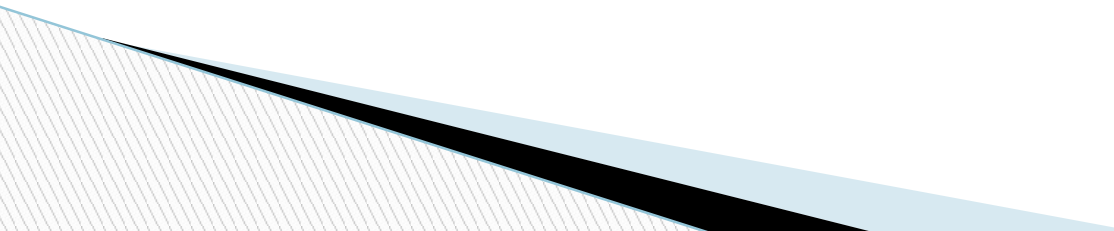


# Term 6. Lecture 5.

## Contracts



# Plan:

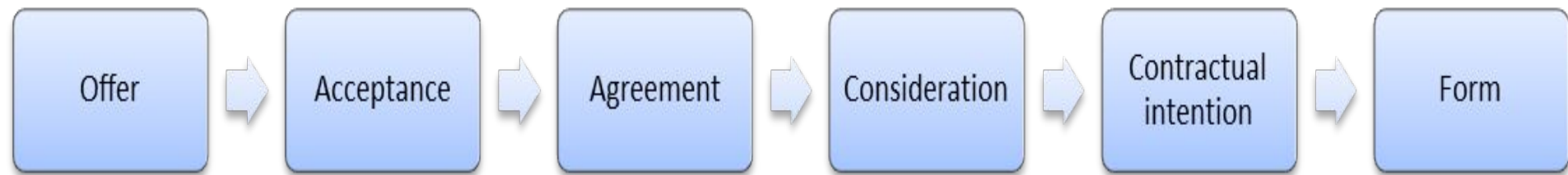
1. Definition of a contract. Process of contract making.
  2. Types of contracts.
  3. Structure of a contract.
- 

# **I. Definition of a contract.**

A contract is an agreement giving rise to obligations which are enforced or recognized by law.



# Process of contract making



# A. OFFER

An offer is an expression of willingness to contract on specified terms, made with the intention that it is to be binding once accepted by the person to whom it is addressed.

## B. ACCEPTANCE

- An acceptance is a final and unqualified expression of assent to ALL the terms of an offer.

# Features of Acceptance:



1) Acceptance has no legal effect until it is communicated to the offeror.

2) The offeree's silence does not amount to acceptance.

3) An acceptance fails where it attempts to vary the terms of an offer. In such cases it is a **counter-offer**, which the original offeror can either accept or reject.

Making a counteroffer amounts to a rejection of the original offer which cannot subsequently be restored or accepted (unless the parties agree).

4) An offer may be revoked at any time before its acceptance, however the revocation must be communicated to the offeree.

5) Once an offer is accepted, the parties have an **agreement**.

## C. CONSIDERATION

(материальное основание договора)

Consideration is promise by one party to a contract that constitutes the price for which the promise of the other party is bought.

*For example,* payment by a buyer is consideration for the seller's promise to deliver goods, and delivery of goods is consideration for the buyer's promise to pay.



## D. CONTRACTUAL INTENTION

Contractual intention means that the parties must intend their agreement to be legally binding.

# E. FORM

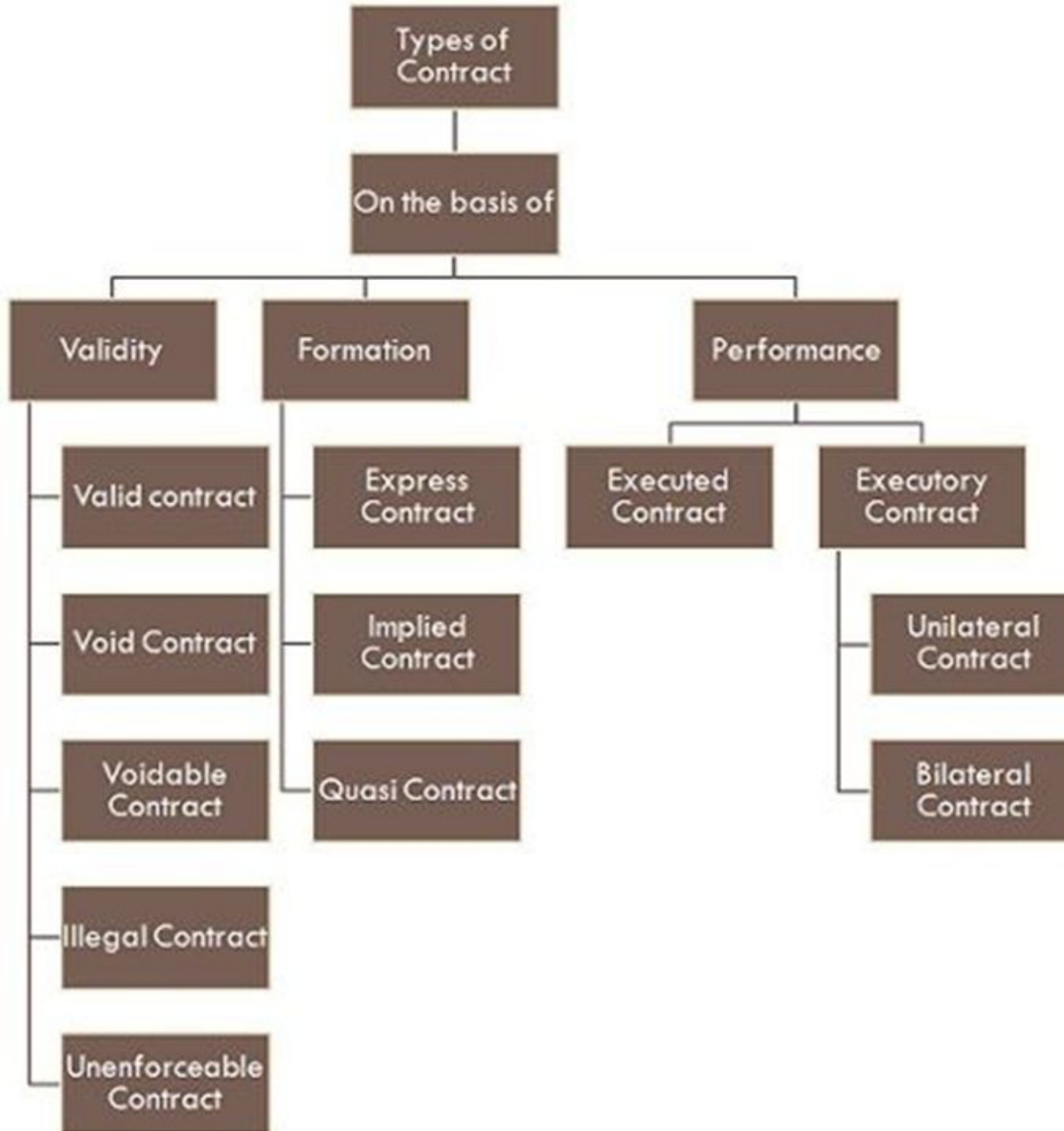
Contracts can be

- formal and informal;
- oral or in writing.

*Note:*

- There are statutory exceptions to this rule.
- *For example:* most contracts for the sale or disposition of an interest in land must be "made in writing".

# 2. Types of Contracts.



# I. On the basis of validity (юридическая сила, действие)

**Valid Contract** (действительный контракт; контракт, имеющий юридическую силу):

An agreement which is enforceable by law.

**Void Contract** (недействительный контракт; контракт, не имеющий юридическую силу):

The contract which is no longer enforceable in the court of law.

**Voidable Contract** (оспоримый договор; контракт, который может быть аннулирован любой из сторон):

A contract in which one of the parties to the contract has a choice to avoid performing his/her part.

**Illegal Contract** (незаконный контракт):

A contract which is forbidden by law.

**Unenforceable Contract** (договор, не имеющий исковой силы):

The contract due to some issues is not enforceable.

## 2. On the basis of formation

### **Express Contract** (определенно выраженный договор)

- the terms of the contract are expressed orally or in writing.

### **Implied Contract** (подразумеваемый контракт)

- is not written or spoken, but which is assumed to exist based on the words and actions of the parties involved.

### **Quasi-Contract** (квази-контракт)

- is created by the court when no such official contract exists between the parties, and there is a dispute with regard to payment for goods or services provided.

### **3. On the basis of performance (исполнение)**

**Executed Contract**  
(исполненный договор):  
When the contract is performed.

**Executory Contract**  
(договор с исполнением в будущем):  
When the obligation in a contract is to be performed in future.

## **Bilateral Contract:**

A contract involving two or more parties, which binds all parties to reciprocal obligations.

## **Unilateral contract**

A contract involving one party making a promise to another party, or to the public in general, to do or provide something.

The second party who didn't make any promise is not legally required to carry out the duty and cannot be held in breach of the agreement if they don't.

## ▣ SELF-TEST QUESTIONS

- ▣ 1. An implied contract
  - ▣ a. must be in writing
  - ▣ b. is one in which the terms are spelled out
  - ▣ c. is one inferred from the actions of the parties
  - ▣ d. is imposed by law to avoid an unjust result
  - ▣ e. may be avoided by one party
  
- ▣ 2. An unenforceable contract is
  - ▣ a. void, not a contract at all
  - ▣ b. one that a court will not enforce for either side because of a rule of law
  - ▣ c. unenforceable by one party but enforceable by the other
  - ▣ d. one that has been performed by one party but not the other
  - ▣ e. too indefinite to be valid
  
- ▣ 3. Betty Baker found a bicycle apparently abandoned near her house. She took it home and spent \$150 repairing and painting it, after which Carl appeared and proved his ownership of it. Under what theory is Betty able to get reimbursed for her expenditures?
  - ▣ a. express contract
  - ▣ b. implied contract
  - ▣ c. apparent or quasi-contract
  - ▣ d. executory contract
  - ▣ e. none: she will not get reimbursed



# 3. STRUCTURE OF A CONTRACT

1. The names and addresses of the parties
2. Recitals
3. Definitions
4. Subject of the contract
5. Price and payment procedure
6. Packing and marking
7. Delivery terms
8. Insurance of goods
9. Force majeure
10. Sanctions
11. Arbitration
12. Other conditions
13. Judicial addresses of the Sides
14. Signatures of the seller and the buyer

### 3.1. The names and addresses of the parties:

- full names and postal addresses of all the parties to the contract

- may also specify that a shortened name will be used in the remainder of the contract to denote each of the parties

*For example:* Continental Equipment Plc. (hereinafter referred to as 'the Company')

## 3.2. Recitals (Preamble)

Recitals provide the reader with a general idea about

- the purpose of the contract,
- the parties involved, and
- why they are signing it.


*Example:*

### **2. Recitals**

Continental Equipment Plc., Brighton, England, hereinafter referred to as “the Seller”, on the one part, and TST Systems, Ltd, Moscow, Russia, hereinafter referred to as “the Buyer”, on the other part, have concluded the Contract as follows:

## 3.3. Definitions

- The definitions section contains a list of terms used later in the contract.



- A definition is given for each term, which represents the way in which the drafters of the contract wish the term to be interpreted as a matter of law.



- Often the definitions section needs to be read in conjunction with another section of the agreement.



*For example, '... shall have the meaning assigned to that term in Section 4.3 of this Agreement'.*



*Example:*

### **3. Definitions**

The following words and expressions will have the meaning specified here below:

**(a) “Contract”** shall be understood to mean the present Contract including its parts.

**(b) “Equipment”** shall be understood to mean any equipment necessary for implementation the process for the production of the Product.

**(c) “Parties”** shall be understood to mean the Customer and the Contractor.

**(d) “Product”** shall be understood to mean silicon polycrystal (“SP”) having the characteristics specified in Annex No.2.

## 3.4. Subject

It names the deal the contract is to put into effect.

*Example:*

### **4. Subject of the Contract**

The Seller has sold and the Buyer has bought the machinery, equipment, materials and services (“Equipment”) as listed in Appendix 1 being as integral part of this Contract.

# 3.5. Price and Payment Procedure

## Price

```
graph TD; Price[Price] --- Firm[Firm price]; Price --- Fixed[Fixed price]; Price --- Sliding[Sliding price];
```

### **Firm price**

(твердая цена)

is not subject to change in the course of the fulfillment of the contract.

### **Fixed price**

(фиксированная цена)

governs in the market on the day of delivery or for a given period.

### **Sliding price**

(скользящая цена)

is the price set in trade transactions for products with a long production time and allows to take into account changes in production costs over the entire period.

# Kinds of Payment

## 1. Large Value Payment System:

(оптовая система платежей)

- interbank
- regulated by Central Banks
- electronic based

### **Examples:**

**Inter-Bank Cheques Clearing Systems**

**High-Value Cheques Clearing System**

**Foreign Exchange Clearing System (the Forex Clearing)**

**FIJICLEAR** (to make large value payments in Fiji)

**SWIFT** (Society for the Worldwide Interbank Financial Telecommunication)

## 2. Retail Payment System: (розничная система платежей)

- transactions low in value but very large in number
- paper based and electronic based

### (a) Cash Payment

### (b) Paper-Based Payments:

- Cheque (чек)
- Demand Draft ( переводный вексель, оплачиваемый по требованию)
- Payment Order (платёжное поручение об оплате)

### (c) Card Based Payments:

- Credit Card
- Debit Card

### (d) Electronic Payments:

- electronic funds transfers,
- internet banking,
- e-commerce payment systems.



# Example:

## 5. ЦЕНА И ПОРЯДОК РАСЧЕТОВ

5.1. Цены на поставляемый по настоящему Контракту Товар, а также условия поставки указываются в соответствующей спецификации.

5.2. Валюта Контракта – доллар США, все расчеты по настоящему Контракту осуществляются в валюте – доллар США.

5.3. Оплата поставок по Контракту осуществляется в течение всего действия Контракта банковским переводом.

5.4. Поставки осуществляются на условиях 100% предоплаты.

## 5. PRICE AND PAYMENT PROCEDURE

5.1. Prices for the Goods supplied under this contract, as well as the terms of delivery are set forth in the relevant Specification.

5.2. Currency of the Contract: US dollar, all payments under this Contract are made in foreign currency (US dollars).

5.3. Payment for deliveries is made throughout the period of validity of the Contract by bank transfer.

5.4. Deliveries are made on the basis of a 100% advance payment.

# 3.6. Packing and Marking

## **Packing**

If the goods are improperly packed and marked, the carrier will refuse to accept them, or will make qualifications about the unsatisfactory condition of packing.

**Marking** should be in indelible paint with recognized kind of marks in the languages of the dealing sides.

The cases in which the equipment is packed are to be marked on three sides: on the top of the case and two non-opposite sides.

# Example:

## 6. Упаковка и маркировка

6.1. Товар должен быть упакован в соответствии с требованиями к каждому виду Товара. Внешняя и внутренняя упаковка должны обеспечивать защиту от порчи, повреждений и атмосферных воздействий. Ящики, в которые упакован

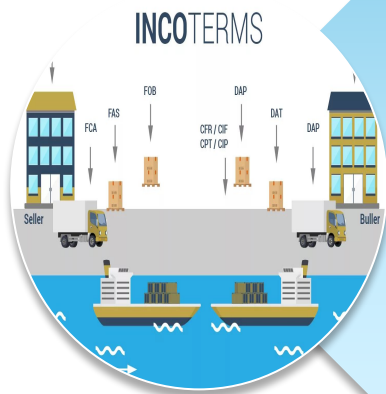
6.2. Товар, должны быть отмаркированы. Все сопроводительные документы так же, как маркировка и техническая документация, должны быть составлены на английском и/или русском языках.

## 6. Packing and Marking

6.1. The Goods shall be packed in line with the requirements for each type of Goods. The internal and external packaging shall ensure that the Goods are protected from being spoiled, damaged or exposed to the effects of the weather.

6.2. Boxes in which the Goods are packed shall be marked. All accompanying documents as well as marks and technical documents shall be drafted in English and/or in Russian.

# 3.7. Delivery Terms



**International commercial terms (Incoterms)** are international rules recognized by government authorities, law firms and entrepreneurs around the world as the basic terms for international trade in goods.



## **The scope of Incoterms (Incoterms):**

- the rights and obligations of the parties under the contract of sale in terms of transportation of goods from the seller to the buyer,
- liability for loss and damage to the goods, its customs clearance and insurance.

# Terms of Delivery Incoterms

2020:

- CPT - «Carriage Paid to / Перевозка оплачена до»
- CIP - «Carriage and Insurance Paid to / Перевозка и страхование оплачены до»
- DPU - «Delivered Named Place Unloaded / Поставка на место выгрузки»
- DAP - «Delivered at Place / Поставка в месте назначения»
- DDP - «Delivered Duty Paid / Поставка с оплатой пошлин»
- FAS - «Free Alongside Ship / Свободно вдоль борта судна»
- FOB (f.o.b.)- «Free on Board / Свободно на борту»
- CFR - «Cost and Freight / Стоимость и фрахт»
- CIF (c.i.f.) - «Cost Insurance and Freight / Стоимость, страхование и фрахт»

# Transport Documents

- confirm the fact of the transaction, and the fact of dispatch of the goods by the consignor in accordance with the terms of the contract are the following:

**Invoice (Счет-фактура)**

**Bill of Lading  
(B/L)  
(Коносамент )**

## **Invoice (Счет-фактура)**

compiled to notify the buyer of the shipment of goods and contains the following information:

- full name, business name, street address, city, postcode and country, phone number, e-mail;
- date of issue and number;
- quantity, description and cost;
- cost of freight and insurance;
- total amount and remittance date;
- number, type, contents and marks on packages;
- import license number;
- signature of the exporter.

# Invoice (Счет-фактура)

Приложение N 1  
к постановлению Правительства РФ от 26.12.2011 N 1137  
(в редакции постановления Правительства РФ от 02.04.2021 N 534)

СЧЕТ-ФАКТУРА N \_\_\_\_\_ 29 \_\_\_\_\_ от " 28 " \_\_\_\_\_ марта 2022 \_\_\_\_\_ (1)  
ИСПРАВЛЕНИЕ N \_\_\_\_\_ от " \_\_\_\_\_ " \_\_\_\_\_ \_\_\_\_\_ (1a)

Продавец \_\_\_\_\_ ООО «Ромашка» \_\_\_\_\_ (2)  
Адрес \_\_\_\_\_ 125008, г. Москва, ул. Михалковская, д. 20 \_\_\_\_\_ (2a)  
ИНН/КПП продавца \_\_\_\_\_ 7708123446/770801001 \_\_\_\_\_ (2б)  
Грузоотправитель и его адрес \_\_\_\_\_ он же \_\_\_\_\_ (3)  
Грузополучатель и его адрес \_\_\_\_\_ ООО «Альфа», 104055, г. Москва, ул. Лесная, д. 69 \_\_\_\_\_ (4)  
К платежно-расчетному документу N \_\_\_\_\_ от \_\_\_\_\_ \_\_\_\_\_ (5)  
Документ об отгрузке N п/п \_\_\_\_\_ 1;2 \_\_\_\_\_ N \_\_\_\_\_ 625 \_\_\_\_\_ от \_\_\_\_\_ 28.03.2022 \_\_\_\_\_ (5a)  
Покупатель \_\_\_\_\_ ООО «Альфа» \_\_\_\_\_ (6)  
Адрес \_\_\_\_\_ 104055, г. Москва, ул. Лесная, д. 69 \_\_\_\_\_ (6a)  
ИНН/КПП покупателя \_\_\_\_\_ 7708123456/770801001 \_\_\_\_\_ (6б)  
Валюта: наименование, код \_\_\_\_\_ российский рубль, 643 \_\_\_\_\_ (7)  
Идентификатор государственного контракта, договора (соглашения) (при наличии) \_\_\_\_\_ (8)

N п/п	Наименование товара (описание выполняемых работ, оказанных услуг), имущественного права	Код вида товара	Единица измерения		Количество (объем)	Цена (тариф) за единицу измерения	Стоимость товаров (работ, услуг), имущественных прав без налога - всего	В том числе сумма акциза	Налоговая ставка	Сумма налога, предъявляемая покупателю	Стоимость товаров (работ, услуг), имущественных прав с налогом - всего	Страна происхождения товара		Регистрационный номер декларации на товары или регистрационный номер партии товара, подлежащего прослеживаемости
			код	условное обозначение (национальное)								цифровой код	краткое наименование	
1	1a	1б	2	2a	3	4	5	6	7	8	9	10	10a	11
1	Негазированная вода		868	бут.	20000	30,00	600 000,00	без акциза	20,00	120 000,00	720 000,00			
2	Газированная вода		868	бут.	10000	15,00	150 000,00	без акциза	20,00	30 000,00	180 000,00			
Всего к оплате (9)							750 000,00	х		150 000,00	900 000,00			

Руководитель организации \_\_\_\_\_ А.В. Львов \_\_\_\_\_ Главный бухгалтер \_\_\_\_\_ А.С. Глебова \_\_\_\_\_  
или иное уполномоченное лицо \_\_\_\_\_ (подпись) \_\_\_\_\_ (ф.и.о.) \_\_\_\_\_ или иное уполномоченное лицо \_\_\_\_\_ (подпись) \_\_\_\_\_ (ф.и.о.) \_\_\_\_\_

Индивидуальный предприниматель \_\_\_\_\_ \_\_\_\_\_ (реквизиты свидетельства о государственной регистрации индивидуального предпринимателя)  
или иное уполномоченное лицо \_\_\_\_\_ (подпись) \_\_\_\_\_ (ф.и.о.) \_\_\_\_\_



## **Bill of Lading (B/L) (Контракт )**

- is used for cargo in maritime transport;
- confirms the fact that the goods have been sent by the shipper (consignor) to the consignee;
- performs the function of a receipt from the captain of the vessel on the acceptance of goods for transportation at the port of loading (shipping) of the goods (port of loading, port of shipment).

For rail, road and air transportation, the role of a bill of lading is performed by **rail, road, or air waybill.**

# Bill of Lading (B/L) (КОНОСАМЕНТ)

<b>Shipper</b> JIANGSU LUCKY BABY SAFETY SYSTEM MFG.CO.,LTD. HONGQIAO INDUSTRY PARK,QIWEI TOWN,TALIXING CITY,JIANGSU PROVINCE,225453 CHINA		<b>Hecny Shipping Limited</b> 14F Tongsheng Mansion No.458,FuShan Road,Pudong New Area, Shanghai,China Tel:86-21-58209998 Fax:86-21-50816230	
		<b>Bill of Lading</b>	
<b>Consignee</b> [REDACTED] RUSSIA,142712, MOSCOW REGION, LENIN AREA,GORKI,		MBL#:142201036233	
<b>Notify Party</b> SAME AS CONSIGNEE		<b>Delivery Agent</b> HS ARE LOUNATKORKIA, 3RD FLOOR, 48310 KOTKA, FINLAND TEL:358 20 FAX:358 20	
Place of receipt / Pre-carriage by	Combined transport - Pre carriage from *	Place of issue	B/L No.
SHANGHAI		SHANGHAI	
Vessel	Voy.No.	Part of loading	Date of issue
TIANJIN 0050-013W		SHANGHAI	10/01/2012
Port of discharge	Final destination (for merchant's ref. only)	Place of delivery	
KOTKA	KOTKA	KOTKA	NSHA12100007
Marks and numbers	Number and kind of packages / Description of goods		Gross weight kos   Measurement
N/M	CONTAINER # /SEAL # CTNS MAGU5146878 /EMCAGV2092/40H 280 CY-CY 4820.00 70.000 SHIPPER'S LOAD & COUNT & SEALED STC: 1 X 40H TOTAL : 280 CARTONS ONLY BABY CAR SEAT FREIGHT COLLECT		
Above particulars as declared by shipper			
OCEANFREIGHT AND CHARGES Rates, Weight and / or Measurement subject to correction AS ARRANGED	Prepaid	Collect	Received for shipment in apparent good order and condition. Terms of this Bill of Lading can be found on the reverse side of the Negotiable Copy. IN WITNESS WHEREOF, the carrier by its agents has signed three (3) original Bill of Lading all of this tenor and date, one of which being accomplished the others to stand void. Place and date of issue as indicated above.
			Hecny Shipping Limited On Board Date

# Example:

## 7. УСЛОВИЯ ПОСТАВКИ

## 7. TERMS OF DELIVERY

7.1. Если иное не предусмотрено соответствующей спецификацией, поставка Товара по настоящему Контракту осуществляется на условиях FOB – free on board/Свободно на борту - Инкотермс 2020, при этом Стороны настоящего Контракта договорились, что правила толкования терминов «Международные торговые термины» имеют общеобязательный характер для Сторон в рамках Контракта.

7.2. Покупатель самостоятельно заключает договор перевозки Товара (транспортно – экспедиционного обслуживания) с компанией-перевозчиком.

7.1. Unless otherwise provided in the Specification under this Contract the Goods are supplied under FOB ("free on board") terms, Incoterms 2020, and the Parties to this Contract have agreed that the Rules for interpretation of terms "International Trade Terms" will be binding on the Parties under the Contract.

7.2. The Buyer shall conclude a contract of carriage for the Goods (a freight forwarding agreement) with a freight company individually. The Goods shall be transported by sea.

## 3.8. Insurance of Goods

**The idea of insurance** is to obtain indemnity in case of damage or loss. Insurance is against risk.

### **While goods are**

- in a warehouse, the insurance covers the risk of fire, burglary, etc.
- in transit they are insured against pilferage, damage by water, breakage or leakage.

### **Goods may be insured against**

- all risks;
- particular loss or damage.

# Example:

## 8. СТРАХОВАНИЕ

8.1. Ни в коей мере не ограничивая ответственность или обязательства Исполнителя по Договору, Исполнитель исключительно за свой счет осуществляет все страхование, требуемое в соответствии с применимым к Договору правом.

## 8. INSURANCE

8.1 Without limiting in any way Contractor's liability or obligations under Agreement, Contractor shall, solely for its own account, obtain and maintain insurance coverage required by applicable law hereunder.

## 3.9. Force Majeure

Force majeure

- is a force against which you cannot act or fight.

It may include:

- natural disasters such as an earthquake, flood, fire, etc.;
- such contingencies as war, embargo, sanctions;
- some other circumstances beyond the Sellers' control.

In case of a contingency the Seller must

- notify the Buyers of a force majeure right away. (If it is done in due time the Buyer may take immediate action to protect his/her interest.)
- submit to the Buyer a written confirmation (A force majeure must be a proven fact.)

# Example:

## 9. Форс-мажор

9.1. Стороны освобождаются от ответственности за полное или частичное неисполнение обязательств по договору, если такое неисполнение явилось следствием обстоятельств непреодолимой силы (форсмажор).

9.2. Под обстоятельствами непреодолимой силы подразумеваются внешние и чрезвычайные события, которые не существовали во время подписания договора, возникшие помимо воли сторон.

Обстоятельствами непреодолимой силы признаются следующие события (включая, но не ограничиваясь): война и военные действия, действия стихийных сил, международное эмбарго, а также иные события, препятствующие исполнению договора

## 9. Force majeure

9.1. The parties are released from the liability for partial or full non-performance hereunder in the event of acts of god (force majeure).

9.2. Force majeure shall mean extraordinary events beyond the affected party's control that did not exist at the date of signing of the present agreement and which the affected party could not reasonably prevent through the measures and means that could be reasonably demanded and expected from the party affected by acts of god.

Acts of god shall include (without limitation) war and military action, natural calamities, international embargo and other events that impede performance hereunder and meet criteria of force majeure set forth in this clause.

## 3.10. Sanctions

Sanctions are commercial and financial penalties.

*Example:*

In the event of delay in delivery of the equipment the Seller is to pay the Buyer a penalty at the rate of 1.0% of the total contract value for every week of delay. However, the total amount of penalty for delay in delivery is not to exceed 10% of the total contract value.



# 3.11. Arbitration

Arbitration is the hearing and settling of a dispute by a third party agreed to by them.



# Example:

## 11. Арбитраж

11.1. Все споры и разногласия, которые могут возникнуть из Договора будут по возможности разрешаться путём переговоров между Сторонами. Стороны устанавливают срок рассмотрения претензий и предложений по Договору равный 10 дням.

11.2. Если переговоры не дадут положительных результатов, то любой спор, разногласие или требование, возникающее в связи с Договором, его толкованием, исполнением, прекращением или недействительностью, подлежат разрешению в Международном коммерческом арбитражном суде при Торгово-промышленной палате Российской Федерации в соответствии с его Регламентом.

## 11. Arbitration

11.1. Any disputes or disagreements which may arise out of the Contract shall be, where possible, resolved through negotiations between the Parties. The Parties shall fix a maximum time frame, which shall be 10 days, for claims and proposals under the Contract to be considered.

11.2. If negotiations do not have a favourable outcome, any dispute, controversy or claim arising out of the Contract, its interpretation, performance, termination or invalidity shall be settled in the International Court of Commercial Arbitration at the Russian Chamber of Commerce and Industry of the Federation according to its Rules.

# 12. Other conditions

# 13. Judicial addresses of the Sides

# 14. Signatures of the seller and the buyer.

## The Customer:

**Chongqing DAQO New Energy Co., LTD**

Address: Wanzhou Industrial Park,  
Chongqing, P.R. China

Post Code: 404000

Telephone: +86 23-64866666

Fax: +86 23-64866688

Authorized Signature: /s/ Zhu Jian

Mr. Zhu Jian

Signing Date:

## The Contractor:

**Poly Engineering S.r.l**

Address: Via Galileo Ferraris 13 Monza /  
Milano Italy

Post Code:

Telephone: +39 0473 244242

Fax:

Authorized Signature: /s/ Mario

Ragaini  
Mario Ragaini

Signing Date:

**THANKS!**

