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FACULTY OF ECINOMICS AND MANAGEMENT

DEPARTMENT OF LAW



BACHELOR THESIS

**DIFFERENCES BETWEEN COMMON LAW AND
CONTINENTAL LAW AND THEIR PRACTICAL
CONSEQUENCES**

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The principal aim of this work is provide a concise introduction to the common law and continental law and to analyze key differences in these law families with practical consequences.

Methodology

The first part contains the literature definition of law and mainly is about common and continental laws, the importance of them. The second part of the work is analysis of these two systems, statistics of the contries that live under each.

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Declaration

I declare that I have worked on this bachelor thesis titled “DIFFERENCES BETWEEN COMMON LAW AND CONTENENTAL LAW AND THEIR PRACTICAL CONSEQUANCES” on my own with the use of only those literature resources which are listed at the end of this work.

In Prague on..... signature

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**Differences between Common law and Continental law
and their practical consequences**

**Rozdíly mezi common law a kontinentálním právem a
jejich praktické důsledky**

Summary

This bachelor thesis is about two major legal systems followed by a large number of developed countries and thus governing a significant part of business contracts entered in the entire global society at the begin of the 21st century: Anglo-Saxon (Common law) legal system and Romano-Germanic (Continental law) legal system.

Each and every business contract reflects the arrangements and preferences of parties as well as the pertinent culture and social setting and is established within a legal framework. Naturally, national laws sharing the continental tradition shapes business contracts differently than national laws sharing the common law tradition. Since businesses nowadays operate often at a global stage and a majority of national laws allows the choice of law by parties in a relationship with a foreign instrument, a set of important questions emerges.

Are national laws sharing the continental tradition truly differnt from national laws sharing common law? Which one of them suit more business conduct in our post-modern era? Does it really matter whether we have a continental or common law business contract? What are they features and what about their enforcement.

In order to conceptually understand and approach this materia, it is necessary to present, assess, evaluate, contrast and compare tese both legal system, with a particular focus on practical implications and current trends.

The principal aim of this work is to provide a concise introduction to the common law and continental law and to analyze key differences in these law families with practical consequences chiefly for business conduct.

The development as well as the key particularities are compared, explained and evaluated. Each system has advantages and disadvantages and for business conduct in the 21st century global society it is critical to enhance awareness in this respect. There are special cases of business relationships between countries with different law systems. Knowledge of laws, rules and the ability to manage them can help and predict from unwanted consequences and situations such as sham business contract and deceived entrepreneurs.

The historical and theoretical conclusions are re-examined based on a selection of study cases (examples of contracts), i.e. real businesses contracts are analyzed based on the information presented in the first general part and their provisions are reviewed and commented, the advantages and disadvantages of them with respect to business conduct are underlined. Partial conclusions are presented throughout the entire work.

Key words

Law, law family, legal system, common law, continental law, business contracts

Souhrn

Tato bakalářská práce pojednává o dvou hlavních právních systémech sdílených většinou rozvinutých zemí a regulujících podstatnou část obchodních smluv ve zcela globální společnosti na počátku 21. století: Anglo-Saské (Common law) právní řády and Římsko-germánské (kontinentální) právní řády.

Každá obchodní smlouva odráží ujednání a preference svých stran stejně jako příslušné kulturní a sociální prostředí a nastavený právní rámec. Přirozeně, vnitrostátní práva sdílející jednu právní tradici formující obchodní smlouvy jinak než vnitrostátní práva sdílející jinou právní tradici, o čemž je zásadní mít povědomí v globální prostředí. Konkrétně je třeba si uvědomovat rozdíly v přístupu, konceptům, pravidlům, interpretaci i vymáhání obchodních smluv v rámci common law právních řádů a kontinentálních právních řádů.

Hlavním cílem této práce je identifikovat základní rozdíly a jejich pozadí a objasnit dopad na režim obchodních smluv a předložit příslušné závěry a doporučení. Předpokladem pro takovouto řádnou teoretickou analýzu a její praktickou transpozici je správně historicky a kontextově uchopit tematiku a provést příslušnou rešerši, kriticky ji vyhodnocovat a překládat již v průběhu práce dílčí závěry s přímým dopadem pro obchodní smlouvy. Celá práce je tak prostoupena posouzením dvou zásadních hypotéz o (ne)rozdílnosti obou tradic a o tom, která z nich je způsobilější pro obchodně smluvní úpravu, a to zejména s přihlédnutím na relativně širokou možnost stran si zvolit právo, kterým se jejich obchodní smlouva bude řídit.

Klíčová slova

Právo, právní rodiny, právní řád, common law, kontinentální právo, obchodní smlouvy.

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Introduction

In today's society, we have many rules for the different aspects of our life, rules which all people have to follow if they want to live peacefully. If people don't follow the rules, they might be punished by society, such as becoming subject to public censure, confinement, or they might be expelled from a group.

Law is obligatory rules, which all people should follow. We need law for the maintenance of order in the society, in the state and federal governments. People who break laws face the potential of punishment by law authorities by paying various fines and/or paying compensation, perhaps arrest and imprisonment.

Legal system is a set of written and unwritten rules applicable to a country, and the delineation of how they might be used.

Currently in the world there are about a dozen legal systems: Romano-Germanic legal family (Continental law), Anglo-Saxon legal family (Common law), Islamic law, Chinese law, African law, and before the start of the 1990s, Socialist law. Each of them is characterized by a special look at the problem of property rights and the procedure for their establishment.

From the point of view of studying the impact of legal institutions on the economic development particular interest have two legal traditions - Anglo-Saxon law (Common law) and Romano-Germanic law (Continental law). It is these legal traditions underlay the formation of a market economy in the countries of European civilization: the common law - in Britain and its colonies (including the U.S.), Romano-Germanic law - in continental Europe.

Therefore, a literature and other written sources research and study represent a logical theoretical part and provide a solid foundation to proceed to the practical part directly focusing on business contracts and allowing to address suggested hypothesis. Naturally, the entire work culminate in conclusions accompanied by practical enclosure demonstrating various aspects of this extremely important issues related directly to the business conduct in the 21st century.

Hypothesis

There is a true difference between Romano-Germanic (Continental) law and Anglo-Saxon (Common) law in the interpretation of business contracts.

Contract according to the continental law is more suitable for business conduct in the 21st century global society, because it is competently compiled, contract language is accurate and clear, the likelihood of fraud and risk for the parties is low.

Methodology

For the creation of this work and understanding of the problem were used lots of methodological tools. First of all, literature search of the literature on this subject, the method of observation of each legal system and their detailed analysis.

The first part contains the literature definition of law and mainly is about history and development of Anglo-Saxon legal family and Romano-Germanic legal family, about the importance of them nowadays.

The second part of this work is about identification of the countries that live under each legal system.

The third part contains the analysis of these two systems, analysis of sources of law. The scientific procedures will entail the identification and description of pertinent facts and issues based on the available literature and other sources, including study cases. The analysis will be narrative and function-systematic with the employment of induction, analogy, and comparatistic processes and manners.

In the practical part will be analysis two legal systems, analysis of contracts, and Strength-Weakness-Opportunity-Threat (SWOT) analysis of contracts.

The research will be predominantly exogen and qualitative. The conclusions will be reached in a self-reflective, critical, and practical manner and will be oriented towards innovative observations and suggestions.

Literature Review

1. History of two legal systems of law

1.1. The History and Development of Anglo-Saxon law (Common law)

The history of English law is divided into four main periods:¹

The first period preceded the Norman Conquest in 1066.

The second period, from 1066 until the establishment of the Tudor dynasty (1485) - during the formation of the Common law when it was argued against the resistance of the local customs. Conditions of this period had influenced on the legal system perceived even now.

The third period, from 1485 to 1832 - blossoming the Common law, but it was forced to compromise with the additional legal system, which was reflected in the "Rights of justice."

The fourth period - from 1832 to the present day - when the common law has met with unprecedented development of the legislation and had to adapt to a society where the value is constantly increasing public administration.

1.1.1. Anglo-Saxon period

The common law system has a long and interesting history, a history that began nearly one thousand years ago in England. Prior to the battle of Hastings, in the year 1066, England was unified and ruled by Anglo-Saxon kings for several centuries. This period is called the Anglo-Saxon period (up to 1066r.). During this period in England there was no centralized legal system. The Law of this period consisted only of the local customs which were

¹ DAVID R. JOFFRE-SPINOSI K. The main legal systems of the present - Les grands systemes de droit contemporains/Translated from Fr. V.A .Tumanov. - Moscow: International Relations, 1996. - 400. - ISBN 5-7133-0892-8

significantly varied among the different parts of the country Local courts in their decisions were based only on the norms of the local customs and traditions.²

1.1.2. The formation of Common law (1066 - 1485 years)

Norman Conquest (1066)

The Common law system really started with the defeat of the last of the Anglo-Saxon Kings, St. Edward the Confessor by William the Conqueror, the leader of the Norman invasion, in 1066. William the Conqueror was the first king who started to create a new, unified system of laws in England and Wales. He created the kings court - the Curia Regis. This Royal court traveled with King around the country, the local people brought in all their disputes there for the judgement of the King and his advisors. William also decided to create a book which would contain information about all the current and potential taxpayers, a book in which would be recorded all the amount of land and resources that was owned, and by whom, in England, and the extent of the taxes he could raise. This famous book is named the Domesday book (pronounce as "Doomsday"). It has been said that 'Domesday' was actually the name of the first tax lawyer, but this is merely an English joke.

Henry II (1156)

In 1156, Henry II became the king of England. Henry II issued the Assize of Clarendon in 1166. He decided to send out judges from Westminster to solve law disputes around the country. The advantage of this idea was in the impartiality of the court decision, there was to be no local influence and no corruption in rendering judgement. The judges' decisions were written down, recorded and published. The law system of that period was illustrated by five main characteristics: it was royal (created with the assistance of the king), legal (established jurisprudence), common (it is the same for the whole country), procedural

² DAVID R. JOFFRE-SPINOSI K. The main legal systems of the present - Les grands systemes de droit contemporains/Translated from Fr. V.A .Tumanov. - Moscow: International Relations, 1996. - 400. - ISBN 5-7133-0892-8

(priority is given not to the material and procedural law) and public (the focus of while providing public law and almost completely ignored by private law). This system was called riding the circuit, and is still done, to a certain extent, today.

Feudalism in England

Norman lords that followed William to England, found themselves in a conquered country, which they did not know, the manners and people who they despise. They felt the need to regroup around their lord, to protect their gains and their property. Conqueror managed to avoid the danger posed to him too powerful vassals: during the allocation of land, which he gave to his friends, he did not create any major feud, and therefore none of "baron" could not compete with him.³

Determination of Common law

In 1066, the term «Common Law» did not exist. Free group of people, called the Court of the county, and its unit called Hundred Court, carried out justice on the basis of local customs in terms of strict formalism and using methods of evidence that can hardly be described as rational. After the conquest of County Courts and Hundred Courts were gradually replaced by feudal jurisdiction of a new type (baronial manorial courts), which are judged on the basis of customary law purely local character. In the scope of church jurisdiction, created after the conquest, was applied canon law common to the whole of Christianity. Common law - the British law and common for the whole of England - was created exclusively by royal courts, usually called Westminster - at the place where they sat since the XIII century.

The disappearance of private law

Courts, for which there was only one interest - the interest of the kingdom and the Crown - had in England the most complete jurisdiction. Courts dealing disputes of private law, disappeared, and with them disappeared in England and the concept of private law. All

³ DAVID R. JOFFRE-SPINOSI K. The main legal systems of the present - Les grands systemes de droit contemporains/Translated from Fr. V.A .Tumanov. - Moscow: International Relations, 1996. - 400. - ISBN 5-7133-0892-8

litigations, jurisdictions of the Royal Justice, considered in the country as a kind of public disputes of a legal nature. English trial - public law rather than private. Under the English law - case turned on the one who got this act and want to implement it, by bringing claims.

1.1.3. Rivalry to the « Right of Justice» (1485 – 1832)

In the XIV - XV centuries, due to the great social changes in society, there is a need to go beyond the strict limits of the existing system of precedents. Emerging market relations were not reflected in the old legal forms and gradually began to develop a special procedure for appeal to the monarch, request to consider the case "fairness" rather than according to the precedent. This appeal is usually carried out through the royal chancellor, who solved the issue of transfer of complaints to the king. Procedure of proceedings goes to the Lord Chancellor, and he becomes an independent judge. Thus, the Common law was formed with «Equity Law». Equity law as Common law had precedents, but the precedents established by other means, and cover other relations than the Common law. In England, there were two separate court systems: Common law and Equity. After 1875, both these systems were merged into one, and the right to justice has become part of the English common law.

Desire to systematize the legislative and regulatory framework

For several decades, were published legislative acts consolidating the rule of law on the most important institutions of civil and criminal law. These acts have absorbed in an orderly manner, the rules of previously published legal acts, as well as some of the provisions formulated in case-law. Thus, over time, have been consolidated a large number of acts, such as laws of family relations (1875), of partnership (1890), of sale of goods (1893) and others.

1.1.4. The modern period

Reform of the XIX century

In 1832, 1833 and 1852 there have been radical reform and modernization of the law. Until that time, English law has developed in the procedural framework represents various forms of lawsuits. Freed from the shackles of these procedural, English lawyers, like their counterparts on the continent, could not pay much more attention to the substantive law, on the basis of which they became systematized Common law decisions.

In 1873 - 1875 years organization of courts has also been greatly modified. All the English courts had the opportunity to apply the Common law and the rules of equity, in contrast to previously existing situation, in which it was necessary to apply to a common court to get a decision on the Common law, and to apply to chancery court to get a decision on the basis of the law of justice.

The main sources of English law became (in regard to the jurisprudence and legislation) a new series of Law Reports (established in 1865), and in the systematization of English law - Law of England, published by Lord Halsbury edited.

1.2. History and Development of Romano-Germanic legal family (Continental law)

Romano-Germanic legal family - the term of comparative law designating a set of legal systems, originally created on the basis of the reception of Roman law and the combined community of its structure, sources of law and the similarity of concepts and legal apparatus.

It unites all the legal systems of continental Europe and opposed to the Anglo-Saxon law. The main source is law (normative legal act). They bring a clear sectoral division of the law. In turn, almost all branches of law are divided into two subsystems: private law and public law, although the assignment of some branches of the right to a single subsystem is debatable and often depends on the legal regulation of the relevant industry in a particular state (for example, labor law).

Public law includes administrative, criminal, constitutional and public international law. The private law includes civil, family, labor and private international law. In the system of state bodies, a clear separation of legislative and enforcement authorities. Legislation and

law as a function exclusively owned by the legislature. For most countries, this family is characterized by a written constitution.

1.2.1. Early era (Ancient Greece and Rome)

The initial step for the Romano-Germanic legal family can be considered from the IX century BC to around the year 529 AD (before compilation of Justinian). During this period begins to form the right of ancient Greece, a few basic principles which later were taken over by the right of ancient Rome (the Commission's work on drafting a law decemvir Twelve Tables). In this period the emergence of the right at the Greek poleis, mixed with ancient oriental law, and later, thanks to a highly developed Roman civilization, Roman law. Until the adoption of the compilation of Justinian, Roman law had a thousand year history of its development, expressed in the various schools, law enforcement and legislative activities of kings and emperors of the Senate, as well as the presence of numerous legal practices. During this period was originated the legal foundation for the future of the Romano-Germanic legal family.

1.2.2. Period after codification Justiniana

The next step for the development of European law and Romano-Germanic law family is the period from the year 529 AD, from the compilation of Justinian to the beginning of the XIII century, when appeared the first universities in Europe. This era is characterized by a unique renaissance of Roman law in Constantinople under Justinian the Great in 529 BC and then its subsequent spread to the western part of the former Western Roman Empire (had already collapsed) by issuing the so-called Pragmatic Sanction of 554 in the year, contain a provision that the right of Justinian applies to Italy (then conquered Byzantium). This period in the history of the Romano-Germanic legal family is the key because the material from which emerged the actual Romano-Germanic law, has not been established yet, but only began to take shape in the form in which it is known now. Unified European law was not existed, universally existed customary law.

Legal custom (customary law) – historically is a source of law and rule of conduct. Later, often sanctioned by the state and entered into its system of legal norms.

In European countries were applied a variety of customs, local Germanic, Slavic, Nordic laws and laws of other tribes. The justice system did not exist.

At that time there was no attempt to systematize force of law. In trials dominated appeal to the supernatural using inquisitorial system of evidence. During this period, the law existed only formally, its real action did not take place. Jurisprudence and the teaching of law in the universities did not exist, besides there were not the universities themselves. The exceptions were the only monastic schools, working primarily for the needs of the church.

Disputes between individuals and social groups were resolved, according to Rene David, according to the law or at the discretion of a strong leader. The Christian population of Europe of that era, was based on the ideas of fraternity and charity, than on the law.

1.2.3. The revival of Roman law in Europe

The next step in the development of the Romano-Germanic legal family started from the XIII century, when Europe began to emerge universities (first Bologna), in law faculties of which was studied Roman law (the so-called right of Justinian) in the form of interpretation of the texts Justinian compilation. This school went down in history as a school of Glossators (from Greek: *Glossa* - obsolete or rare word), they interpreted and studied the values of old Justinian law. Somewhat later, the school of Glossators changed on school of commentators (post glossators). From the beginning of the XVIII century in Europe started to emerge the Romano- Germanic law.

Actually continental European universities have developed a fundamental principle of a single European law, which are dominant today, namely the priority of written law - the law and other regulations before a judicial decision (precedent). Later, at the turn of the middle ages and modern time, law went out of European universities frames, and gained in importance in the social life of European states which later became national European states with their national legal systems, based on the reception of Roman law.

Finally, was recognized the need for the return of law and its regulatory functions as relationships in the church and in the social life. One of the first industries in dire need of an order of things was trade and commercial law, particularly intensified since the Crusades and the growth of European cities. Development of a new law in the area of trade, based on positive law, was the need for the merchants of that time, in this also had an interest the power, because power received more revenue from trade.

Precisely in the XIII century was a division between religion and law. In this era of law became both practical and theoretical. Law has been the object of scientific study at universities, there was a medieval corporation of legal scholars who had degrees in law and taught jurisprudence.

At the same time was the tendency of separation secular state (Roman law) from canon law, to regulate the activities of the church, which at that time played a huge role in medieval society in Europe. With further development of public relations to change the rules of law, its system, the role and functions. Gradually in European universities the priority given to Roman law began to change on the principles that would express not only academic, but also the beginning of the rationalist. Began a new era in the development of European law and the Roman-Germanic legal family - the era of natural law.

1.2.4. The Age of Enlightenment to the present day

The next period in the development of the Romano-Germanic legal family is characterized by the strong influence of natural law on the legal doctrine in Europe and, as a consequence, increased development of legislation in European countries and the codification of the whole branches of law.

This period, from the XVII-XVIII centuries, is undergoing a significant transformation in recent years. Within the development of the Romano-Germanic law turned out that the victory of the bourgeois revolution, have become completely abolish the feudal law and related legal institutions. Precisely in given period the law has become a major source of the Romano-Germanic law. Doctrine was changed in the absence of law-making functions of the sovereign. Was first admitted that the sovereign can create law and revise it as a

whole. It was believed that these powers was given to the sovereign for consolidate the principles of natural law, but sovereign could evade this purpose, and use the power to change the foundations of the state and social system, did not care about the natural rights.

Originating class bourgeoisie demanded clear rules for relations between the government and the citizen, including between citizens. This need is an important impetus to the development of positive law - law and legislation in Europe, and then systematization of regulations of the positive law in order to organize.

One of the achievements of European science at that time was the creation of complicated legal documents by systematization of rules of one industry, namely codified acts. Codification allowed streamline existing legislation to get rid of obsolete archaisms. It helped to overcome the existing phenomenon of political particularism that is getting rid of fractional rights, all possible multiplicity of customs, the gap between legal theory and practice. Since that time, has taken shape Romano-Germanic legal family. In many European countries were conducted codification of legislation, among which we should highlight two important civil codification in France in 1804 - the Code Napoleon, and in Germany in 1896 - the German Civil Code. That codification data affected the further development of European law, thus creating two different systems: institutional in the Code Napoleon and pandectists in the German Civil Code.

France and Germany are the backbone national legal systems in the Romano-Germanic legal family. Over them are divided Romano-Germanic legal family into two groups of countries: the group Roman law and the group German law. This is due to a strong legal science and practice in the countries that have had a significant influence on the development of national legal systems in other European countries.

2. Legal Families

Legal Families - one of the central concepts of comparative law; represents a more or less broad set of national legal systems that integrate community of law sources, the basic concepts of law and the structure of the historical path of its formation.

Each legal family is unique, but comparative law allows finding out their similarities and differences, to produce a typology of legal systems. Thus formed types of legal systems, called legal families.

The criteria are:

- Value and use of sources of law.
- The court's role in establishing precedents.
- Origin and development of the legal system.

Classification of legal systems allows focusing in specific legal phenomena, it is reasonable to use foreign experience, to capture and understand the general trends of the legal development of mankind, to enrich their legal and political culture.

The most famous is the classification of the French scientist Rene David, according to which stand out:

- Roman-Germanic legal family.
- Anglo-Saxon legal family.
- Religious Family Law (Muslim, Jewish, etc.).
- Socialist legal family.
- Traditional Family Law.
- some other legal families.

2.1.National legal systems, included in the Anglo-Saxon legal family

The geographical structure of the Anglo-Saxon legal family distinguishes two groups: English (UK and Commonwealth countries) and the U.S. (U.S. - federal legal system and the legal systems of the states). Each of them has the specific difference.

Legal systems of the North American colonies of Britain after independence began to develop in a different way from the development of the legal system of the United Kingdom and its other colonies; legal community persists after their independence.

Some legal systems belonging to the Anglo-Saxon legal family are mixed. These include the following legal systems: Scotland, the Canadian province of Quebec, Louisiana (all three - predominantly Roman-Germanic character) , India and its states (where there are remnants of the influence of the traditional Hindu law, with the dominance of Anglo-Saxon legal system) , Pakistan (the legal system , mixed with Islamic law), Israel (the legal system which combines all three major legal families of modernity, while maintaining influence of traditional Jewish law), South Africa (combines features of the Anglo-Saxon legal system and archaic civil law), etc.

2.2.National legal systems, included in Romano-Germanic legal family

Romano-German (Continental) legal family includes national legal systems of continental Europe - France, Germany, Italy, Spain, the Scandinavian countries, as well as several Non-European countries, formed in line with the basic ideas and structures of Romano-Germanic legal system.

As part of the Romano-Germanic legal system are the following groups:

- Group of Roman (legal systems of France, Italy, Belgium, Spain, Romania, the right of Latin American countries);
- Group of German law (legal system of Germany, Austria, Hungary, Switzerland, Greece, Portugal, Turkey, Japan);
- Scandinavian group of law (legal system in Denmark, Norway, Sweden).

Forms of national law within the Romano-Germanic legal family, characterized by common historical roots and fundamental common law principles, which explains a number of other important aspects of their similarities and community, belonging to this legal family systems of national law have an identical structure.

The law is divided into private and public.

Feature of the Romano-Germanic legal family is the same understanding of the nature, meaning and significance of the rule of law as the abstract and general rules of conduct governing uniform set of social relations.

Such an understanding of the nature and character of the rule of law underlies the concept of the Romano-Germanic legal act, the regulatory activities of the state and the corresponding codification of existing law.

3. Differences and Similarities of two legal systems of law

Anglo-Saxon legal system (Common law) and Romano-Germanic legal system (Continental law) are two main systems in the world. States use the law as a means of regulating social life in the state. This chapter shows main differences and similarities of two legal systems.

3.1.Sources of law

Several factors of law have contributed to the development of law. These factors are regarded sources of law: Custom, Constitution, Legislature, Judiciary, Executive, Administrative Agencies.⁴

Custom

Customs - is an unwritten rule of conduct was the result of its actual and repeated use for a long time and recognized by the state as a compulsory rule.

Custom develops slowly over time. It needs time for becoming strength and powerful. Legal custom fixes, contains what is evolved as a result of long practice in the community, it may reflect the overall positive moral and spiritual values of the nation, prejudices.

⁴ HENRY N. Butler. Legal environment of business. Dallas, 1987. ISBN 0-538-12401-6

Its feature that distinguishes it from other sources of law, is that it is preserved in the consciousness of the people, passed down from generation to generation orally.

Typically, custom acting in a particular area within a relatively small group of people or a relatively small area, is a unique tradition of the area.

In Romano-Germanic system, legal custom can act not only *secundum lege* (in addition to the law), but also *praetor lege* (except law). There may be situations when legal custom takes a position *contra lege* (against the law) (for example, in Italy in the navigation law, where the sea custom prevails over the norm of the Civil Code). In general, legal custom lost the character of an independent source of law.

The role of custom in Anglo-Saxon law is continuously decreasing. However, for the formation and development of Common law tradition it was very important. Custom fills a niche in the law, which is formed due to lack wrote the constitution and other constitutional acts.

Constitution

Constitution – defines the relationship between the citizens of the State and government, separates governing power among the various branches of the federal government and the state, and further limits the governing power by ensuring certain rights to individuals that are protected from infringement by those with governing power.

Classification of the Constitution:

Written constitution (the constitution in a formal sense - Codification) represents either a single normative act (exist in most countries with Romano-Germanic system), or a combination of several constitutional or organic laws (for example, the constitution of Swede, the Spanish Constitution).

Codification - the process of collecting and arranging the laws of a country or state into a code, t. e., into a complete system of positive law, scientifically ordered, and promulgated by legislative authority.

Unwritten constitution consists of constitutional norms, "scattered" by a large number of acts, as well as contained in the constitutional convention (relate to the Anglo-Saxon legal family (except the U.S.), the constitution of Great Britain).

Principle of the Constitution:

Irrespective of the legal system of state, each constitution has some features.

Main principle of the Constitution is the separation of powers into three branches of power- the legislature, the executive and the judiciary. The role of the legislature is to make laws, the role of the executive is to enforce the laws, the role of the judiciary is to interpret the laws.

Legislature (Statute)⁵

Statutes - an enactment made by a legislature and expressed in a formal document; the document in which such an enactment is expressed.

All countries of the Romano-Germanic legal family have a written constitution for the norms, which recognize the highest legal authority. This authority is also manifested in the establishment of the majority of judicial control over the constitutionality of the law.

Constitution differentiates lawmaking competence of various government agencies. European legal doctrine and legislative practice distinguish three varieties of ordinary law: codes, special laws (current legislation) and the consolidated texts of regulations.

One of the features of the concept of statute in the Continental law is that the law is put at the forefront in the formation and development of the legal family and its component national legal systems, as well as in the creation and strengthening of Law Enforcement.

Statute in the Romano-Germanic system is regarded as an act emanating from the supreme legislative body of the country and has the highest legal force, and as a collective term and the concept which means all acts emanating from authorized on their publication of central and local, legislative, executive and administrative public bodies.

⁵ HENRY N. Butler. Legal environment of business. Dallas, 1987. ISBN 0-538-12401-6

Judiciary⁶

Judicial authorities (Judges and Supreme Court justices) implemented criminal enforcement apply actions to persons convicted of offenses, settle legal disputes between specific individuals, also consider cases contesting the legal regulations for compliance with higher power (laws - the Constitution).

In Anglo-Saxon system (Common law) judges have the authority and responsibility to create law by creating a precedent.

Precedent - An adjudged case or decision of a court of justice, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law. A draught of a conveyance, settlement, will, pleading, bill, or other legal instrument, which is considered worthy to serve as a pattern for future instruments of the same nature.⁷

Precedents are the very foundation stone for Anglo-Saxon legal system. The use of precedents is based on the principle that cases that are similar to cases that have been decided before should be resolved in accordance with those previous decisions (the doctrine of stare decisis). However if the court finds that the essence of a case is quite different from all previous cases, it will decide that new case as for the first time, as something new and original. After that, a new decision will set a precedent, and it will bind future cases in accordance with the binding force of precedents. In the absence of clear definitions of the law, judges have the authority and responsibility to create law by creating a precedent. All judicial decisions that have already been rendered in the past are collected in yearbooks and law reports.

The role of judicial practice in the Romano-Germanic legal family can be verified only in connection with the role of the statutes. Considering the desire of lawyers to rely on the law, creative role of the jurisprudence always or almost always hidden behind the visibility of interpretation of the law. Mention of the relationship between statutes and precedent, it

⁶ HENRY N. Butler. Legal environment of business. Dallas, 1987. ISBN 0-538-12401-6

⁷ Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. Online: <
<http://thelawdictionary.org/precedent/>>

must be emphasized that as a general rule a precedent under the continental law arises in accordance with the law, exists in line with it and act in accordance with the law.

Executive⁸

As distinguished from the legislative and judicial departments of government, the executive department is that which is charged with the detail of carrying the laws into effect and securing their due observance.

The president or prime minister can create law by issuing executive orders and controlling the policies of the executive branch.

Administrative Agencies⁹

Administrative Agencies- a governmental regulatory body that controls and supervises a particular activity or area of public interest and administers and enforces a particular body of law related to that activity or interest.

Administrative agencies influence on the shape of the conditions of business conduct in the both legal systems by implementation and enforcement of special regulations in the particular area.

3.2.Differences of interpretation and application of law in the Common law and Continental law families

Law has priority over precedent in the sense that it can cancel it. However, this does not mean that the law produces a precedent. The peculiarity of Common law is that the law is not implemented independently, the law is implemented through precedents, by means of them. Laws are focusing on consideration of details of the case. Before to become implemented, law must be approved and endorsed by the court. In Common law judicial practice, there were cases when the adopted laws were unfulfilled, ignored by the courts or their meaning and significance interpreted differently.

⁸ HENRY N. Butler. Legal environment of business. Dallas, 1987. ISBN 0-538-12401-6

⁹ HENRY N. Butler. Legal environment of business. Dallas, 1987. ISBN 0-538-12401-6

Laws are adopted by the supreme representative body or by referendum, have supreme legal force and apply to the entire territory of the State in all its citizens. Laws express the will of the majority of society, fundamental human rights and social justice. It may prohibit or legalize custom, certain provisions of jurisprudence, domestic contracts. Laws are interpreted and applied from an indefinite form to a concrete situation.

3.3.Role and function of judges in the Common law and Continental law families

In Common law, in the center of justice is an adversarial process, before the appointment judges, generally have practice experience in the function of the legal representative of the parties or counsel (attorney, barrister), while for the function judges do not have special training. Supreme courts have authority similar to the continental constitutional courts and can cancel laws. In Common law judge has the authority to set penalties for offenses in the courtroom, as well as for violations of court decisions.

Each case allows the only judge, based on the debate of the parties, the evidence presented in court and the jury's verdict. Important role plays judicial precedent and personal discretion (deliberation) of the judge, the judge may impose legal norms in the absence of precedent.

In various jurisdictions the authority of judges and their requirements are different. In the continental law, where the crimes are investigated, judges usually have special training, additional to higher legal education and judicial practice for them is their primary; the case is considered a panel of judges headed by the presiding officer.

In some countries, for a number of criminal cases is required a jury trial, but civil cases are heard by judges only. Sometimes judges have the authority of investigators, in any case they are not required to be limited only presented evidence during the meeting. There is a system the Courts of Appeal, the highest of which is called the Supreme Court, the supreme courts usually do not sit in a full complement and sit in special collegiums. In some Continental legal systems, there is also the Constitutional Court, which decides on the constitutionality of laws or regulations, and may cancel them.

4. Contract law

Business owners often focus on their core business ideas and providing value to customers, but business often involves legal obstacles that may be outside the area of knowledge of the owner.

Contract is a special type of agreement between two or more parties which enforceable by law. In the course of doing business may arise features of the contracts.

4.1. Classification of contracts

Contracts may be classified on various grounds. There are several classifications of contracts used including trading activities. Their essence is as follows.

Principal contract and preliminary:

- Principal contract directly generates rights and obligations of the parties.
- Preliminary contract - the parties' agreement on the conclusion of the principal contract in the future.

By the time of legal relations contract are:

- For the conclusion of real contracts it is necessary to have agreement of both parties and transfer object of the contract. Such contract is valid since the moment of transfer of the object.
- Consensual contract does not require any conditions on the formulation and implementation, except a mutual agreement of the parties at its conclusion. It is valid since it was signed.

Depending on the legal orientation distinguish contracts:

- Simple contract consists of arrangements of a single object.
- Complex contract may include multiple contracts simultaneously.

By the nature of the rights and responsibilities contracts are:

- Onerous contract when the party receives a fee or other compensation for the performance of their duties.
- Gratuitous contract - royalty-free, by which one party agrees to provide something to the other party without receiving payment or other counter.

By the ratio of of the rights and obligations of the parties distinguish contracts:

- Unilateral (one-way binding) when the rights or obligations arise from one side.
- Mutual (bilaterally binding) when the rights and obligations arise mutually both sides.

According to the nature a contract for the economic-organizational relationships can be divided into three main groups of contracts:

- Contracts for the transfer of property in goods that package relationships on a reimbursable sale of goods for business and economic needs (contracts retail sale contract, supply, contracting, procurement for state needs, exchange, donation).
- Contracts for the transfer of goods for temporary ownership, use and disposal (lease contracts, storage).
- Contracts for works and services (construction contracts, transportation, expedition, commission, agency execution services, etc.).

4.2.Contract of sale and purchase

Contract of sale and purchase is one of the main obligations on transfer of property ownership or other proprietary right. According to the sales contract, one party (the seller) undertakes to transfer item (goods) in the ownership of the other party (the buyer), and the buyer undertakes to accept the goods and pay for it a sum of money (price).

Sale and purchase contract is the most common type of contract. It is a legal form intended for service sphere of commodity circulation both within the country and in foreign trade.

Sale and purchase contract is one of the legal forms that mediate the movement of material assets from one person to another.

It is onerous contract. By purchasing thing in ownership the buyer pays to the Seller agreed price, or, in other words, the seller receives a counter material allowances.

A bilateral nature of the exchange of goods determines the design contract of sale as a bilaterally-binding - rights and obligations arise from both sides: the seller is obliged to transfer to the buyer a certain thing, but is entitled to demand for that set price of payment, while the buyer, in turn, must pay the price but is entitled to demand the transfer of the thing sold.

Sale and purchase contract is consensual. Under the appearance of consensual understood rights and obligations of the parties at the moment they reach agreement on all essential terms of the contract. However, in cases where for certain types of sales contracts law provides for mandatory registration of them in a certain order and recognizes valid only contract, duly executed, the rights and obligations arise only after the proper execution of the contract.

Types of contracts of sale , depending on the principles underlying the classification , sales contracts can be divided into the following types.

Depending on the nature and specificity of delivery counterparty relationships are distinguished:

- Contract with a single delivery of the goods, after the execution of which the legal relations between the parties are terminated;
- Contract with periodic regular delivery of goods from the seller to the buyer for a certain period.

Both types of contracts can have both short and long-term performance, and the main difference is in the specifics of the transaction the relationship partners.

Depending on the form of payment for goods contracts are divided into:

- Contract with payment in cash (includes payments to some agreed currency using the contract due to the payment method and form of payment);
- Contract with payment in the form of commodities (selling one or more products at the same time linked to the purchase of another product, and payments in a foreign currency are not made). These contracts include barter and compensation agreements.

Depending on the nature of the transport of goods:

- Contracts for the sale of goods, providing transportation, in which the transferor is not required to transfer the goods in a certain place, but it must first pass an independent carrier for transmission to the purchaser (Article 67 (1) of the Vienna Convention, FCA, CIP, CPT Incoterms 2000);
- Contracts for the sale of goods, providing transportation, in which the transferor is obliged to hand the goods over to an independent carrier in a certain place for onward transmission to the purchaser (Article 67 (1) of the Vienna Convention, CIF, CFR, FAS, FOB Incoterms 2000).

Case study

5. Analysis of two legal families

Table 1. Features of Anglo-Saxon legal family and Romano-Germanic legal family

Features	Anglo-Saxon law	Romano-Germanic law
Other names	Common law, English law, Anglo-American law	Continental law, Civil law
Current use	United Kingdom (except Scotland), India (except Goa), Ireland, Singapore, Hong Kong, United States (except Louisiana), Canada (except Québec), New Zealand, Pakistan, Malaysia, Bangladesh, Australia.	France, Germany, Czech Republic, Austria, Belgium, Holland, Denmark, Spain, Iceland, Italy, Portugal, Norway, Luxembourg, Monaco, Russia, Sweden, Switzerland, Finland. Affects in Latin America, Louisiana, Quebec, Turkey, Egypt, Madagascar, Lebanon, Indonesia, Vietnam, Thailand.
Major source of law	Legal Precedent	Lagislative statutes
Written constitution	Not always	Always
Judicial decisions	Always binding	Not binding
Law-making bodies	Court	Legislator

The division of law	No	Yes, public law and private law
Court structure	Unified court structure	Diffused court structure
Major decision stage	Judge decision - evidence and the jury's verdict	Investigation and examination of crimes
Freedom of contract	Extensive - just a few of the provisions arising from the law in a contractual relationship.	More limited - number of provisions in the law arising out of the contractual relationship

Source: own processing

Comparison analysis of two legal families helps to underline and identify main features of legal families, which influence on business conduct in the 21st century. For cases when in the case of unfair trade or non-compliance of contract in the system of Anglo-Saxon law the parties could expect and anticipate judicial decision, if similar case was considered before. The parties could intentionally make the contract so that in case of bad faith the court decision will be in their favour, from the experience of previous cases. The Anglo-Saxon legal system could be good for business conduct if the parties of contract are good faith, but on the other hand scammers could use the concept of precedent for fraudulent purposes for their own benefit. That means that parties of contract do not have equal chances for judicial verdict. In the system of Romano-Germanic law the structure of judicial decision is arranged so that the parties have absolutely equal chances for judicial verdict in their favour, in spite of the previous cases. That makes parties to comply their obligations and contributes strong, fair and honest business relations. After the comparison analysis of two legal families I will recommend for business relations Romano-Germanic family.

5.1. Analysis of sample sale and purchase agreements in Common system and Continental system

Table 2. Content of the contracts

Contract according to the Common law	Contract according to the Continental law
1. Object	1. Subject of the Contract
2. Delivery basis and terms	2. Price
3. Quantity and quality of goods	3. Delivery Conditions
4. Price and total amount of contract	4. Payment Conditions
5. Delivery terms and parties obligations	5. Negotiations Documents
6. Delivery acceptance of goods	6. Packing and marking of the Goods
7. Payment terms and conditions	7. Quality of the Goods
8. Performance Bond – Proof Of Product	8. Confidentiality Clause
9. Documents required for payment	9. Force Majeure
10. Provision of documents	10. Other Conditions
11. Force majeure	11. Legal Addresses and Signatures of the Parties
12. Seller liability	
13. Buyer liability	
14. Law and arbitration	
15. Contract termination	

16. Assignment	
17. General provisions	
18. Effective date	

Source: taken from the contracts

Briefly analysing the table of content i can tell that in the Common law contract are described all possible conditions. The parties of this contract are notified about their liabilities, obligations and rights with more detail, it lets them to be confident in the deal. In the Continental law contract all clauses are described briefly, the content is simplified in comparison to the Common law contract. For better analysing of which of contracts is better for business conduct, i will compare and analyse individual clauses of contracts.

Clause 1 – Delivery

Table 3. Delivery conditions

Contract according to the Common law	Contract according to the Continental law
1. The seller shall deliver the goods under deliveries conditions CIF destination in accordance with INCOTERMS-2000.	1. The goods will be delivered on “CIP” parity (Carriage and Insurance) to the agreed Custom Free Zone.
2. The Seller shall deliver the total quantity of goods in accordance with the Deliveries Schedule, in Appendix No.3 :	2. The Buyer is obliged to grant all the relevant and required (by law or other authorities restrictions or requirement) licenses and also to complete all importing procedures on his costs and his behalf. The Seller is not responsible for the custom, duties, taxes etc. out of the country

	of destination.
<ul style="list-style-type: none"> • All taxes or levies imposed by the country of destination, having any effect on this contract are for Buyer's account and his sole responsibility. All taxes or levies and port dues imposed by the country of origin, having any effect on this contract are for the Seller's account and his sole responsibility. • Should the vessel be required to shift from one berth for another port of discharge, then the time used shifting shall be for the Buyer's account. In the event lighter age is required at the port of discharge, the said expenses are for the Buyer's account. • The Buyer is authorized to claim on the Seller's insurance policy in the event of non-delivery and the Seller agrees to support the Buyer's claim by providing all documents required for the processing of the said claim, as appropriate. 	<p>3. The Seller is obliged to grant all the requested licenses, permissions, certification requested, required or prescribed by the laws and authorities requirements in the country of origin and requested by the transporting organization and other legal valid norms to be presented. All the export permissions and licenses related to the export of the goods from the country of origin must be fulfilled by the Seller and in any case of request presented in the relevant form to the Buyer before the export procedures will start.</p>

• Insurance is to be in accordance with ICC rules, and the terms and conditions of this contract. Insurance is for the Seller's account and is his sole responsibility.

3. All provisions included in the Deliveries Schedule will be observed by both the Buyer and the Seller and the breaches in the provisions will be subject to penalties as per provisions under clauses 11.0 & 12.0 respectively.

4. The Parties may agree upon the extension of the delivery period. In this event, the Party responsible for the delays (Seller in delivery or Buyer in unloading) will have to bear the costs for the extension of the validity of the payment instrument and any other costs incurred due to delay.

Source: taken from the contracts

According to the term "CIF" in the Common law contract seller delivers when the goods pass the ship's rail at the port of shipment. The seller must pay the costs and freight necessary to bring the goods to the named port of destination but the risk of loss or damage to the goods, as well as any additional costs occurring after delivery, are transferred from the seller to the buyer. According to this the delivery of goods is carried out better in "CIF" (provided for sea or inland waterway transport).

According to the term “CIP” in the Continental law contract seller delivers the goods to the named carrier nominated by him. The seller must pay the entire route. But the seller will not respond for the goods as soon as he gives goods to the carrier.

Clause 2-Payment condition

Table 4. Payment conditions

Contract according to the Common law	Contract according to the Continental law
<p>Payment will be in US\$ and guarantee by an Irrevocable Transferable Automatically Revolving Letter of Credit for an amount of US\$ (+/- 5%) covering the 12,500 MT value payable at sight 100% against shipping documents, at loading port.</p> <p>If it is the case the buyer must fill the confirming bank in Appendix 4:</p>	<p>1. The Seller shall facilitate an Escrow Account with bank under or in other bank institution for this particular transaction who will act as a Fiduciary based on the terms of the contract and the signed contract will be lodged with the bank.</p>
	<p>2. The Buyer shall transfer the funds to the Special Escrow Account, within 3 banking days after receipt of the Notice of Readiness from the Seller stating that the goods is ready for handing over to the Buyer accompanying with the confirming documentation.</p>
	<p>3. Upon delivery of the said documentation in the contract, the Seller shall submit the documentation to the Bank for release of funds from the Escrow Account.</p>

• ALTERNATE CORPORATE BANK ACCOUNTS – Due to the different banking regulations and practices around the world, various banking instruments are accepted by some banks in some countries and not accepted by others. Depending upon the financial instrument finally issued by the Buyer to the Seller, in order to facilitate the transaction, it may be necessary for the Seller to use a bank other than that originally designated. Direct contact with any bank designated by the Seller without first gaining written permission from will not be permitted and will render this contract null and void.

Any deviation from the above payment terms is subject to acceptance by the seller. No responsibility can be claimed by the buyer in the event that acceptance of the payment instruments are refused.

1. The Seller reserves the right not to load the vessel if the payment instrument does not meet requirement of the contract. Buyer shall arrange for its bank (one of the top 50 rated banks) to provide the Seller a copy of the payments instruments by SWIFT, within 5 banking days from the signing of the contract.

<p>2. In the event that the buyer fails to issue the payment instrument in compliance with this clause then payment for full contract value shall be made 100% at site of demand upon the buyer without protest as a contract breach.</p>	
<p>3. All bank charges related to the issuance of the payment instruments are for the Buyer's account. Bank charges related to the negotiation of the document are for the Seller's account.</p>	
<p>4. Any extension of the validity of the document will be borne by the side in fault from the extension.</p>	

Source: taken from the contracts

In the contract according to the Common Law obligations of parties are written down in the clause 3, parties have an equal rights, but the buyer has less secure if fails to issue the payment in time as it written in the clause 2. First the buyer shall transfer the funds to the seller's account, and only after this the seller will load the vessel if the payment instrument meets requirement of the contract.

In the contract according to the Continental law the buyer shall transfer the funds to the seller's account, after receipt of the notice stating that the goods is ready for handing over to the buyer accompanying with the confirming documentation.

Clause 3-Documents

Table 5. Documents

Contract according to the Common law	Contract according to the Continental law
<p>1. The Seller shall provide with each consignment a full set (6/6) Clean on Board Ocean Bill of Lading signed by an authorized representative of shipping ocean lines, signed by the Master and showing vessels stamp and showing “CLEAN ON BOARD” and Freight Prepaid, following Master’s remarks are acceptable: Wet before shipment: Loaded from open area: Atmospherically rusty within 21 (twenty-one) days from date of payment. Provided port of discharge is the same and segregation of separate consignments is the responsibility of Buyer after unloading. Each full vessel may be comprised of multiple consignments representing separate orders.</p>	<p>1. The following documents will complete the contract :</p> <ul style="list-style-type: none"> • commercial invoice showing the contractual actual price as per delivered quantity of the goods • certificate of quality issued by the Institut (1 original and 3 copies), • certificate of origin • certificate of deposit
<p>2. Commercial invoice issued by Seller: 6 originals and 6 original copies showing Contract Number, description of Goods, pieces of bundles of goods, unit price, total amount, gross/net weights of the goods.</p>	
<p>3. Original and three (3) copies of SGS quality and quantity report.</p>	
<p>4. Three (3) original and three (3) copies of certificate of origin</p>	

5. Insurance certificate listing Buyer as beneficiary covering 110% of the value of the cargo covering all possible events that could result in delay of delivery, loss or depreciation of quantity, quality of the goods.

6. Charter party agreement covering the shipment.

7. All of the documents including the B/L, invoice, packing list, original certificate of origin, will be faxed to the Buyer within 5 (five) days after B/L date.

8. Seller shall provide at seller's expense Standard Quality Certificate issued by SGS in clear, clean faxed or e-mailed version, certifying that the shipment meets the quality requirements of the Contract. (Hard copies will follow with-in seven (7) banking days, and are required as part of the documentation required for payment.) The chemical analysis data is included in the Standard SGS Quality Certificate and this chemical analysis is a required document for payment. At buyer's request, Seller shall arrange for all other independent international survey/inspection companies at Buyer's expense, excluding the port of unloading. Quality Certificates from other than SGS are not recognized as documents required for payment.

2. The parties can agree to add further documents in order to meet mutual or governmental requirements.

<p>9. Quantity assay issued by SGS in clear, clean, faxed or e-mailed version, showing the quantity of the goods loaded on board vessel. (Hard copies will follow with-in seven (7) banking days, and is required as part of the documentation required for payment.) If CIQ/CCIC is required by the Buyer, then Seller shall arrange for all Quantity and Quality inspections at Seller's expense from CIQ/CCIC except at the port of unloading.</p>	
<p>10. Original certificate of origin issued by Chamber of Commerce and Industry of the country of export: 3 originals and 3 original copies.</p>	

Source: taken from the contracts

For seller it is easier to provide the documents to the Continental law contract than to Common law contract. In the Continental law contract atmosphere between parties is more friendly than in the Common law contract. The parties able to meet each other and discuss if they want to add further documents, parties can chose the form of requirements. In the Common law contract this conditions of document provisions are more formal, parties shall do everything in accordance with contract in additional time.

Clause 4- Confidentiality

Table 6. Confidentiality

Contract according to the Common law	Contract according to the Continental law
<p>1. Seller, his Mandate and Buyer and his mandate shall treat information provided by the other party on a strictly private and confidential basis. Seller and Buyer shall take all necessary steps to prevent the others confidential information from being misused or disclosed or made public to any third party except as needed to successfully complete the Contract or to avoid conflicting claims (and except as may be required in accordance with the applicable law).</p>	<p>1. The Parties will keep all information and documents relating to discussion (orally or written), in consideration of the matter of contract and all related talks, cooperations and transactions strictly confidential. The Parties will keep all information and documents, delivered by one Party to the other strictly confidential and subject to the requirements set forth in this Agreement.</p>
<p>2. Both Seller and Buyer shall not use the confidential information provided the Seller in such a way as to:</p>	<p>2. Excepting cases where the law sets forth and express duty to communicate information, each of the Parties, throughout the entire duration of this Agreement and for a period of two years following the termination of the same, will in any case maintain the confidentiality of all of the data and information of the other Party or in any case related to the implementation of this Agreement, if that data or information is expressly identified and labeled as “confidential” or “reserved” or is of a nature that is intrinsically</p>

	<p>confidential. Each of the Parties involved accepts not to reveal in any way any of the actions, data or information, except having obtained the previous written consent of unauthorized use of confidential information and agrees to give access only to authorized individual that needs that data or information for the development of activities and/or in order to satisfy obligations arising out of the present Agreement. In any case such confidential information will be provided on the ground of Transfer-Acceptance Deed, signed by each of the Party, clearly identifying documents handed over or information transmitted.</p>
<p>(a) Circumvent the Seller or his mandate in the commercial dealings with any and all suppliers under the contract, or</p> <p>(b) Knowingly do anything to cause the Seller or his Mandate to lose any fees or commissions that are due or may become due under the Seller agreement with the suppliers under the Contract, if any, or</p>	<p>3. All confidential data and information remain the exclusive property of the authorizing Party, and that confidential data and information, including all copies or reproductions of the same, will be returned to the other Party at the expiration of this Agreement, or, should the authorising Party so request, be destroyed.</p> <p>4. Furthermore it can be requested, to agree separately and enlarged level of confidentiality in order to meet the requirements of state secrets.</p>

(c) Do anything to circumvent the Seller or his Mandate in such a way as to put Seller or Mandate at a commercial disadvantage with the suppliers or countries under this Contract.
3. The Seller his Mandate and the Buyer and his mandate shall keep each other fully informed about the progress of all current and future contract negotiations and about the performance of the contract.
4. The obligation of confidentiality of the Sellers, his Mandate and Buyer shall remain in force for a period of 5 (five) years from the date hereof.
5. Any breach of these provisions will entail payment of damages to the other party

Source: taken from the contracts

Conditions of confidentiality in both contracts are strict and the execution conditions of contact are obligatory. There are one the same exception in both contracts, information about parties can be promulgated if it is required by law. In the Continental law contract there are another exceptions, information can be also promulgated as needed to successfully complete the contract or to avoid conflicting claims.

Clause 5- Law support

Table 7. Law support and arbitration

Contract according to the Common law	Contract according to the Continental law
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1) The contract is subject to English Law, ICC rules are to be observed under existing CIGS guidelines and UCC Law will supersede over ICC if in conflict.

2) The Seller and Buyer will try to settle all disputes amicably. Either party may serve notice on the other requiring any dispute to be settled within 30 (thirty) days after such notice and, if not settled to refer it to arbitration in accordance with this contract unless breach of payment occurs by the buyer or failure to post the Bank Guarantee.

3) The arbitration will be heard by one or more arbitrators appointed mutual agreement of the parties and in accordance with the French Rules. The seat of arbitration shall be Paris - France. The award shall be enforceable in any country, and a Letter Rogatory shall be deemed accepted without contest or protest.

4) Should payment not be received when scheduled under this contract and Seller declare breach of contract then Summary Judgment under the Laws of England shall apply and be deemed automatic for the full contract value and damages claimed therein under UCC law with the authority therein to recover those costs in

This clause is not written in this contract, there is not written the information under which law the contract is supported.

any country.	
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Source: own processing

In the contract according to the Common law this condition helps to understand the accessory of the contract to the law, also reports and alerts about law compliance.

In the contract according to the Continental law this condition is absent.

Clause 6- Force Majeure

Table 8. Force Majeure

Contract according to the Common law	Contract according to the Continental law
1. Both sides in this contract will be exonerated from their obligation in case of Force Majeure event.	
2. Force Majeure is understood as per provisions under ICC500 and means any event such as fire, explosions, hurricanes, floods, earthquakes and similar natural calamities, wars, epidemics, military operations, terrorism, riots, revolts, strikes, industrial unrest, government embargoes, or other unforeseeable actions occurring after the conclusion of this contract and outside the sides reasonable control and which cannot be avoided by the reasonable diligence that could delay or prevent the performance of either sides obligations in this contract.	No Party shall be liable for any failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

3. The party to this contract whose performance of this contract is prevented by a Force Majeure event must notify the other party within 7 (seven) days of the effective date of occurrence, which notice is to be confirmed by a certificate issued by the local Chamber of Commerce and Industry, including particulars of the event and expected duration. Failure to submit such a notification will prevent the party's exoneration from contractual obligations under Force Majeure event makes such notice impossible.

4. The performance of either party's obligations will be in such a case postponed with the period of the existence of the Force Majeure event plus a reasonable period to remobilizing production and shipping. No penalty shall be payable for the duration of this delay.

5. Should the delay caused by a Force Majeure event last for more than I (one) month the sides will attempt to agree measures to allow contract to continue. Should such an agreement not be reached within 30 (thirty) days from the date of certified Force Majeure event, the sides are entitled to terminate the contract.

6. The Force Majeure event does not exonerate the Buyer from paying for the goods already delivered under documents in section 9 Bill of Lading.	
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Source: own processing

Force Majeure situations are described better in the Common law contract. Conditions and responsibility are described in more detail this contract is more reliable and more specific than Continental law contract.

Contract complaining in accordance to the Common law is better for business conduct. In this contract all clauses are described in more details, the language of this contract more formal, all clauses must be complied in frames of contract with accordance of Law. For a safety and reliability i will recommend contract in the Common law, this contract is more clear and strict in its interpretation and implementation.

Contract in the Continental law is more flexible in its interpretation and implementation, I will recommend this contract for people who like to be in close relations with the contract partner and for people who prefer simplified model of contract.

5.2.SWOT Analysis of contracts

Table 9. SWOT Analysis of contracts

Strengths		Weaknesses	
Contract according to the Common law	Contract according to the Continental law	Contract according to the Common law	Contract according to the Continental law
<ul style="list-style-type: none"> • The structure 	<ul style="list-style-type: none"> • Simple 	<ul style="list-style-type: none"> • Rights of the 	<ul style="list-style-type: none"> • The structure

<p>of contract is written in detail.</p> <ul style="list-style-type: none"> • Rights of the seller are more protected. • Strict confidentiality • Equal obligations and rights during the delivery. 	<p>language of the contract.</p> <ul style="list-style-type: none"> • Rights of the buyer and the seller are equal protected. • Friendly atmosphere between parties. • Strict confidentiality. 	<p>buyer are less protected.</p> <ul style="list-style-type: none"> • Formal atmosphere between parties. • Ambiguous language of contract. 	<p>of contract is simplified.</p> <ul style="list-style-type: none"> • The seller has more obligations during the delivery.
Opportunities		Threats	
Contract according to the Common law	Contract according to the Continental law	Contract according to the Common law	Contract according to the Continental law
<ul style="list-style-type: none"> • Supported by law evewhere. 	<ul style="list-style-type: none"> • Supported by law 	<ul style="list-style-type: none"> • No contest or protest to judicial decision. • Confidentiality can be broken if it is required by law. 	<ul style="list-style-type: none"> • Confidentiality can be broken if it is required by law.

Source: own processing

SWOT analysis lets to realise all positive and negative sides of business contracts.

For fair business-relations between parties i will recommend contract according to the Continental law because the structure and language of the contract minimizes the risks of possible unfair deal. Ambiguous language of contract in common law allows to create unfair and unprofitable terms and conditions in the contract. Rights of the buyer and seller are equal protected in the contract according to the Continental law, that contributes to the strong relations between parties, and for the future business-relations between parties. In the contract according to the Common law parties do not have equal rights, the buyer should pay more attention before the signing the contract in order to avoid unprofitable deal.

For internal business-transactions, i will recommend contract according to the Continental law. For international business-transactions i will recommend contract according to the Common law, because in the condition of any kind of breach of contract, the contract has its legal force everywhere, and it is supported by English law. In the contract according to the Continental law such condition is not written, what can be bad for international business-transactions.

Conclusion

To sum up all theoretical and practical parts about legal families, it could be said that each legal family has their own traditions and norms, which are supported and implemented by law. Anglo-Saxon legal family is more based on the rights and equality, in the first place are human rights protected by the court, not duties. In Romano-Germanic family in the first place are not duties, but human and civil rights. System of Common law is based on traditions, it is common to consolidate the information, evaluate it systematic without going into the details.

The system of Continental law could be characterised as accurate and individual, this system has written codes and all court decisions are based on it. The benefit of a Continental law is that it can judge by the laws, which were actually written down at the time. The drawback is that even if previous cases show the case should win, there is no guarantee a judge will interpret the code in the same way on this case.

Arguably, the Continental law is more suitable for business conduct in our post-modern era because of its alleged abstract accuracy included and implied by codes and variations of laws in it. Nowadays the situations could change rapidly, and the way of resolving also could undergone swift modification, and a more radical and revolutionary approach than a conservative evolutionary approach seems to be appropriate. Continental law is more adopted for resolving the business problems and conflicts in our society. In addition, it needs to be stressed the impact and influence of the EU law which despite the strong role of the Court of Justice of the EU and its case law follows more than Continental law approach.

Since the contract law has become decreasingly national and increasingly European (Grundmann, 2011) and to some extent even „cross-border“ and international, the conventional approach to business contracts needs to undergo a serious scrutiny and the opening pathway for a global reshaping of business contract perception and framework needs to be addressed in an educated manner, i.e. with knowledge of both legal traditions. More concretely, each and every business should critically assess its own situation, expectations and the manner how these can be addressed in Continental and Common law perspective.

To sum up all theoretical and practical parts about contracts, it could be said that each contract has their own positive side and negative side. Being a continental law person and due to my preference for Continental law standards, principles, and sources of law in general, as well as the manner of their interpretation, I would recommend to businesses that they use business contracts according to the Continental law. I would underline especially the structure and language of this contract, that make the deal clear and fair. Comparison analysis shows that this contract is good for fair business and exclude condition of cheating what is so actual it 21th century.

I will accept the hypotheses, that for business negotiations it is better contract according to the Continental law.

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List of Acronyms

EU - EUROPEAN UNION

UK - UNITED KINGDOM

US - UNITED STATES

AD - AFTER DEATH

BC - BEFORE CHRIST

SWOT - STANDS FOR "STRENGTHS, WEAKNESSES, OPPORTUNITIES AND THREATS."

ICC - INTERNATIONAL CHAMBER OF COMMERCE

UCC - UNIFORM COMMERCIAL CODE

CIQ - CHINA INSPECTION AND QUARANTINE BUREAU

CCIC- CHINA COMMODITY INSPECTION CORPORATION

SGS - SOCIETE GENERALE DE SURVEILLANCE S.A.

B/L - BILL OF LADING

SWIFT- SOCIETY FOR WORLDWIDE INTERBANK FINANCIAL TELECOMMUNICATIONS

INCOTERMS - *INTERNATIONAL COMMERCE TERMS*

EXW – EX WORKS (NAMED PLACE OF DELIVERY)

FCA - FREE CARRIER (NAMED PLACE OF DELIVERY)

CPT – CARRIAGE PAID TO (NAMED PLACE OF DESTINATION)

CIP – CARRIAGE AND INSURANCE PAID TO (NAMED PLACE OF DESTINATION)

DAT – DELIVERED AT TERMINAL (NAMED TERMINAL AT PORT OR PLACE OF DESTINATION)

DAP – DELIVERED AT PLACE (NAMED PLACE OF DESTINATION)

DDP – DELIVERED DUTY PAID (NAMED PLACE OF DESTINATION)

FAS – FREE ALONGSIDE SHIP (NAMED PORT OF SHIPMENT)

FOB – FREE ON BOARD (NAMED PORT OF SHIPMENT)

CFR – COST AND FREIGHT (NAMED PORT OF DESTINATION)

CIF – COST, INSURANCE AND FREIGHT (NAMED PORT OF DESTINATION)

DEQ – DELIVERED EX QUAY (NAMED PORT OF DELIVERY)

DDU – DELIVERED DUTY UNPAID (NAMED PLACE OF DESTINATION)

Appendix

Appendix 1.

SALES AND PURCHASE CONTRACT

Validity before signature: 7 (seven) banking days from the ***** 08

CONTRACT NUMBER :
SELLER'S CODE :
BUYER'S CODE :
DATE : ***** 08

AS THE BUYER:

Company :
Address :
City / Country :
Phone :
Fax :
Mob :
E-mail :

Represented by : Mr.
Cement Import License:

Duly Represented by:

Tel
E-mail address:

Buyer's Mandate :

AS THE SELLER:
COMPANY

CORRESPONDENT

Duly represented by
Email
Tel
Seller's Mandate

I. OBJECT

1.1 The seller herewith will sell and the buyer herewith will purchase in accordance with the terms, conditions and specifications and the quality described in this contract (hereinafter called "the Goods").

1.2 The specification of the goods is provided in Appendix No. 2 hereto.

II. DELIVERY BASIS AND TERMS

2.1 The seller shall deliver the goods under deliveries conditions CIF destination in accordance with INCOTERMS-2000.

2.2 Loading port: shall be defined in the deliveries Schedule in Appendix 3, or as designated by the Seller.

2.3 Country of Export: As per Delivery Schedule Appendix 3, or as designated by Seller and Country of Import to be designated by the Buyer.

2.4 The named ports of destination: for thirty (30) days prior to the beginning of shipment of each vessel, the Buyer will inform the Seller about port (ports) destination, if different, these being any known major Country Port. If there is a change in destination, this must be done prior to scheduling of the vessel. A second alternative port must be specified for delivery in the event there are problems in getting a ship berth for unloading at the preferred delivery port.

III. QUANTITY AND QUALITY OF GOODS

3.1 The unit of measurement in this contract is metric tons of weight (MTW). Months are calendar months according to the Gregorian calendar.

3.2 The total quantity of the goods to be delivered is ***** MT (+/-5%), deliverable to port (s) stated in Appendix 3 in (evenly from May 08 to *****) consecutive months.

3.3 The quantity, quality and weight of goods will be confirmed on a certificate issued by the independent international survey company "SGS" (Societe Générale de Surveillance). Any other independent international survey/inspection company to be used will be at the buyer's expense.

3.4 The quality of the goods will be confirmed by a certificate issued by the independent international survey company "SGS (Societe Générale de Surveillance)" which shall be binding on both parties in all respects, including but not limited to the payment of invoices, replacement of faulty goods. The correspondent of the same independent international survey/inspection company can be used at the request of the buyer will be at the buyer's expense, and recognized as documents required for payment.

IV. PRICE AND TOTAL AMOUNT OF CONTRACT

4.1 The Buyer shall pay the Seller in United States Dollars (USD).

4.2 The price of the goods is USD ** CIF per MTW Cost Insurance and Freight included as well the at the port of destination. This price is subject to the payment instrument stated in article VII below.

4.3 The price of goods includes all costs incurred by Seller up to and including delivery, basis CIF, except where the contract specifically provides for a cost to be borne by the Buyer, port demurrage charges, tariffs, and export/import fees. The unit price is fixed and firm for any quantity not exceeding the maximum permitted under the contract either delivered or stored. If vessels are delayed by the buyers (failure to unload in a timely manner) on or before expiry of the period stated in sub-clause 5.1, or such extended period as expressly provided in this contract or agreed by mutual written understanding.

4.4 The vessel shipment value of the delivery of 12.500 MT of the goods *****US\$ (+/- 5%). Monthly delivery program is of *vessels of 12.500 MT, in *months, and *vessels of 12.500 MT in * months

4.5 The total amount of the contract is US\$ ***** United States Dollars (+/- 5%).

V. DELIVERY TERMS AND PARTIES OBLIGATIONS

5.1 The Seller shall deliver the total quantity of goods in accordance with the Deliveries Schedule, in Appendix No.3 hereto.

5.2 The Seller shall start the deliveries of the consignment in accordance with the Procedure and Terms, Appendix No.1 hereto.

5.3 All provisions included in the Deliveries Schedule will be observed by both the Buyer and the Seller and the breaches in the provisions will be subject to penalties as per provisions under clauses 11.0 & 12.0 respectively.

5.4 The Parties may agree upon the extension of the delivery period. In this event, the Party responsible for the delays (Seller in delivery or Buyer in unloading) will have to bear the costs for the extension of the validity of the payment instrument and any other costs incurred due to delay.

VI. DELIVERY ACCEPTANCE OF GOODS

6.1 In accordance with INCOTERMS 2000, and conditions of delivery CIF, the Seller is obligated to pay charges relating to cost, insurance & freight, however, risk of loss or damage of the goods and any additional charges arising after the transfer of the goods over the hand-rail of a vessel in the port of unloading shall pass from Seller to the Buyer.

6.2 Title for the goods will pass from Seller to the Buyer upon clearance of funds into the Seller's account.

6.3 The quantity of goods stated in the Bill of Lading shall be conclusive evidence of the quantity of goods delivered.

6.4 No claim(s) against quality or quantity received thirty (30) days following receipt by Buyers of SGS quality or quantity report as appropriate will be taken into consideration.

VII. PAYMENT TERMS AND CONDITIONS

Payment will be in US\$ and guarantee by an Irrevocable Transferable Automatically Revolving Letter of Credit for an amount of US\$ ***** (+/- 5%) covering the 12,500 MT value payable at sight 100% against shipping documents, at loading port.

If it is the case the buyer must fill the confirming bank in Appendix 4.

Any deviation from the above payment terms is subject to acceptance by the seller. No responsibility can be claimed by the buyer in the event that acceptance of the payment instruments are refused

7.2 The Seller reserves the right not to load the vessel if the payment instrument does not meet requirement of the contract. Buyer shall arrange for its bank (one of the top 50 rated banks) to provide the Seller a copy of the payments instruments by SWIFT, within 5 banking days from the signing of the contract.

7.3 In the event that the buyer fails to issue the payment instrument in compliance with this clause then payment for full contract value shall be made 100% at site of demand upon the buyer without protest as a contract breach.

7.4 Payment instrument shall be payable by swift transfer payment by issuing bank upon presentation of the seller's sight draft(s) for the amount of hundred percent (100%) of invoice value of the shipment, accompanied by the Ocean Bill Of Lading. The weight certificate issued by S.G.S, surveyor of ship's draft, shall be the basis for the seller's invoice. The said payment instruments shall accept third party documents except the invoice and the draft.

7.5 All bank charges related to the issuance of the payment instruments are for the Buyer's account. Bank charges related to the negotiation of the document are for the Seller's account.

7.6 Any extension of the validity of the document will be borne by the side in fault from the extension.

7.7 Spelling and typographical errors and differences of such nature between bank issued and beneficiary issued documents shall not be deemed discrepancies provided that the intent of the writer is clear from the context and in such case only UCP500 regulations shall apply at any time.

VIII. PERFORMANCE BOND – PROOF OF PRODUCT

Within 5 banking days from the receipt of the payment instrument the seller's bank will issue a Proof of Product under the for of Swift MT799 and Performance Bond in the form of conditional Letter of Credit equal to 2% of the face value of the Buyer's Letter of Credit.

In the event of non-delivery of the goods within 45 calendar days the amount of the Performance Bond opened shall be remitted to the Buyer upon written notification by the Buyer to the seller's bank stating the seller's cargo has failed to meet the terms of the contract, thereby causing the buyer to invoke the payment of the 2% Performance Bond in recompense.

IX. DOCUMENTS REQUIRED FOR PAYMENT

9.1 The Seller shall provide with each consignment a full set (6/6) Clean on Board Ocean Bill of Lading signed by an authorized representative of shipping ocean lines, signed by the Master and showing vessels stamp and showing "CLEAN ON BOARD" and Freight Prepaid, following Master's remarks are acceptable: Wet before shipment: Loaded from open area: Atmospherically rusty within 21 (twenty-one) days from date of payment. Provided port of discharge is the same and segregation of separate consignments is the responsibility of Buyer after unloading. Each full vessel may be comprised of multiple consignments representing separate orders.

9.2 Commercial invoice issued by Seller: 6 originals and 6 original copies showing Contract Number, description of Goods, pieces of bundles of goods, unit price, total amount, gross/net weights of the goods.

9.3 Original and three (3) copies of SGS quality and quantity report.

9.4 Three (3) original and three (3) copies of certificate of origin

9.5 Insurance certificate listing Buyer as beneficiary covering 110% of the value of the cargo covering all possible events that could result in delay of delivery, loss or depreciation of quantity, quality of the goods.

9.6 Charter party agreement covering the shipment.

X. PROVISION OF DOCUMENTS

10.1 All of the documents including the B/L, invoice, packing list, original certificate of origin, will be faxed to the Buyer within 5 (five) days after B/L date.

10.2 Seller shall provide at seller's expense Standard Quality Certificate issued by SGS in clear, clean faxed or e-mailed version, certifying that the shipment meets the quality requirements of the Contract. (Hard copies will follow with-in seven (7) banking days, and are required as part of the documentation required for payment.) The chemical analysis data is included in the Standard SGS Quality Certificate and this chemical analysis is a required document for payment. At buyer's request, Seller shall arrange for all other independent international survey/inspection companies at Buyer's expense, excluding the port of unloading. Quality Certificates from other than SGS are not recognized as documents required for payment.

10.3 Quantity assay issued by SGS in clear, clean, faxed or e-mailed version, showing the quantity of the goods loaded on board vessel. (Hard copies will follow with-in seven (7) banking days, and is required as part of the documentation required for payment.) If CIQ/CCIC is required by the Buyer, then Seller shall arrange for all Quantity and Quality inspections at Seller's expense from CIQ/CCIC except at the port of unloading.

10.4 Original certificate of origin issued by Chamber of Commerce and Industry of the country of export: 3 originals and 3 original copies.

XI. FORCE MAJEURE

11.1 Both sides in this contract will be exonerated from their obligation in case of Force Majeure event.

11.2 Force Majeure is understood as per provisions under ICC500 and means any event such as fire, explosions, hurricanes, floods, earthquakes and similar natural calamities, wars, epidemics, military operations, terrorism, riots, revolts, strikes, industrial unrest, government embargoes, or other unforeseeable actions occurring after the conclusion of this contract and outside the sides reasonable control and which cannot be avoided by the reasonable diligence that could delay or prevent the performance of either sides obligations in this contract.

11.3 The party to this contract whose performance of this contract is prevented by a Force Majeure event must notify the other party within 7 (seven) days of the effective date of occurrence, which notice is to be confirmed by a certificate issued by the local Chamber of Commerce and Industry, including particulars of the event and expected duration. Failure to submit such a notification will prevent the party's exoneration from contractual obligations under Force Majeure event makes such notice impossible.

11.4 The performance of either party's obligations will be in such a case postponed with the period of the existence of the Force Majeure event plus a reasonable period to remobilizing production and shipping. No penalty shall be payable for the duration of this delay.

11.5 Should the delay caused by a Force Majeure event last for more than I (one) month the sides will attempt to agree measures to allow contract to continue. Should such an agreement not be reached within 30 (thirty) days from the date of certified Force Majeure event, the sides are entitled to terminate the contract.

11.6 The Force Majeure event does not exonerate the Buyer from paying for the goods already delivered under documents in section 9 Bill of Lading.

XII. SELLER LIABILITY

12.1 Goods shall be considered in “full quantity” if within tolerance provided under Section III and as per deliveries schedule. “Date of delivery” shall be the date on the Bill of Lading.

12.2 Seller attests to have all export licenses to deliver the goods.

12.3 Seller has the obligation to make consignment complete and deliver the full quantity and will only be paid for what is delivered at the time.

12.4 Failure to deliver full quantity within extended period will entail penalties at the rate of 0.3% (point three percent) pro rata temporize of the value of the undelivered goods. The total value of the penalties cannot exceed 5% (five percent) of the value of the undelivered goods at which time full breach is declared automatically.

12.5 Should the Buyer decide, at any time during the period of delivery, to take only a partial delivery rather than wait for the full quantity (if the quantity is not already available in port and ready for loading) then the Seller will not be liable for liquidated damages?

XIII. BUYER LIABILITY

13.1 Any sums which the Buyer is liable as penalties, for which no provisions are made in this contract, are made against the invoice issued by Seller and by a top 50 rated bank transfer within maximum ten (10) banking days as for the submitted invoice date.

13.2 Buyer attests to have all import licenses to unload the goods at ports of discharge. Also the buyer attests to have agents in each ports of discharge managing logistic part on behalf of Buyer.

13.3 “Scheduled date of Arrival” means date when the vessel should be alongside quay and available to take delivery of the Goods as per both Seller and Buyer mutual notifications and provisions in Appendix No.3 hereto.

13.4 Should the vessel not arrive within 15 (fifteen) calendar days as from scheduled/notified date as a result of delays by the buyer at the unload port, the Buyer will pay the Seller penalties at the daily rate of 0.3% (point three percent) pro rata temporize of the value of undelivered goods but the total amount should not exceed 5% (five percent) of their value.

13.5 The payments of the storage costs in port have no connection with the payment penalties, which are paid separately to the Seller.

13.6 To make payment in the target dates for consignment, payment shall be effected by within five (5) banking days after receipt by the advising bank of all documents required under clause 9.

XIV. LAW AND ARBITRATION

14.1 The contract is subject to English Law, ICC rules are to be observed under existing CIGS guidelines and UCC Law will supersede over ICC if in conflict.

14.2 The Seller and Buyer will try to settle all disputes amicably. Either party may serve notice on the other requiring any dispute to be settled within 30 (thirty) days after such notice and, if not settled to refer it to arbitration in accordance with this contract unless breach of payment occurs by the buyer or failure to post the Bank Guarantee.

14.3 The arbitration will be heard by one or more arbitrators appointed mutual agreement of the parties and in accordance with the French Rules. The seat of arbitration shall be Paris - France. The award shall be enforceable in any country, and a Letter Rogatory shall be deemed accepted without contest or protest.

14.4 Should payment not be received when scheduled under this contract and Seller declare breach of contract then Summary Judgment under the Laws of England shall apply and be deemed automatic for the full contract value and damages claimed therein under UCC law with the authority therein to recover those costs in any country.

XV. CONTRACT TERMINATION

15.1 Either party may terminate the contract should the other side refuse performance of a substantive contractual obligation, but excluding refusal cause by a Force Majeure event.

15.2 Notification of termination is to occur within thirty (30) calendar days following non-performance of contractual obligations.

15.3 No termination is permitted should any of the sides excuse their obligations within the stated thirty (30) days from the notification date.

XVI. ASSIGNMENT

16.1 Any of the sides is allowed to assign the contract or payment instruments in order to secure the performance of its obligations.

16.2 Any assignee or legal successor to either party shall assume all obligations and benefits of the contract

16.3 Assignment is permitted under mandate issued and agreed jointly by both the Seller and the Buyer.

XVII. GENERAL PROVISIONS

17.1 Amendments to the present contract shall be valid only if agreed in writing and signed by duly authorized representatives of both sides.

17.2 Correspondence in the course of the ordinary administration of the contract such as but not limited to notification of anticipated delivery dates might be sent by fax, any electronic means or any form of mail. Notices of suspension, termination or to invoke arbitration shall be sent as an advance fax with an original by courier service and shall be deemed delivered on the evidenced date of the facsimile.

17.3 The language of the contract and the correspondence, notices, invoices, certificates, Bills of Lading shall be English.

17.4 The contract comprises the present documents, Appendices and Addendums.

17.5 This contract supersedes all prior negotiations, representations and agreements and it is the sole agreement between the sides for the sale and purchase of the goods.

17.6 The Buyer acknowledges the Seller is (Canadian for example) Corporation who has collateral business agreements with other countries in the performance of this contract including, the quantity and quality of the rate of delivery of goods, the shipment methods deployed in the performance of the contract, the financial exchange of the terms within the contract and subject to the laws of those countries at all times.

XIII. EFFECTIVE DATE

18.1 This contract shall come into effect when the Buyer and Seller have both initialed and signed the present document and its appendices.

XIX. CONFIDENTIALITY AGREEMENT

19.1 Seller, his Mandate and Buyer and his mandate shall treat information provided by the other party on a strictly private and confidential basis. Seller and Buyer shall take all necessary steps to prevent the others confidential information from being misused or

disclosed or made public to any third party except as needed to successfully complete the Contract or to avoid conflicting claims (and except as may be required in accordance with the applicable law).

19.2 Both Seller and Buyer shall not use the confidential information provided the Seller in such a way as to:

- (a) Circumvent the Seller or his mandate in the commercial dealings with any and all suppliers under the contract, or
- (b) Knowingly do anything to cause the Seller or his Mandate to lose any fees or commissions that are due or may become due under the Seller agreement with the suppliers under the Contract, if any, or
- (c) Do anything to circumvent the Seller or his Mandate in such a way as to put Seller or Mandate at a commercial disadvantage with the suppliers or countries under this Contract.

19.3 The Seller his Mandate and the Buyer and his mandate shall keep each other fully informed about the progress of all current and future contract negotiations and about the performance of the contract.

19.4 The obligation of confidentiality of the Sellers, his Mandate and Buyer shall remain in force for a period of 5 (five) years from the date hereof.

19.5 Any breach of these provisions will entail payment of damages to the other party.

XX. NON-CIRCUMVENTION AGREEMENT

20.1 The Parties shall not in any manner whatsoever solicit nor accept business from sources or their affiliates that are made available by the other party to this agreement, at any time, without the prior written permission of the Party which made the source available.

20.2 The Parties shall maintain complete confidentiality regarding each others business sources or their identities and shall disclose such only to named Parties pursuant to express written permission of the Party that made the source available.

20.3 The Parties shall not in any way whatsoever circumvent or attempt to circumvent each other or any Party involved in any of the transactions the Parties are desiring, entering and pursuing into and to the best of their ability and assure each other that the original transaction codes established will not be altered or changed.

20.4 The parties recognize the contract to be an exclusive and valuable contract of the respective Party and they shall not enter into direct negotiations with such contracts revealed by the other party.

20.5 Neither Party shall avoid payment of due fees, commissions and other remuneration in any way whatsoever.

20.6 In the event of circumvention by any party whether directly or indirectly, the circumvented Party shall be entitled to legal monetary penalty as damages, equal to the maximum amount it should make from such transaction and any and all expenses including but not limited to legal fees that would be involved in the recovery of said damages. The circumventing Party renounces to any right that he may have to claim a reduction of this amount.

20.7 All considerations, benefits and commissions received as a result of the contraction of the Parties relating to any of the transactions will be allocated as mutually agreed to.

20.8 The Buyer irrevocably binds itself to provide any and all documentation requested by the Seller as stated herein, immediately and without delay, in connection with the sale/purchase of the aforementioned goods

20.9 The Seller irrevocably binds itself to provide any and all documentation requested by the Buyer as stated herein, immediately and without delay, in connection with the sale/purchase of the aforementioned goods.

The ICC 1993 revision, publication 500 shall apply to this contract as well as INCOTERMS-2000 as published by the International Chamber of Commerce.

APPENDIX No. 1

PROCEDURE AND TERMS.

The buyer sends an Irrevocable Corporate Purchase Order (ICPO) including bank details.

The seller issues a draft contract to the buyer and his mandate

Once both Seller and Buyer agree the draft contract, they respective signatures and seals make the draft contract a final contract accepted in electronic form.

Both Seller and Buyer lodge 1 final original contract in their respective bank.

Banking communication can begin:

Within 3 banking days from the receipt of the final original contract, the buyer instructs his banker to issue to the seller's bank a RWA letter as per Appendix 5.

Within 3 banking days from the receipt of the RWA letter from the buyer's bank, the seller's bank issues the Proof of Product under the form of Swift MT799 to the buyer's bank.

Within 3 banking days from the receipt of the Proof of Product, the buyer's bank issues to the seller(s) bank the payment instrument as stated in clause VII Payment terms and conditions and in the wording stated in Appendix 6.

Within 3 banking days from the receipt and satisfactory verifying of the payment instrument, the seller's bank issues to the buyer's bank after the 2% Performance Bond under the form of a conditional Revolving Letter of credit.

Shipments commence within thirty (30) to forty-five (45) days from date of seller's receipt of the acceptable operative payment instrument.

In the case of Buyer fails to issue the payment instruments within 5 banking days from the signing of the final original contract, the seller has the right to cancel the contract and ask for penalties equal to 2 % of the total value of the contract.

In the case of Seller fails to provide the Buyer with the Proof of Product or with the 2% Performance Bond, the buyer has the right to cancel the contract and ask for penalties equal to 2% of the total value of the contract which 10% of its value should be paid to his mandate .

APPENDIX No. 2

SPECIFICATIONS

Product: Ordinary Portland Cement

Grade: 42,5 N

Type: Construction

Origin:

Norms: ASTM C-150 or BS 12/1996

Packing:

Chemical analysis

Silicon dioxide (sio ₂)	20,5%-22,0% minimum
Aluminium oxide(al ₂ o ₃)	4,3%- 6,0% maximum
Iron oxide(fe ₂ o ₃)	3,5%- 6,0% maximum

Calcium oxide(cao)	61,0%- 66,0 maximum
Magnesium oxide(mgo)	1,6%- 6,0% maximum
Sulfur trioxide(so3)	1,9 -3,0% maximum
Loss on ignition	1.2%- 3,0% maximum
Insoluble residue	0.05%- 0.75% maximum
Alkalies as na2o	0,45% <0,60%
Tricalcium silicate(c3s)	65,5% 63 to 68%
Tricalcium aluminate(c3a)	5,1% <8,0% 8,0% maximum

Physical analysis

Blaine surface, m2/kg	380 370to380
Vicat set, minutes	Initial 115 not less than 45 not more than 375 final 235
Air content	7,7% 12% maximum
Autoclave expansion	0,02% 0,80% minimum
Compressive strenght, p. S. I.(mpa)	1 day 2430(16,8) >2100
	3 days 3980(27,4) >3500 12,0 mpa minimum
	7days 4950(34,1) >4750 19,0 mpa minimum
	28days 6370(43,9) >6300
Flow 111	>105
False set	87 >80

**APPENDIX No. 3
DELIVERY SCHEDULE**

The shipments of goods in MTW with five percent tolerance (+/-5%) as per specification under Appendix No.2 of this contract will be made from any port as designated by the seller as follows:

Number of 12.500 MT Shipment	APPROX. SAILING DATE (MONTH)	QUANTITY of SHIPMENT	PACKING	DESTINATION
.. shipments	.. months		

		MTW		
--	--	-----	--	--

1. Delivery:

Delivery of the goods will commence no later than 30 days after the acceptable operative payment instrument is received at the Seller's bank.

2. Transport:

All supervision and fees or levies at the port of loading are for the Seller's account.

Vessel must be classified as 100-A-1 in the Lloyd's Register or be of an equivalent classification and must not be older than twenty (20) years.

Vessel should be certified cargo hold cleanliness/suitable to load.

Not later than seventy two (72) hours from the completion of loading, the Seller's agent shall telex, fax or cable the Buyer and inform him of the vessel's sailing date and the expected time of arrival at the port of destination. Seller shall also inform the Buyer of the vessel's name, vessel's capacity, number of hatches, number of cargo and particulars of the vessel's readiness to effect operations through all hatches and at completion of loading the quantity loaded per chamber and the quantity shipped.

3. Vessel Discharge:

The vessel's Master is to advise the Buyer's agent at port of discharge the vessel's name, date of arrival, vessel capacity, number of hatches / number of cargo chambers, quantity loaded per cargo chamber and the particulars of the vessel's readiness to effect cargo operations through all hatches.

The vessel's Master shall give twenty (20) days and seven (7) days provisional notice and 72, 63 and 21 hours final notice of the vessel's estimated time of arrival at port of destination to the Buyer's agent at the port of discharge. Such notices shall be effected during normal business hours and whether in berth or not.

Lay time shall commence from 1.00 PM if vessel's notice of readiness to discharge is given prior to noon and from 8.00 AM of the next working day if notice is given after noon. If the port is congested, then lay time is to commence twenty-four (24) hours after notice of readiness is given. The Buyer is responsible for the product discharge.

The average discharge rate shall be at least 1,500 MT for bagged product or 5,000 MT for bulk product per weather working day of twenty-four (24) hours. If the port of discharge has a lower average discharge, the discharge rate will be adjusted according to the port's capacity. The times from 5.00 PM on Saturday to 08.00 AM on Monday and from 5.00 PM on the day proceeding to 08.00 AM on the day succeeding any holidays are excluded even if used.

Should the vessel be discharged at the rate less than the average, the Buyer shall pay to Seller demurrage at a rate established by that particular port per running day and prorated share for any portion of any running day.

It is agreed that demurrage be settled by the vessel's Master and Buyer's shipping agent within five (5) days from the receipt of the vessel Master's Invoice.

All taxes or levies imposed by the country of destination, having any effect on this contract are for Buyer's account and his sole responsibility. All taxes or levies and port dues imposed by the country of origin, having any effect on this contract are for the Seller's account and his sole responsibility.

Should the vessel be required to shift from one berth for another port of discharge, then the time used shifting shall be for the Buyer's account. In the event lighter age is required at the port of discharge, the said expenses are for the Buyer's account.

The Buyer is authorized to claim on the Seller's insurance policy in the event of non-delivery and the Seller agrees to support the Buyer's claim by providing all documents required for the processing of the said claim, as appropriate.

INSURANCE

Insurance is to be in accordance with ICC rules, and the terms and conditions of this contract. Insurance is for the Seller's account and is his sole responsibility.

Insurance is to cover 110% of the value of the goods and should be payable to the order of the Buyer.

Insurance of the goods for voyage is the Seller's sole responsibility.

Insurance must include non-delivery of the goods.

**APPENDIX No.4
BANKING INFORMATION**

BUYER
BANK
ADDRESS
CITY
COUNTRY
ACCOUNT NAME
ACCOUNT NUMBER
SWIFT
BANK OFFICER
TEL.

Confirming Buyer Bank Name (if need):

BANK
ADDRESS
COUNTRY
SWIFT
BANK OFFICER
TEL.

SELLER
BANK NAME ADDRESS
CITY COUNTRY
SWIFT CODE
ACCOUNT NAME
ACCOUNT NUMBER IBAN
BANK OFFICER

ALTERNATE CORPORATE BANK ACCOUNTS – Due to the different banking regulations and practices around the world, various banking instruments are accepted by some banks in some countries and not accepted by others. Depending upon the financial instrument finally issued by the Buyer to the Seller, in order to facilitate the transaction, it may be necessary for the Seller to use a bank other than that originally designated. Direct contact with any bank designated by the Seller without first gaining written permission from will not be permitted and will render this contract null and void.

APPENDIX No 5

Wording of RWA letter

ON BUYERS BANK LETTERHEAD

NN

Address :

E mail :

Addressed to :

Subject Letter of Readiness related toclient name

We,(Buyer's bank name)..... herewith confirm with full bank responsibility, that we are Ready, Willing and Able to issue in favor of(Seller's name)..... one Irrevocable, Transferable, Divisible, Automatically Revolving, Unrestricted, Unencumbered, Letter of credit as per text attached herewith and in the amount of USD XXXXX (million Hundred and XX Thousand United States Dollars) (+/- 5%) covering the 12,500 MT (+/- 5%) value of Cement automatically revolving X (X) times till the full contractual quantity delivered.

Also we herewith confirm this Irrevocable, Transferable, Divisible, Automatically Revolving, Unrestricted, Unencumbered, Letter of credit will be issued not later than 3 (three) banking days upon receipt of the Certificate of Proof of Product from the Seller's bank for the contracted volume of /MT Cement as per Contract Signed and exchanged Under Ref. Number Dated X 2008.
..... 2008

Official Stamp of the Bank

Seal and Signature Seal and Signature

Bank Officer 1 gar* Officer 2

APPENDIX No 6

Wording of payment instrument

LOCALSWIFTACKS -

-----Instance Type of Transmission-----

Notification (Transmission) of Original sent to SWIFT (ack)

Network Delivery Status : Network Ack
Priority/Delivery : Normal / Deliv Notif
Message Input Reference :

-----Message header-----

Swift Input FIN 700 Issue of a Documentary Credit

Sender:
.....

Receiver:
.....
.....

-----Message Text-----

: 27 : Sequence of total
: :
: 401 : Form of Documentary Credit
: : Irrevocable, Transferable, And Automatically Revolving
: 20 : Documentary Credit Number
: :
: 31C : Date of Issue
: :
: 31D : Date and Place of Expiry
: : 24 + 2 months from the date of issuance
: 50 : Applicant
: :
: :
: :
: 59 : Beneficiary - Name & Address
: :
: :
: :
: 32B : Currency Code, Amount
: : Currency: US\$ (US Dollar)

: : Amount: US\$ X,XXX,XXX
: 39A : Pct or AMT tolerance
: : 05 / 05
: 42A : Available With / By - BIC
: :
: :
: :
: 42C : Drafts
: : Sight
: 43P : Partial Shipments
: : Allowed
: 44A : Transshipment
: : Not Allowed
: 44A : On Board / Disp / Taking Charge
: : XXXX Country of Origin
: 44B : For Transportation to ...
: :
: 44C : Latest date of Shipment
: : 24 + 2 months from the date of issuance
: 45A : Description of Goods
: : Ordinary Portland Cement ASTM C-150 norms or BS 196/97 norms
: : **,000 Metric Tons (+/- 5%)
: 46A : Documents Required
: : 1. Signed commercial invoice issued by the beneficiary in one original plus 3
copies
: : indicating LC number, name of the issuing bank and full details of the goods
shipped.
: :
: : 2. Packing list in one original and 3 copies
: : 3. Full set of clean on board marine Bills of Lading made out to the order of the
shipper,
: : endorsed to the order of(bank name and address).....
: : 4. Insurance policy or certificate for 110 % of invoice value endorsed in blank
and covering
: : all risks.
: : 5. Certificate of origin
: : 6. Certificate of quantity and quantity from SGS or independent similar
inspectors
: 47A : Additional conditions
: : 1. Drawing under this credit must be for 100 % of the invoice value
: : 2. All bank charges other than those of(buyer's bank).....,
are for beneficiary's
: : account and will not be born by the issuing bank and should be collected from
the
: : beneficiary at time service is rendered by the advising / remitting bank
: : 3. Discrepant documents will be subject to a discrepancy handling fee of
US\$..... which
: : will be for beneficiary's account

: : 4. Documents will be presented within 21 days after the Bill of Lading date, but within the
: : validity of the LC
: : 5. All documents must be issued en the English language
: : 6. This Letter of Credit is transferable in whole or part, provided this original credit presented : : to, for endorsement of transfer, under advise to us and their transfer
: : commission is paid. Transfer to designated foreign nationals and / or specially designated
: : nationals are not permitted P.S. being contrary to U.S. Treasury Department, foreign assets
: : control regulations. The transferring bank must inform us if the first beneficiary retains their
: : rights to substitute their draft and invoices with those of the second beneficiary one mailing
: : by courier by seller
: : 7. This Letter of Credit will be revolving for the full value till the complete deliveries of the full
: : quantity of the goods.
: : 8. The charter-party Bill of Lading and 3rd party documents are acceptable
: : 9. No goods value nor unit price nor price basis to appear on any documents except on
: : commercial invoice
: : 10. No documentary Credit number to be shown on any documents unless otherwise
: : specified
: : 11. TT reimbursement allowed
: 48 : Period of presentation
: : Documents must be presented to pay at buyer bank within 21 days after issuance of
: : transport documents however within the validity date of the LC
: 49 : Confirmation Instructions
: : Without
: 53A : Reimbursement bank
: :
: 78 : Instructions to the paying / accepting / negotiating bank
: : Upon receipt of your authenticated swift confirming that all terms and conditions of
: : documentary credit are complied with and that all documents have been forwarded
: : to us - -
: : you are authorized to reimburse yourselves on our correspondent bank in with
: : a referred value of 3 days
: 57A : Advise through bank – BIC
: :
: :
: :

: 72 : Sender to receiver information
: : KINDLY CONFIRM HAVING NOTIFIED AND CONFIRMED THE
IRREVOCABLE FULLY-FUNDED : : MONTHLY, CONFIRMED,
TRANSFERABLE, DIVISIBLE, AUTO REVOLVING LETTER OF
: : CREDIT TO BENEFICIARY BY RETURN SWIFT QUOTING YOUR
REFERENCE

SIGNATURE PAGE

BY SIGNING ON THE SIGNATURE PAGE THE PARTIES HEREBY ENTER INTO THIS AGREEMENT IN KNOWLEDGE AND ACCEPTANCE OF ALL ABOVE CLAUSES AND APPENDIX.

The First Party: (Buyer)
Authorized signatory for and on behalf of

Signature:

Company stamp

Buyer's Mandate

The Second Party: (Seller.

Authorized signatory for and on behalf of
Passport

Date:

Appendix 2.

PRIVATE AND CONFIDENTIAL

SALE AND PURCHASE CONTRACT No

Prague,, 20..

.....,
a corporation organized and existing under the ... law,
with its head office located at : Praha .., Czech Republic,
represented by its general Director
hereinafter referred to as the **Seller**, on one side

and

a corporation organized and existing under the ... law,
with its head office located at : Praha .., Czech Republic,
represented by its general Director
hereinafter referred to as the **Buyer**, on the other side

both hereinafter referred as **Parties**, concluded this **Contract** to the effect as below :

1. Subject of the Contract

1.1. The Seller sells and the Buyer buys the **Goods**.

1.2. The quantity will be kg (..... kilograms)

2. Price

2.1. The price of the merchandise, agreed by the Parties, is USD/gram (.... United States Dollars per gram) net.

2.2. The total value of the contract is USD (..... United States Dollars).

2.3. The total contractual value is fixed and will not be changed.

3. Delivery Conditions

- 3.1. The goods will be delivered on “CIP” parity (Carriage and Insurance) to the agreed Custom Free Zone.
- 3.2. The Buyer is obliged to grant all the relevant and required (by law or other authorities restrictions or requirement) licenses and also to complete all importing procedures on his costs and his behalf. The Seller is not responsible for the custom, duties, taxes etc.out of the country of destination.
- 3.3. The Seller is obliged to grant all the requested licenses, permissions, certification requested, required or prescribed by the laws and authorities requirements in the country of origin and requested by the transporting organization and other legal valid norms to be presented. All the export permissions and licenses related to the export of the goods from the country of origin must be fulfilled by the Seller and in any case of request presented in the relevant form to the Buyer before the export procedures will start.

4.Payment Conditions

- 4.1. The Seller shall facilitate an Escrow Account with bank under or in other bank institution for this particular transaction who will act as a Fiduciary based on the terms of the contract and the signed contract will be lodged with the bank.
- 4.2. The Buyer shall transfer the funds to the Special Escrow Account, within 3 banking days after receipt of the Notice of Readiness from the Seller stating that the goods is ready for handing over to the Buyer accompanying with the confirming documentation.
- 4.3. Upon delivery of the said documentation in the contract, the Seller shall submit the documentation to the Bank for release of funds from the Escrow Account.

5. Negotiations Documents

- 5.1. The following documents will complete the contract :
 - commercial invoice showing the contractual actual price as per delivered quantity of the goods
 - certificate of quality issued by the Institut (1 original and 3 copies),
 - certificate of origin
 - certificate of deposit
- 5.2. The parties can agree to add further documents in order to meet mutual or governmental requirements.

6.Packing and marking of the Goods

- 6.1. The shall be packed in a box to ensure full safety and security of the transportation for long distances by all means of transport with several transshipments during transportation provided the Goods are duly handled. Each box shall have seal of Testing Analytical Centre and Seller's seal and have the following marking in English: Contract No, Denomination of the Goods, Total gross weight of the Goods in grams, Consignor, and Consignee.
- 6.2. Packing list shall be enclosed in the box, containing the following information :

7. Quality of the Goods

- 7.1. The quality of the goods has to be in accordance to this agreement, determinate in the certificate of quality, which is an integral part of this agreement.

8. Confidentiality Clause

- 8.1. The Parties will keep all information and documents relating to discussion (orally or written), in consideration of the matter of contract and all related talks, cooperations and transactions strictly confidential. The Parties will keep all information and documents, delivered by one Party to the other strictly confidential and subject to the requirements set forth in this Agreement.
- 8.2. Excepting cases where the law sets forth an express duty to communicate information, each of the Parties, throughout the entire duration of this Agreement and for a period of two years following the termination of the same, will in any case maintain the confidentiality of all of the data and information of the other Party or in any case related to the implementation of this Agreement, if that data or information is expressly identified and labeled as "confidential" or "reserved" or is of a nature that is intrinsically confidential. Each of the Parties involved accepts not to reveal in any way any of the actions, data or information, except having obtained the previous written consent of unauthorized use of confidential information and agrees to give access only to authorized individual that needs that data or information for the development of activities and/or in order to satisfy obligations arising out of the present Agreement. In any case such confidential information will be provided on the ground of Transfer-Acceptance Deed, signed by each of the Party, clearly identifying documents handed over or information transmitted.
- 8.3. All confidential data and information remain the exclusive property of the authorizing Party, and that confidential data and information, including all copies or reproductions of the same, will be returned to the other Party at the expiration of this Agreement, or, should the authorising Party so request, be destroyed.
- 8.4. Furthermore it can be requested, to agree separately and enlarged level of confidentiality in order to meet the requirements of state secrets.

9. Force Majeure

No Party shall be liable for any failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war,

civil unrest, flood, earthquake, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

10. Other Conditions

10.1. All and any amendments, additions and appendices to this Contract, when drawn up in the written form and signed by duly authorized representatives of the Parties, shall be deemed as its integral parts.

10.2. This Contract has been executed and signed in English and made in 2 (two) original copies, one for each of the Parties.

11. Legal Addresses and Signatures of the Parties

Seller :

Buyer :