

# Practical Law Canada – Transcript

## **COMMERCIAL TRANSACTIONS: DRAFTING A SALE OF GOODS AGREEMENT**

Welcome to the Practical Law Canada tutorial on drafting a Sale of Goods Agreement. The purpose of this tutorial is to show you how you can use Practical Law Canada resources to help you complete this task.

When you access our site you can see a list of all Practical Law Canada's practice areas. Practical Law Canada covers a wide variety of subjects all of which can be accessed from this page.

Practical Law was developed to make practicing law easier and more efficient. One of the ways we do this is by creating continuously maintained know-how documents.

One of the hallmarks of Practical Law is that we have in-house lawyers draft and update the vast majority of our resources. This is important because:

Our lawyers were specifically chosen for their substantive knowledge and excellent practice standards. We know that quality documents have been drafted at the outset.

By using in-house lawyers, we can also ensure that our documents continuously reflect current law and market practice. The majority of our resources are never stale. This means that:

- You can directly access the Practical Law site, pull a precedent and start customizing it to fit your client's wishes. There is no need to verify that the law or market practice is current.

- You can use Practical Law as your key resource to update the majority of your commercial precedents. Teams of lawyers, law students or knowledge managers spending hours conducting legal research (looking through multiple texts, bulletins, databases, or articles) are no longer required to update their knowledge management databank or their precedent database.

As drafting a sale of goods agreement is a commercial transactions matter, let's start by selecting the **Commercial Transactions** practice area, and then selecting the **Supply of Goods and Services** subtopic.

By selecting the subtopic you can see a list of all the supply of goods and services resources. We have organized our resources this way to make them easy to browse. The resources fall into various categories.

These categories include Practice Notes, which are straightforward how to guides. Practice Notes help you get up to speed quickly and include broad overviews as well as detailed notes on particular issues. Practice Notes provide clear explanations of current law and practice, ranging from basic overviews to detailed analysis for specialists.

We also have Standard Documents and Standard Clauses, including template agreements and clauses. All Standard Documents and Standard Clauses contain drafting notes to explain legal, drafting and negotiating points. The drafting notes are great time savers and can be particularly helpful at crunch time.

Next we have checklists, which include concise list of points, timetables and flowcharts you can consult to ensure you have thought of everything. Checklists are helpful because:

1. They help mitigate risk by highlighting pertinent issues and requirements.
2. They serve as a quick reference tool when a client calls out of the blue about a particular matter. Helps you give informed advice without having to double check the primary law.
3. They help keep you organized, serving as a reminder of issues to be considered and tasks to be completed.
4. They can be used to explain important processes to a client.

We also have Toolkits, which aggregate most of the available resources on a topic. They are often the most valuable to a lawyer who is new to an area of law and wants to study it.

We also have updates. Our lawyer/editors are constantly researching new sources and will promptly alert you to important developments. Our core resources are maintained by our lawyer/editors so you do not have to worry about whether or not the resource you are reading is up to date and reflects changes in the law.

To illustrate how you can use our Commercial Transactions module to your advantage, we thought it might be useful to walk you through a hypothetical scenario.

You are an associate practicing commercial law. You have been asked by a senior partner to draft all the necessary documentation for a supply of goods and services transaction for one of the firm's major clients.

They are an established manufacturer and supplier of widgets. You have not had much dealing with the client with respect to their core business.

Your client tells you that, historically, they have done most of their business with customers through purchase orders.

They are now negotiating a deal with a major new customer, who is demanding a formal supply agreement. They need your help in negotiating and documenting the transaction and the senior partner advises you that the matter is urgent.

Before you telephone the client, you open the Commercial Transactions main page. The Commercial Transactions main page reminds you that you should ask the client whether they have a non-disclosure agreement in place with the new customer, to ensure discussions regarding pricing and other confidential business information, remain confidential.

To prepare yourself for the call with the client, you retrieve the Supply of Goods Agreement Checklist to ensure that all aspects of the transaction will be adequately addressed.

You telephone the client and review the checklist with them. For example, you review with the client the structure of the deal, to ensure it is in fact a supply agreement and not a reseller or distribution agreement. If it is a reseller or distribution agreement, you switch to the applicable checklist.

You then discuss whether the products being sold will be customized for the client, potentially requiring a manufacturing and supply agreement. Again, if it is more appropriate to frame it as a manufacturing and supply arrangement, you switch to that checklist.

Having confirmed it is in fact a traditional supply agreement, you use the Sale of Goods Agreement Checklist to review key aspects of the proposed transaction, providing you with a basis for drafting the agreement.

Based on the information provided by your client, you have determined that the proposed transaction is an ongoing supply agreement.

The client advises you that they do not yet have a Confidentiality and Non-Disclosure Agreement in place. Before any information is exchanged between the client and its customer, you recommend entering into a Confidentiality and Non-Disclosure Agreement.

Since the parties will both be sharing confidential information with each other, you suggest that a Mutual Confidentiality and Non-Disclosure Agreement would be ideal. Given the size of the transaction and important confidential information that will be exchanged, you recommend the Long-form, Mutual Confidentiality and Non-Disclosure Agreement. The long form agreement provides certain additional provisions that you think will be important to your client such as a non-solicitation covenant.

Next, the client would like to proceed with a letter of intent prior to undertaking the expense of having a formal sale of goods agreement drafted. You find a Letter of Intent: Commercial Transactions and begin to customize it.

Having not drafted a letter of intent in some time, you decide to refresh your knowledge about term sheets referencing the Practice Note, Term Sheets.

The client and his customer execute the confidentiality and non-disclosure agreement and term sheet you have drafted and are now ready to enter into a formal sale of goods agreement to conclude the transaction.

You know that Practical Law provides several variations of a Sale of Goods Agreement – Pro-Seller and Pro-Buyer versions, both in long-form and short-form. All Sale of Goods Agreements are applicable in almost every province or territory in Canada. For sample cross-provincial provisions, see *Sale of Goods Agreement (Pro-Seller Long Form)* Article 6, Shipment and Delivery Note: Delivery.

Based on the size and importance of the deal, you believe a long-form agreement would be preferable. Because you are representing the seller, let's work with this pro-seller long-form agreement.

You review the document online, examining the drafting notes on a few key provisions. In particular, you review the pro-seller shipment and delivery provisions contained at section 6 of the Agreement and are satisfied that they are sufficiently favourable to the client and comply with the terms of the Letter of Intent.

As mentioned earlier, Standard Documents like the Sale of Goods Agreement (Pro-Seller, Long-form) are forms or templates of agreements with drafting notes that contain drafting or negotiating points. You can use the Standard Document in two ways.

You can print it out with all the drafting notes to use as a guide while you draft the agreement from your firm's template, or you can download and modify the Practical Law Canada Standard Document to suit your project.

Every Standard Document is downloadable into Word. The Word version is formatted normally and does not contain any drafting notes. You can save the Word version directly to your system.

Practical Law Canada's Commercial Transactions service also has a large library of standard clauses so that if the client requires further customizations, you can select from the list of general contract clauses as needed.

You are now close to having the sale of goods agreement ready for the client. However, the client has raised a few further issues that will require special attention. You are able to draw upon the large bank of general contract clauses to find clauses that address these further issues.

The first unique issue is that the client's buyer would like an early payment discount. You search the Commercial Transactions general contract clauses and find one for early payment discount and insert that into the master sale of goods agreement.

Another issue raised by the client is that it would like audit rights vis a vis its customer so you use the general contract clause, and insert that into the Sale of Goods Agreement.

You have now completed your drafting of the Sale of Goods Agreement.

Now that the Sale of Goods Agreement is complete, you decide to brush up on your knowledge about acceptance and delivery of goods as these issues may arise during the actual execution of the transaction.

You reference the Practice Notes on Acceptance of Goods. You then wish to read the Practice Note on Delivery of Goods, so you search the term "Delivery of Goods" using your keyword search, and select that practice note from the results list.

The client also mentioned in passing that it would like credit support from the customer.

You review the Practice Note on Credit Support in Sale of Goods Transactions, and make a note to follow up with the client regarding the need for a letter of credit or a parent guarantee.

To get a better idea of what the various types of credit support exist, you have a look at the Comparing Types of Credit Supports in Sale of Goods Transactions Checklist.

Using the checklist, you determine that a Commercial Letter of Credit is ideal for the client's needs. You pull up the Standard Document, Letter of Credit: Commercial.

Because of the size and nature of the proposed agreement, you suspect that the client may require board approval before finalizing the deal.

You read a Practice Note about Board Approval of a Significant Commercial Agreement to brush up on the topic and then you select to the General Contract Clause, Board Resolution Approving a Significant Commercial Agreement.

You are now able to provide the client with a solid first draft of the Sale of Goods Agreement, together with the attendant letter of credit and authorizing board resolution. The client is extremely happy with the thoroughness of your work and the short turn-around time for obtaining it.

We hope that you have found this tutorial helpful. Of course we have resources to assist with many other projects. We encourage you to take a few minutes to search our site and see how practical Practical Law Canada can be to you. Thanks for joining us today.