclusions, removals or any other kind of modification made by the party that received the first proposal, will be deemed to be a new proposal. New terms will thus not be treated as an acceptance, but as a counter offer, due to the mandatory nature of proposals (*section 431, BCC*).

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

There is no specific regulation requiring any special notice to be given by one party to another in a supply agreement (business-to-business).

However, some form of acceptance (expression of the party's volition) must be given by the parties for certain terms to be incorporated. For example, if there is a change in the general terms and conditions, this change must be notified to the accepting party and that party must express some form of acceptance. Therefore, a valid and effective additional term depends on the same requirements on which a contract depends on (see *Question 1*).

All notices, including pre-contractual notices, must follow the good faith principle (see *Question 6*), which means that they will be evaluated on a case-by-case basis, such as may happen with an arbitration clause.

It is also possible to have a clause in the contract regulating the form of an eventual additional term. In this case, the additional term will have to be made in accordance with the rules established in the contract by the parties. If the additional term does not follow these rules created by the parties, it will not be valid.

6. Is the concept of a party acting in "good faith" recognised in your jurisdiction (see *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 4.2*)?

The duty of good faith applies to all contracts, requiring that all parties adhere to a fair dealing standard (*sections 112 and 113, BCC*). It is not necessary to forego business advantages or enter into a full disclosure negotiation, but neither party may lie or mislead the other about material facts concerning the contract (*sections 138, 139, 145, and 146, BCC*).

Good faith and, therefore, fair dealing, should be assessed according to commercial standards (as may be specified by the type of goods, markets or geographic regions), as well as to past behavior or acts exercised by the parties.

The parties must act according to the principle of good faith during all stages of the contract, including the pre-contractual phase, the execution of the contract and the post-execution phase (*section 422, BCC*). The courts tend to accept the application of this principle when analyzing contractual relationships.

Brazilian scholars interpret the principle of good faith as a source of lateral obligations (or "ancillary obligations"), that the parties must observe to comply satisfactorily with the agreement. These obligations include, for example, a duty to:

- Mitigate loss.
- Inform the other party.

- Act diligently to avoid damages to the counterparty.

The lateral obligations can vary infinitely. They will depend on the relationship and the purpose of the transaction, considering both the objective and subjective characteristics of the transaction, such as the usages of business in general market practice and in the previous relationships of the parties to the contract in dispute.

7. Is the concept of using "best endeavours" recognised in your jurisdiction (see *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 5.2*)?

Best endeavors or best efforts is a standard recognized in Brazil for certain types of contract, usually characterized by more open-ended obligations. It is widely applicable to long-term relationships, to avoid disputes that could otherwise not be solved between the parties without the recourse to the judge (or arbitral tribunal). However, the "best endeavors" clause only applies to "means obligations" (that is, obligations to behave in a certain way) and not "results obligations" (that is, obligations to obtain a particular result). This means that, under a single contract, the duty to (for example) supply defined goods, in a certain place, at a certain date, will not be subject to a best endeavors requirement, but a duty to mitigate loss will be subject to a best endeavors requirement.

With regards to *Standard document, Supply of goods agreement: Cross-border: clause 5.2*, the concept of best endeavors can apply if there is no specific obligation regarding the amount to be supplied under the order. This clause would also be acceptable where the amount required by the buyer is above any specified requirement of the main agreement (for example, if the agreement provides that the supplier will supply a minimum of ten units of the goods per month, subject to an order, and the buyer places an order for 11 units, this additional unit can be denied or accepted under a "best efforts" condition).

8. Is the concept of "material breach" recognised in your jurisdiction (see *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 16.1(a)*)?

Brazilian law does not recognize the concept of material breach. Therefore, it is recommended that the parties establish whether a breach can be construed as a cause for terminating the agreement and claiming damages (*section 474, BCC*). Whenever feasible, parties should state causes of material breach and specify respective liquidated damages.

It is also important to consider the theory of substantial performance. This is not expressly provided for in the BCC, but it is broadly accepted as a doctrine and applied by the courts, depending on the circumstances of the case. The main idea of this theory is to preserve contracts that are almost entirely complied with. The theory relates to the principles of good faith and social function of contracts. The verification of the substantial performance is not only based only on quantitative criteria, but on qualitative ones too.

Incorporation of standard terms of business

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

As national law provides for freedom of form for contracts (*section 104, III, BCC;* see *Question 1*), standard terms can be used as a contract in their own right, with the addition of the parties' names (qualification/identification) and other details, such as price, quantities and delivery dates. In other words, standard terms can be freely used as the actual contract clauses and can be completed with the specific terms of the transaction at hand. They can also be used as an exhibit and, therefore, can be incorporated into the contract by making reference to them (incorporation by reference).

Pre-contractual statements can indicate that the potential supply contract will use the offeror's standard terms, in which case the terms of an offer can include, aside from product and price, an additional statement that the supply will be regulated by standard terms.

Once the offer is accepted, the buyer would also be deemed to have accepted the standard terms of the seller, which means that the offer can comprise price, quantities, delivery dates, and other details about the transaction, but also the contractual terms. Accepting the offer is, therefore, to agree upon specifics and contractual regulations (*sections 427 and following, BCC*).

The use of standard terms is very common. They can regulate the entire agreement, or only a few aspects of the relationship, for example, codes of conduct, compliance codes, and environmental rules. Usually, companies with several similar operations use standard contracts to regulate all these operations.

10. If the seller's standard terms of business are being used, is it acceptable to limit the seller'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 *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 7.5*?

Yes. Liability can be subject to limitation of liability clauses, which means that the parties can establish all rules concerning contractual liability arising from a breach, including payment of limited damages. This occurs because the parties have freedom to establish the terms of the agreement (*section 421, BCC*). However, as delivery and payment are the essential obligations of a supply of goods agreement, caution is advised when drafting these clauses, as they should not be construed as a permission to not perform the agreement. Therefore, the limitation of liability clause should specify a reasonable amount, that would not deprive the creditor of its expectations under the contract, nor would amount to an unjust enrichment of the debtor. Efficient breach and related theories still face strong resistance in Brazil.

Pre-contractual misrepresentation

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

A seller can be held liable for pre-contractual misrepresentation. Good faith is a duty applicable to all contracts, requiring that all parties adhere to a fair dealing standard (*sections 112 and 113, BCC;* see *Question 6*). It is not necessary to forego business advantages or enter into a full disclosure negotiation, but neither party may lie or mislead the other about material facts concerning the contract (*sections 138, 139, 145 and 146, BCC*).

Silence must not be used to induce a party into error or to keep them in error (*section 147, BCC;* see *Question 13*).

Should misrepresentation be proved in a court of law, a contract can be rendered invalid and the breaching party held liable for all damages suffered by the other party (*sections 145, 146, 186 and 927, BCC*). National law acknowledges pre-contractual liability in a very broad sense, including cases in which the parties did not reach an agreement (*section 422, BCC*). It is not possible to force a party to enter into a contract, but that party may nonetheless be considered liable for all expenses or investments made in good faith by the other party in preparation to enter into the contract, depending on the circumstances of the case that lead the other party to trust that the contract would be executed (*sections 112 and 113, BCC*). The BCC protects trust and good faith during the negotiation.

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?

Statements may be construed as a contractual offer and, therefore, are binding on the seller (*sections 427 and 429, BCC*). However, to be enforceable, statements must present essential elements concerning what should be a valid contract. In a sale of goods, this means the product and its price. Once these essential elements are present, the statements made by sales staff or in promotional literature will be considered as an offer (*section 481, BCC*) and bind the seller.

It is common (and recommended) that these statements have limitations, mainly concerning time and quantities (that is, express indications in relation to the duration and quantities available to that offer).

Should the statement be considered an offer, the proponent can be forced to either enter into a contract and supply the product or to indemnify the interested person (*section 427, BCC*). An indemnity could arise if the specific execution of the obligation is not possible (for example, if the supplier does not have any more goods in stock). The indemnity should cover actual damage and reasonable losses directly and immediately resulting from non-performance (*sections 402 and 403, BCC*).

A statement can be withdrawn using the same means used to make the statement, including the same publicity, if the statement allowed the seller to do so (*section 429, BCC*).

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

There is no specific obligation to disclose any information, but a party can be held liable if it is considered in breach of the duty of good faith (*sections 113 and 138, BCC;* see *Question 6*). Further, if one of the parties is intentionally silent about some fact or quality which is essential for the contract to exist and not known by the other party, this silence will be regarded as malicious omission (*section 147, BCC*).

It is not necessary to forego business advantages or enter into a full disclosure negotiation, but neither party may lie or mislead the other about material facts concerning the contract (*sections 110, 138, 145, 441 and 443, BCC*).

Silence must not be used to induce a party into error, or to keep them in error (*sections 110, 111, 138, and 145, BCC*). Silence in relation to a material fact concerning the contract may constitute misrepresentation and may be sufficient to invalidate the agreement (*sections 138 and 139, BCC*). In particular, in a sale of goods agreement, if during the negotiations the seller becomes aware that the buyer is not well informed about the goods (characteristics, properties and functionalities), the seller should clarify the situation, otherwise the agreement may be invalidated and the seller will be obliged to indemnify the buyer (*sections 147, 186 and 927, BCC*).

Therefore, should misrepresentation be proven in a court of law, the contract can be rendered invalid and the breaching party can be held liable for all damages suffered by the other party (*sections 186 and 927, BCC*).

Main terms of a supply contract

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

Brazilian law has general principles and rules applicable to all contracts, including rules on payment, term, termination, penalties, among others (*sections 104-480, BCC*). In addition to the general rules, the legislation includes provisions of various contracts called "typified contracts" ("off the shelf" contracts), which can, in most cases, be modified by the will of the parties. If not modified, they will apply to fill any gaps not specifically regulated by the parties to the contract (*sections 481-504, BCC, concerning sale of goods*).

Supply contracts are, therefore, subject to these general and mandatory rules and principles, and also to the rules of the typified contract of sale of goods, which may supplement the agreement or even override it, where the legal

rules are mandatory (*sections 481-537, BCC*; see also sections 484, 489, 490, 492, and 493, BCC, as examples of implied terms).

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

Sale of goods by sample has one mandatory rule, which establishes the obligation of the seller to ensure that the product will have the same quality and features of the sample, under section 484 of the BCC:

"If a sale is made according to samples, prototypes, or models, it will be presumed that the seller guarantees that the goods have the same qualities as the samples, prototypes, or models."
If there is any difference or contradiction between the product and the sample that was described, the buyer can terminate the contract with a right to recover damages (*section 484, BCC*).

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

Brazilian law provides remedies for the innocent party to obtain specific performance of any breached obligation or termination of the contract. In any case, the innocent party will be entitled to damages recovery (*section 475, BCC*).

It is usual for a defaulting party to receive a reasonable term to perform its obligation, subject, in any case, to payment of damages, penalties, arrear fees or interest and monetary restatement (*sections 394, 395 and 397, 398 and 927, BCC*). (Brazilian law requires monetary values to be restated from their historic value (that is, the amount originally due) to their actual value (the amount now due, taking into account inflation and other economic factors). There are several indexes commonly used in Brazil to update the value of pecuniary provisions. When it comes to private law matters, the parties can establish which index will be used in contracts.

If it is not possible to order specific performance, the matter will be resolved through financial compensation, in other words, payment for all damage caused due to the default (*section 395, BCC*). A contract can regulate these matters and set out in advance a "cure period" (a period within which a breach must be remedied) as well as liquidated damages.

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

Implied terms (if not amended by express terms) will, whenever possible, follow the same rules concerning breach as those applicable to express terms (*sections 394, 395 and 397, BCC*; see *Question 16*).

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?

Prices can be set according to market indexes or any commodities/future exchange indexes, or according to other parameters agreed by the parties, provided that these parameters can be objectively determined (*sections 486 and 487, BCC*). Prices may also be fixed by a third party chosen by agreement between the parties (*section 485, BCC*). Moreover, if the parties agree to the contract without fixing the price (or at least a criterion for how to determine it), and if there is no official price control, the current price will be applied based on the seller's usual sales. In this case, if there is a diversity of the price and there is no agreement between the parties, the average price will be deemed to be the price applicable to the transaction (*section 488, BCC*).

If one of the parties can set prices in their sole discretion, the contract can be voided after execution (*section 489, BCC*). Therefore, the seller can only raise the price if this increase is within parameters agreed between the parties, but never at its sole discretion.

Refusal to supply the goods in line with the price set in the contract implies default and exposes the seller to legal and contractual consequences (*sections 485, 486, 487, 488, 394 and 395*).

Brazilian law implies that packing and delivery costs (transfer of property) must be paid by the seller, if the agreement does not establish otherwise.

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

- Importing goods into your jurisdiction?
- Exporting goods from your jurisdiction?

  Which party usually bears the costs of obtaining these (see *Standard document, Supply of goods agreement: Cross-border: clause 6.8*)?

Exporting is fostered by the government and usually requires no licensing, but imported goods are subject to substantive regulation. Usually, each party should bear its own licensing costs, but all express terms in relation to delivery obligations and costs should apply.

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 *Standard document, Supply of goods agreement: Cross-border: clause 11.2*?

The price of goods will be inclusive, but parties can state otherwise. The parties normally include a clause stating who is responsible for the tax burden, even if this just replicates the relevant legislation, in a bid to protect themselves and reinforce the obligation. Any provision departing from what is provided by tax law will not bind the fiscal authorities (*section 123, Brazilian National Tax Code*), and it is very common to see situations of joint liability concerning taxes, so parties should be cautious while addressing the tax burden (who pays and who is responsible to collect the amount).

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 *Standard document, Supply of goods agreement: Cross-border: clause 11.3*?

Yes, it is possible. However, it is important to note that supporting documents, such as invoices, are subject to public law (tax law, administrative law) and, therefore, cannot be freely agreed by the parties.

In most cases, goods should be accompanied by an invoice during transportation. The invoice can be substituted by other documents (for example, bill of lading) if permitted by law or by a specific tax regime applicable to one of the parties. The law also defines the information (tax deductibles, rates, tax retentions and so on) that must be included in an invoice.

Therefore, parties are able to separate invoicing, delivery, and payment date, and a clause to this effect may be included in the agreement, provided this is allowed under the applicable tax law.

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

Brazilian law has general regulations applicable to all contracts, including rules on payment, term, termination, penalties, among others (*sections 104-480, BCC*). Sale of goods agreements are included specifically in the Brazilian Civil Code with specific regulations (*sections 481-537, BCC;* see *Question 14*).

With regard to payment, parties should be aware of sections 304 to 359 of the BCC, which provide, in particular, that:

- If the payment date is not determined, the seller can demand payment immediately.
- Payment must be collected at the buyer's place of business, if not stated otherwise.

(See *Question 18*.)

23. Does national law permit a seller to charge interest on late payment as set out in *Standard document, Supply of goods agreement: Cross-border: clause 11.5(a)*?

Under Brazilian law the debtor is liable to default interest in case of late payment. Under sections 389 and 395 of the BCC, the debtor will be responsible for paying damages caused by the delay they caused, as well as interest, monetary restatement according to the official indexes established, and attorneys' fees. The seller can charge interest on late payment of up to 12% per year, pro-rata per day (*section 406, BCC*). Compound interest or capitalized interest rates can only be claimed annually (capitalization of interest refers to the situation where the accrued interest is added to the principal). The interest is payable jointly with the main obligation (principal payment or the respective instalment)

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 (see *Standard document, Supply of goods agreement: Cross-border: clause 11.4*)?

Yes. Under Brazilian law, specific execution of obligations is preferred over damages. The seller has the right to deliver goods and receive payment, as well as to charge penalties for late payment. However, it is necessary to take into account what the parties agreed as the deadline for payment and if any deadline tolerance was given to the buyer. If there was no tolerance or if the tolerance has expired, the seller has the right to bring a court claim against the buyer to receive payment for the goods (this is the case even if deadline tolerance has not been explicitly addressed). The buyer will have to provide, in addition:

- Losses and damages.
- Interest.

- Monetary values updated according to the official indexes and attorney's fees.

(*Sections 389 and 395, BCC.*)

25. Is set-off permitted in your jurisdiction (see *Standard document, Supply of goods agreement: 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?

Yes, set-off is permitted as a general rule for all payment obligations (*section 368, BCC*). To be able to offset the debts, the debts must be:

- Of a fixed amount (net).
- Overdue.
- Fungible.

(*Section 369, BCC.*)

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

Delivery can be understood in most cases as a transfer of possession over the goods (*sections 1267–1286, BCC*). It can be effected both by physically transferring possession from one party to another, which often occurs, or by sending documents from one party to the other (*sections 529-532, BCC*), such as transferring title over goods deposited in a warehouse.

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

National law states that the seller should bear the costs related to the transfer of property (*section 490, BCC*).

Ownership of the goods is transferred on delivery and in the absence of an express stipulation in the sale of goods agreement, the default legal provision is a symbolic delivery of a title (document) where the transfer of property is

usually deemed to take place at the location where the goods were situated at the time of the sale (see *Question 35*). The buyer is then responsible for transporting the goods to its place of business and the seller must only make the goods available and packed for transportation (*sections 490 and 493, BCC*). The risks related to transportation are borne by the buyer (*section 494, BCC*).

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

Unless the contract specifies that the goods may be delivered by instalments, or the circumstances indicate that delivery by instalments was intended by the parties, the buyer is not obliged to accept delivery by instalments. Therefore, if the contract does not provide for delivery by instalments, the seller would be considered in breach of contract, bearing all legal and contractual consequences.

The buyer is not entitled to reject a current instalment solely because the previous one was defective. If that is the case, the buyer should declare the seller in breach of contract, at the time of the previous defective instalment, and enforce the available legal and contractual remedies, including terminating the agreement before any following instalments are due.

29. Is the concept of "time is of the essence" understood in your jurisdiction? Please also consider the validity of *Standard document, Supply of goods agreement: Cross-border: clauses 7.4* and *11.4*/*16.2* in relation to this question.

Failure to meet any deadline means automatic default, where the breaching party will be subject to all consequences provided by law and by the contract, including payment of penalties and contract termination (*sections 394, 395 and 397, BCC*). In Brazil, there is a differentiation between:

- Breaches that are not "fundamental" (which therefore do not lead to a termination of the contract).
- Breaches that are "fundamental" (in Brazilian Portuguese, a literal and free translation is "absolute breach"; however, as this is not a globally understood concept, "fundamental breach" is the closest concept that applies).

The contract can (but need not) provide wording to emphasize that timely completion of the obligation, delivery of goods, for example, is essential and that failure to comply will result in a fundamental breach, amounting to contract termination and rejection of the goods. *Clauses 7.2* and *11.4* would have this effect. As time of delivery is presumed of the essence by Brazilian Law, *clause 7.4*, when stating that the date of delivery is approximate, would work as a permission to the seller to delay delivery within a reasonable and acceptable time (evaluated according to

the concrete circumstances). On the other hand, the statement that time is of the essence would only reinforce the importance of timely completion, which was already presumed (see *Question 30*).

Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 16.2 is valid and enforceable in Brazil as it expressly states that the agreement may be terminated due to late payment (the cure period is recommended, but it is not needed under the law), which is compatible with section 475 of the BCC.

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:

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

Time for performance is considered fundamental to the contract (see *Question 29*). Failure to meet a deadline means automatic default, where the breaching party will be subject to all consequences provided by law and by the contract, including payment of penalties and contract termination (*sections 394, 395 397 and 475 BCC*).

Remedies follow the same general rules applicable to any breach, including specific performance of the obligation (payment with interest and monetary restatement), and payment of damages (*sections 395, BCC; section 497 and following of the Brazilian Civil Process Code* (BCPC)).

The innocent party may also request termination of the contract (*section 475, BCC*). However, termination of the contract due to late payment of the price is not common in practice.

It is usual to insert a clause specifying which events will trigger termination, which may include:

- Default of payment (no payment at all).
- Where the price is paid in instalments, late payment of three or more instalments.

31. What remedies are available to a seller where the buyer fails to accept delivery under the laws of your jurisdiction? Would *Standard document, Supply of goods agreement: Cross-border: clauses 7.6* and *11.3* be permitted in your jurisdiction?

Remedies follow the same general rules applicable to any breach, including specific performance of the obligation and payment of damages (*section 395, BCC; sections 497 and following, BCPC*). The innocent party may also request that the contract be terminated (*section 475, BCC*). Delivery dates bind both parties to the contract, including the buyer. Therefore, if the buyer refuses to receive the goods, it is also subject to the consequences provided for by law and contract, including contract termination and payment of damages (*sections 394, 397 and 400, BCC*).

With regard to the supply of goods, when the buyer fails to accept the product, the seller:

- Will be free from responsibility for conservation.
- May charge the buyer for any necessary expense to preserve the goods. If the price varies during the period between the contractual date of delivery and the date of the actual acceptance of the delivery by the buyer, the seller will be entitled to receive the higher price for the relevant period.

(*Section 400, BCC.*)

Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: the insertion of a provision such as clause 7.6 is not common practice in Brazil, and the validity of such a provision can be challenged in the courts, although it is not expressly prohibited by the law. *Clause 11.3* is valid and enforceable in Brazil.

32. Under the laws of your jurisdiction what remedies are available to a buyer against a seller for any delay in delivery? Would *Standard document, Supply of goods agreement: Cross-border: clause 7.5* be permitted in your jurisdiction?

Failure to meet a deadline means automatic default, where the breaching party will be subject to all consequences provided by law and by the contract, including payment of damages, penalties, liquidated damages (if stated in the contract) and contract termination (*sections 394, 395 and 397, BCC*).

Remedies follow the same general rules applicable to any breach, including specific performance of the obligation and payment of damages, including actual and consequential damages (*section 395, BCC; and 497 and following, BCPC*) (see also *Question 44*). The innocent party may also request that the contract be terminated (*section 475, BCC*).

The buyer can prove that the time of delivery was essential and reject the goods. This would be the case whenever goods are used to manufacture other goods for a specific event (buying goods to bake a cake for a wedding party that already took place, for example). In this case, the remedy would be termination of the contract and payment of damages.

Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 7.5 is valid and enforceable in Brazil. However, an estimate of damages which uses a substitute transaction as a basis is not usually agreed in Brazilian contracts and not often upheld by the courts, unless there is an express provision in the contract. If this provision is not included, the calculation of damages may take into consideration "average" or "good" quality goods, not necessarily "the cheapest market goods available", resulting in higher compensation values.

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

Products can be rejected if they do not meet the standards set by the parties, including quantity and quality, as well as in case of late delivery or delivery in a different place than the one agreed in the contract (*sections 313 and 327, BCC*). Even if the goods delivered are more valuable than the ones required, the buyer is not obliged to accept them (*section 313, BCC*).

Ideally, assessment is based on receipt/delivery, but the sale can be based on satisfaction, which means that the deal will be under a suspensive condition until the buyer can evaluate and express its satisfaction with the products (*sections 509 and 510, BCC*). If there is no pre-set deadline for the assessment, the seller can notify the buyer to set a non-extendable deadline (*section 512, BCC*).

Normally, the buyer will have 30 days to complain about hidden defects in goods. The buyer may reject any defective goods or receive a proportional reduction in the price (*section 445, BCC*). If the hidden defect is difficult to identify after conduction a standard inspection, the term within which the buyer may reject or demand compensation is 180 days from the discovery of the defect (*section 445, paragraph 1, BCC*). After such a period, the right to reject is lost.

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

Tolerance limits in supply agreements are possible for the seller. The contract may establish supply amounts or possible band variations, using, for example, percentiles as reference (*sections 421 and 425, BCC*).

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 *Standard document, Supply of goods agreement: Cross-border: clauses 9.1* and *9.2*?

As a rule, the title to the goods is transferred on delivery, which can be real, with physical transfer of the products, or symbolic, when performed by delivery of a document (*sections 492, 493 and 529, BCC*). The document representing a symbolic delivery can be, for example, a bill of lading or a bill of transport, depending on the agreement between the parties. The risk is transferred together with the title, under the principle that "*res perit domino*".

However, the parties are free to agree different times for the transfer of the risk and transfer of the title. For example, the International Chamber of Commerce's International commercial terms (Incoterms 2010) are broadly applied in commercial transactions and accepted by the courts (see *Question 37*).

Standard document, Supply of goods agreement: Cross-border: clauses 9.1 and *9.2* are valid under Brazilian legislation.

36. Can a seller elect to transfer title in the goods as set out in *Standard document, Supply of goods agreement: Cross-border: 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?

No. In Brazil, one party cannot unilaterally determine the date of the payment after the conclusion of the contract. If the contract does not establish a date for the payment, the payment will be considered as due immediately after the execution of the contract (*section 331, BCC*). Therefore, *Standard document, Supply of goods agreement: Cross-border: clause 9.5* is not valid under Brazilian legislation.

However, the parties can agree to a sale with title retention. This is an exception to the general rule according to which the title is transferred at the time of delivery. In a sale with title retention, the seller will retain the title in the goods until the whole payment is made, even after delivery. If the payment is not made in accordance with the provisions of the contract, the seller will have the right to sue the buyer and have the goods returned (*sections 521 and 522, BCC*).

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

Retention of title is a valid clause in Brazilian law (*sections 521-528, BCC*). *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clauses 9.2* and *9.3* are valid, but must be in written form (*section 521, BCC*) and should be registered before a Notary Public (*section 522, BCC*) to be enforceable against third parties, such as the buyer's creditors.

38. Can the parties include a clause in the contract such that the seller is granted a licence to enter the buyer's premises to recover the goods where the buyer has not paid for them as set out in *Standard document, Supply of goods agreement: Cross-border: clause 9.4*?

Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 9.4 is valid, but with limited practical effect. To make this clause enforceable, the seller is likely to need to file a lawsuit to reclaim possession over the goods.

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

The seller can prove that the transfer of title has not been effective and recover all goods delivered, if a retention of title clause is inserted in the contract. To enhance the seller's legal position, retention of title should be registered before a Notary Public (*section 522, BCC*) to be enforced against third parties, such as the buyer's creditors. Under insolvency laws, all assets and credits belonging to the debtor will be used to pay its creditors, with equal treatment.

Retention of title is recognized as an exception to that rule and will free the respective goods from all effects related to the buyer's insolvency and, therefore, not subject the goods to any holding from creditors (*section 49, paragraph 3, Act 11.101/2005*). However, if the contract does not provide for a duly registered retention of title, the buyer will not be able to recover the goods in case of liquidation or judicial re-organization.

Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 9.4 is valid and enforceable in Brazil, but with limited practical self-enforceability.

Termination

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

The parties can terminate an agreement for all the reasons set out in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 16*. Therefore, insolvency can be used as grounds to terminate an agreement.

Voluntary liquidation is recognized by Brazilian Law, as well as self-proclaimed insolvency (bankruptcy or court-supervised or out-of-court re-organization). With regards to voluntary liquidation, the law provides that the legal entity should not enter into new business contracts, as company managers must only use their powers to liquidate assets and liabilities. Failure to do so will result in personal liability for company managers and members.

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: Cross-border: clause 16*?

The BCC provides four situations of non-satisfactory termination of the contract (*Chapter II, Title V, Contracts in General*):

- Mutual agreement to early termination (*section 472, BCC*).
- Unilateral termination without just cause, when permitted by the law or by the contract (*section 473, BCC*).
- Termination clause establishing mutual agreement to terminations (*section 474, BCC*) (this is the type into which *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 16* falls).
- Termination in the case of excessive onerousness (*sections 478 and 479, BCC*), applicable when the requirements are met.

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: 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.

Although they may be challenged by the parties, limitation and exclusion of liability clauses are generally accepted in Brazil. The parties can exclude certain types of liability for a particular type of loss, or adjust an overall amount of liability, including any specific or aggregate cap for penalties. All these provisions are understood in the context of freedom to contract. *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 14* is valid, and the wording can be used in sale of goods contracts.

However, there are some limits to the application of these clauses and liability for the following cannot be excluded:

- Death and personal injury.
- Intention misconduct and gross negligence.
- Breach of the main purpose of the agreement.
- Breach of public policy rules.

The most important is the one that prohibits limitation of liability to the extent that it contravenes the main purpose of the agreement. The main purpose of a supply of goods agreement is to supply goods of a certain quality and certain quantity, in a certain time and place, in return for a certain amount of payment. As a result, the limitation of liability clause could not be applied to the extent that, in the case of termination of the contract and the return of the goods, it would deprive the creditor of receiving back the whole amount already paid for the goods.

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: Cross-border: clause 14*?

It is possible to exclude certain claims or liabilities under Brazilian legislation. The requirements are explained at *Question 42*.

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 (see *Standard document, Supply of goods agreement: Cross-border: clause 14.2(a)*)?

Yes, damages and loss of profits can be separated into direct and indirect loss. Under Brazilian law there is no duty to indemnify indirect and consequential loss (*section 403, BCC*). Unless the parties explicitly include in the indemnity clause the duty to indemnify against indirect and consequential damages, indirect damages are not recoverable.

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

Under the Consumer Defense Code the supplier must inform the authorities in charge of the matter (if the situation involves food improprieties, for example, then the Brazilian Health Regulatory Agency would have to be informed) and consumers when a defective product has been identified (*section 10*). The procedure to be observed in a product recall is set out in the Federal Ministry of Justice's Ordinance No. 487, 15 March 2012.

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: Cross-border: clause 12*? Are any indemnities implied into supply of goods contracts?

Warranties and indemnities provide different remedies for the creditor when facing a breach.

Warranties

With a warranty, the fault of the party that caused the breach is not relevant. Unless the seller demonstrates that the buyer caused the breach of the warranty clause, the seller will be responsible to the extent provided by the contract

(in general, warranty clauses provide for repair of the goods which are the object of the agreement, replacement of them and, finally, refund of the price already paid).

The warranty clauses must set out a period of time during which the buyer will be able to submit claims and enforce the warranty. Warranties of three months, one year or two years are the most frequent. This is a relevant feature of a warranty clause that differentiates it from a pure contractual liability clause. The warranty requirements, and consequences for their breach, are stipulated by law. Therefore, the parties must agree the terms of any warranty contractually.

Indemnities

A pure liability clause, whether expressed or implied, provides that damages (indemnity) will be paid as result of a breach, and, in more serious cases, also termination of the contract, returning the parties to the position they were in before the execution of the agreement.

In Brazil, the burden of proof is on the innocent party. Therefore, the innocent party must demonstrate that:

- It suffered damages.
- The damages were caused by the breach of the agreement.
- The breach of the agreement derived from the fault of the other party.

This third requirement is presumed in contractual relationships, but it is possible for the counterparty to claim that the event was out of its sphere of control. See *Question 41* and *Question 53*.

The indemnity does not have to be expressed in the contract to be applied (including third party claims), since the obligation to indemnify derives from statute. The breaching party is liable for all losses, damages, including attorney fees, interest and monetary restatement, as provided by sections 389 and 395 of the BCC.

It is common practice to contractually establish a specific regime of liability, expanding or narrowing the legal regime as needed. It is possible, for example, to stipulate specific situations in which some types of damages are not considered for indemnification purposes.

Standard document, Supply of goods agreement: Cross-border: clause 12 enables the innocent party to be restituted for the damages it may have to pay for obligations that were originally owed by the breaching party. It is common (and recommended) to include a clause such as this in the supply of goods agreement. However, even when such a clause is not inserted in the contract, the innocent party will be able to seek restitution, based on the statutory provisions mentioned above.

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

There are specific laws governing IP rights and infringement, but any contractual effects, including seller's liability before buyer, should be treated as civil liability due to breach of contract. IP rights usually become relevant when the seller makes additional warranties to the buyer concerning ownership of the IP rights and licensing.

The BCC states that compensation must be measured by reference to extent of the damage (*section 944, BCC*).

An indemnity relating to IP rights must be determined by taking into account the benefits that the injured party would have enjoyed if the breach had not occurred. The injured party is also entitled to damages to compensate for the loss caused by the breach of the IP rights in question, as well as by any acts of unfair competition intended to damage the reputation or business of others, to create confusion between commercial, industrial or service providers, or between products and services placed on the market (*sections 208 and 209, Brazilian Intellectual Property Law*).

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: Cross-border: clause 12.3*?

Although it is recognized that the duty to mitigate derives from the good faith principle (*section 422, BCC*), this is not expressly provided in Brazilian law (see *Question 6*).

In addition, a statement made by the Council of Federal Courts clarifies that the principle of good faith implies that the creditor must avoid worsening and, as far as possible, mitigating their own loss (*Terceira Jornada de Direito Civil, Statement no. 169*). This statement is non-enforceable but constitutes a standard of interpretation widely applied by the courts.

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 of *Standard document, Supply of goods agreement: Cross-border: clause 8.2*?

Yes. The priority, as set out by legislation, is to execute the agreement, and, therefore, a refund or any form of compensation should be considered secondary and desirable only if the specific performance of the agreement is not possible or no longer appealing to the creditor.

50. Could the pre-conditions in *Standard document, Supply of goods agreement: Cross-border: clause 8.2* and the exclusions in *clause 8.3* affect the enforceability of *clause 8* as whole?

All pre-conditions in *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 8.2* and all exclusions in *clause 8.3* should not impair the enforceability of the clause as a whole. In addition, they are permitted by Brazilian law.

> 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: 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*?

Complete exclusion of liability for failure to comply with warranties is not accepted under Brazilian law, because it would ultimately enable the parties to negate any enforceability of the agreement, and the exclusion could be construed as a complete disregard for the nature of an agreement.

Therefore, the buyer will, at the very least, have the right to claim damages and the right to terminate the agreement.

Parties are free to agree on the remedies for breach of warranties, including the seller's right to replace or repair the goods before any indemnity payment, if possible. However, if the seller does not comply, the buyer can claim damages. In other words, specific execution of the agreement (delivery of goods) is always preferred by Brazilian law, but any breach can be resolved in damages.

Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 8.2 option 1 would be valid in Brazil. Although a complete exclusion of liability for failure to comply is not accepted under Brazilian law, warranty and liability can be limited by agreement between the parties, including, for example, the seller's right to regulate certain conditions that the buyer should comply with to access the warranty.

> 52. Can a seller'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*?

Yes, *Standard document, Supply of goods agreement (with contract details cover sheet): Cross-border: clause 8.4* is valid.

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: Cross-border: clause 17.1*?

Force majeure is one of the implied terms set out in the BCC, which defines it as a necessary fact with unforeseeable or unavoidable effects (*section 393, BCC*).

The debtor is only responsible for damages resulting from unforeseeable circumstances of force majeure if this is expressly stated in the contract (*section 393, BCC*).

In the event of force majeure, the parties will not be liable for any breach, unless:

- The party assumed an express obligation to perform its side of the contract even in those specific circumstances.
- The party was already in default when the fact occurred.

(*Section 492, paragraph 2º and 399, BCC.*)

The law does not provide any examples of force majeure, or any obligation related to proof or notification of force majeure. Therefore, legal control is minimal, and the parties to a contract can freely agree as they see fit.

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: Cross-border clause 17.4*? Are there any circumstances in which an entire agreement clause may be unenforceable?

This type of clause is not common in agreements between Brazilian parties, although common in international contracts with a Brazilian party.

A party who intends to enforce the entire agreement clause may face difficulties in the Brazilian courts, because expert study and analysis about its effectiveness are still very recent and not yet sufficiently developed. It is possible to anticipate that public order provisions, such as the principles of good faith and social function of the contract, will, as they cannot be derogated from, not be capable of exclusion from the interpretation of an agreement, even

if there is no specific provision in the contract about them and even with the inclusion of an entire liability clause. Therefore, at the moment the effectiveness of an entire agreement clause is still uncertain.

Competition law

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

Yes, however the law is broad and does not provide a comprehensive list of situations leading to infringements. All proscribed conduct is stated in general terms (*section 36 of Act 12.529/2011 and section 173, paragraph 4º of the Federal Constitution*). Therefore, if the seller or the buyer is in a dominant market position, with a participation market share exceeding 20%, caution is required so that the contract is not perceived as a violation of free enterprise and free competition (*section 36, paragraph 2º of Act 12.529/2011*).

56. Do sellers often ask for a minimum purchase commitment from the buyer as set out in *Standard document, Supply of goods agreement: Cross-border: clause 3*?

Minimum purchase commitment can be included in an agreement and is usually connected to a financial matter, such as transportation costs, machinery adaptation and investments, specific assets needed to supply the goods, packaging costs and so on. Minimum purchase commitments such as "take or pay clauses" are usually accepted and used in supply agreements for high volumes of commodities.

General

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

Anti-bribery and anti-corruption laws apply to all legal relationships, including contracts, and must be followed even if they are not expressly mentioned in the agreement. In Brazil, Act 12.846/2013 is the most important law concerning this area. It is common practice to include a clause stating that the parties must act according to this law otherwise they will incur the relevant penalties stipulated by the contract and by law in the event of a breach.

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?

Enforceability formalities

To be enforceable, the supply agreement must be executed by both parties and signed by two witnesses (*section 784, III, BCPC*). Oral agreements will be valid, but their enforceability will depend on a judicial decision declaring the existence of an agreement.

Parties must pay special attention to legal representation, including powers and potential limitations stated in corporate charters (articles of incorporation/organization).

An agreement or any other document must be apostilled if it is executed abroad, accompanied by a Portuguese translation by a public accredited translator (sworn translation), only in cases where the agreement needs to be presented before a Brazilian court or to certain Brazilian governmental entities. It is not mandatory in order to be valid.

Registration formalities

Supply agreements do not usually need to be registered with any authority, organization or body. There are few exceptions, such as energy supply agreements entered into under the free market regulation, which must be registered at the CCEE (electrical energy commercialization chamber) and ONS (National System Operator).

In most cases, any obligation related to registration will only relate to special provisions included in the agreement, such as some types of guarantees/collateral. Retention of title clauses must be in the written form and must be registered before a Notary Public and the agreement must precisely identify the goods.

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

All points concerning legality of clauses were covered during previous questions.

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?

In long term agreements it is common to include the following clauses:

- "Take or pay" (buyer must purchase a minimum amount of goods during a certain period of time).
- Amortization of investments (minimum duration of the agreement needed to recuperate investments).
- Minimum stock guarantees (seller must ensure that it has a minimum volume of goods at any time during the agreement).

Contributor details

Erika Donin Dutra

Souto Correa Advogados
T + 55 51 3018 0500

E *erika.donin@soutocorrea.com*

Areas of practice: Corporate Law/ M&A, Restructuring and Insolvency, Contracts and Arbitration.

Luiza Coelho Guindani

Souto Correa Advogados
T +55 11 35308400

E *luiza.guindani@soutocorrea.com.br*

Areas of practice: Corporate Law/ M&A, Contracts, Startup Hub and Data Protection.

Matheus José Silva Rios

Souto Correa Advogados
T +55 11 35308400

E *matheus.rios@soutocorrea.com.br*

Areas of practice: Corporate Law/ M&A, Contracts and Startup Hub.

END OF DOCUMENT