GENERAL TERMS OF SALE
FOR EXPORTS TO THE USA,
THE WESTERN HEMISPHERE
GENERALLY, AND
WORLDWIDE:

A GUIDE FOR THE FOREIGN (NON-US)
EXPORTER

BY

AARON N. WISE
Attorney at Law, Member of the New York Bar
INDEX

PART I: INTRODUCTORY POINTS

PART II: GTS SPECIALLY PREPARED FOR THE US MARKET

PART III: ONE GTS NOT ONLY FOR US EXPORT SALES BUT ALSO FOR SALES TO CANADA, MEXICO, SOUTH AND CENTRAL AMERICA AND THE CARIBBEAN

PART IV: ONE GTS FOR ALL SALES ANYWHERE IN THE WORLD

PART V: ARE SPECIALLY CREATED GTS SUITABLE FOR “SALES ON CONSIGNMENT”?

PART VI: THE EXPORTER’S INPUT INTO CREATING AND IMPLEMENTING GTS

PART VII: THE GTS DISCUSSED IN THIS GUIDE ARE NOT TOO COMPLICATED, DIFFICULT OR COSTLY FOR YOU, THE EXPORTER, TO HAVE PREPARED AND IMPLEMENT

PART VIII: USING THE SPECIALLY CREATED GTS FOR SALES TO YOUR DISTRIBUTORS

PART IX: GTS FOR US SUBSIDIARIES OR AFFILIATES OF FOREIGN COMPANIES
ABOUT THE AUTHOR

Aaron N. Wise is a partner of the New York City law firm, Gallet Dreyer & Berkey, LLP. Mr. Wise’s areas of expertise include corporate, commercial and contract law, taxation, intellectual property law, and other areas dealt with in this guide. Mr. Wise holds law degrees from Boston College Law School, New York University Law School and the University of Paris Law School (France). He is a frequent speaker inside and outside the USA. Mr. Wise biography is listed in Who’s Who in the World, Who’s Who in America and Who’s Who in American Law. He also practices in the sports law field, both domestically and internationally. Mr. Wise is proficient in German, French, Italian, Spanish, Portuguese, Russian and Japanese, and has a basic working knowledge of several other foreign languages. He is the author of a multivolume work, International Sports Law and Business (The Hague and Cambridge, Massachusetts 1997) and several other publications. He has many years of broad, in-depth experience in representing foreigners in connection with their US and international legal and tax matters.

THE SERVICES OF GALLET DREYER & BERKEY, LLP

Gallet Dreyer & Berkey, LLP (“GDB”) is a law firm based in New York city, offering a full array of legal and tax services. GDB is capable of handling client matters throughout the USA, as well as their international legal and tax matters. Examples of GDB’s fields of expertise include:

- Direct investments in the USA of all kinds, including acquisitions and, mergers, joint ventures, establishing companies and manufacturing facilities;
- Commercial law generally;
- Contracts of all types;
- Intellectual property law;
- Technology transfer and licensing; franchising;
- Real property law;
- Computer law and related contracts;
- Visas and immigration;
- Tax law and planning (US and international);
- Litigation, arbitration and mediation;
- Sports Law (US and international).
PART I. INTRODUCTORY POINTS

What are General Terms of Sale?

General Terms of Sale (which we will hereafter call “GTS”) are pre-printed terms and conditions intended to apply to sales your company makes to its customers. They are often placed on the seller’s order, order acknowledgment and invoice forms. They can also be used free-standing. They are supposed to protect the seller’s interests, but quite often do not do so sufficiently.

They are most often used in connection with the sale of goods, and throughout this Guide we deal with GTS mainly for that specific purpose. However, GTS can also be used in connection with the sale of services, leases of equipment, and licenses of, for example, computer software, but certain of the GTS terms for these operations will be different than GTS prepared for the sale of goods.

When properly drafted and employed, GTS can be extremely valuable in connection with a enterprise’s export sales. Many non-US exporters use GTS. However, their “home country GTS” will usually not come close to protecting their interests in connection with export sales to the US and many other markets.
PART II. GTS SPECIALLY PREPARED FOR THE US MARKET

Importance of US Export Market

For many foreign (non-U.S.) companies, the United States is a very important export market. That market may already produce considerable revenues, or it has the potential to do so.

However, making the sale is not the end of the story. You, the exporter, will want to optimize your chances of, for example:

- getting paid for your goods by the stipulated payment date, without delay;
- being able to collect interest on late payments at an appropriate, commercial rate;
- recovering your collection and litigation or arbitration costs, particularly the fees and disbursements you pay to your lawyer;
- becoming a preferred creditor of the US buyer in the event of its bankruptcy;
- preventing other creditors of your US buyer from seizing and applying your goods (or the price those creditors can get for them) against the debts owed to them by your US buyer;
- limiting or excluding your own potential liability to the US buyer (e.g., for product liability type claims);
- having claims and disputes with all your various buyers located in different parts of the USA resolved in a manner and in one place that is the least costly, the most efficient and the most beneficial to your interests, and that your buyer is likely to accept.

Actually, these points apply not only to exports sales to US buyers, but to sales to all customers wherever located. However, the US is a country where legal claims and counterclaims are frequently made; lawsuits are plentiful; and debtors often get away with not paying their bills or paying them very late; and bankruptcies or bankruptcy reorganizations are commonplace.

GTS for the US market, properly prepared by an experienced US lawyer, and correctly used by the exporter, will often be an extremely potent weapon in terms of attaining those objectives and others.
Credit Risk Insurance for Export Sales

Companies may be able to purchase credit risk insurance to cover some of the risk of non-payment by its customers. Some potential problems with this kind of insurance are:

- not many insurers offer it, particularly for the US market.
- you may not be able to obtain it from those carriers that do offer it, for your particular customers and products.
- the premiums are quite high, particularly for the US market.
- the actual amount of insurance coverage will usually be considerably less than the total sales price; and if the insurer has to undertake collection measures (including litigation) some of those costs may be deducted from the amount payable to the exporter and/or the exporter may have to pay, out-of-pocket, a portion of those costs. Often, the buyer will raise some defense or counterclaim (e.g. some product defect) which can cause problems collecting from the insurer.
- in some cases, the exporter itself may be required under the policy to sue the non-paying customer.
- it typically takes considerable time to receive money from the insurer.

These points---or certain of them---may not apply in all circumstances, and credit risk insurance may be worthwhile for some exporters.

However, with or without such insurance, most exporters can derive substantial advantages from having prepared for them and employing properly, GTS for their exports to the US market------and other foreign markets as well.

Your Present “Home Country GTS” Are Likely To Be Ineffective For Sales to US Customers

A foreign (non-US) company’s GTS will usually be drafted so as to conform to the laws, regulations and customs of that company’s home country----call them “home country GTS”. They will not contain the necessary provisions to give the exporter anywhere near the optimum benefits and protection for sales to US customers; and will typically contain points that are disadvantages for such sales. For example:

- Home country GTS are often written very poorly. Some (where the home country’s language is not English) are bad English translations. Some home country GTS are left in that country’s language, not put in English at all, which puts in to considerable doubt their enforceability in US sales.
• Home country GTS written by non-US lawyers often do not go far enough to protect the exporter in civil law code countries, the drafter tends to rely on the civil and commercial code provisions as written rather than trying to give the exporter greater protection where possible;

• Home country GTS will frequently say that the laws of the home country apply to the GTS and the particular sales transaction, and that a particular court of the home country will be competent---or the only competent court---to decide claims and disputes. Those clauses can be a big problem for the exporter. First, often the “home country court” stipulated in the GTS will not, under home country law, actually have jurisdiction over the foreign (e.g., US) buyer to decide the claim or dispute. Secondly, it will typically be difficult (if not impossible), time consuming and costly to try to enforce the home country judgment against the buyer (e.g., US purchaser).

• Home country GTS will typically not say that the buyer must bear the exporter’s costs of collection and litigation/arbitration, including the exporter’s legal fees. The reason: in many countries, automatically, by law, the losing party in a lawsuit must pay the winning party’s legal fees and costs. This is not so under US law in most instances----unless there is an agreement to that effect between the parties, written in a particular way. that’s where specially prepared GTS for the US market come into play.

• Home country GTS will usually not sufficiently and correctly limit or exclude the export seller’s product warranties, its liability for damages (including particularly damages of the product liability type)----particularly, but not only, in connection with US sales.

• Home country GTS will inevitably not give the exporter “security for payment” of the purchase price when sales are made on credit terms (e.g., payment due in 30 or 60 days). Moreover, under US law and the laws of certain other countries, a clause stating that the exporter retains ownership of the goods sold until receipt of payment of the full purchase price will usually not allow the exporter any priority right to recover possession of the goods vis-à-vis other creditors of the buyer or in case of the buyer’s bankruptcy or bankruptcy reorganization.

• Often, the exporter using home country GTS will not require the buyer to sign and return the exporter’s order or order acknowledgment containing the GTS or some separate document
stating that the buyer agrees to the GTS. Under US law and the laws of many other countries, such signature/return is necessary in order for certain key GTS provisions to be legally binding and enforceable.

**Advantages of GTS Specially Prepared for US Sales**

This writer, in his legal practice, has experienced many instances where the non-US exporter did not use any GTS at all or any other properly prepared “contractual” type document in connection with its US sales; or used home country GTS in connection with them, which were of no practical value and potentially, if not actually, an obstacle.

The usual result was (i) a decision not to sue the US buyer for the moneys owed because a lawsuit in a US court in the buyer’s home US state seemed too costly and difficult; or (ii) an expensive and rather difficult lawsuit in such a court was initiated, which the exporter later regretted.

To repeat, GTS specially prepared for the US market and properly employed offer very distinct advantages to exporters. Here is a non-exhaustive list of provision that such GTS might contain:

- clauses providing for **interest on late payments** at a rather substantial rate. Without such a clause, pre-judgment interest may not be recoverable at all under the laws of some US states; and under those US state laws that permit it, without such a clause only the legal (statutory) rate can be obtained.
- Clauses allowing the exporter to recover its **costs of collection**, **including its attorneys’ fees in connection therewith**. To repeat, under US law, without such a contractual agreement, the seller will quite probably not be legally able to recover these.
- Clauses substantially limiting or excluding warranties on the exporter’s goods and services, and which reduce the exporter’s damage risk (e.g., of the product liability type).
- Clauses giving the exporter a “**security interest**” specified “collateral” of the buyer, where goods are sold on credit terms. A “security interest is like a recorded mortgage but the mortgaged assets (the “collateral”) can be essentially any presently existing or future asset or right of the buyer any type, but excluding those of the “real property” type. The collateral might be, for example, the exporter’s goods themselves, the buyer’s accounts receivable arising from the resale of those goods, and the proceeds thereof received by the buyer.
The collateral can be more extensive, if the buyer agrees. To “perfect” such a security interest against third parties, the seller would complete and file a form in normally one or two registers. This procedure will usually give the exporter a preferred creditor status (priority with the respect to the agreed collateral, to the extent of the debt) vis-à-vis most other of the buyer’s creditors provided no other creditor has an earlier recorded security interest on the same --which would put it in a second preferred creditor status. filings can be checked in advance or at any other time. rule, a clause by which the seller retains ownership until full payment is received is generally not party. The “security interest” is a very commonly used US mechanism to obtain security for payment. Remember: a clause by which You reserve ownership of your goods will normally not be effective against third parties in the USA---the “perfected security interest” the way to achieve that; and 2. no “foreign country” mechanism intended to secure payment and protect your rights to recover your goods from the buyer in case of non-payment will be effective in the USA, even if (theoretically) your GTS or some contract provides for the application of “foreign” (e.g., your home country’s) laws.

- An arbitration clause stating that all claims and disputes will be finally resolved by arbitration in a designated US city under the International Arbitration Rules of the American Arbitration Association (“AAA”). Arbitration is typically less expensive and faster than a lawsuit in a US court--particularly if the arbitration clause is properly drafted. One point would be, in the GTS, limit severely the amount of “pre-hearing discovery” of evidence that the parties’ lawyers could implement in the arbitration----as they can in a lawsuit in a US state or federal court. Another major advantage: Assuming the exporter makes sales to US customers in various US states, then absent a GTS clause centering arbitration in one US city reasonably convenient for the exporter, suits might have to be brought in courts located in several different US states (e.g., to recover the purchase price). If, for example, the GTS stated that arbitration will take place in New York City (the AAA’s headquarters), then New York state law could be made applicable, even if both parties have no other connection with that State. New York State law in the pertinent areas is well developed and not unfavorable to sellers of goods. Still another advantage: if a third party sues your buyer for injuries
sustained as a result of your product (product liability claim), the
GTS could state that any claims your buyer wishes to make to be
indemnified by you, the exporter, for any damages that injured
party is found to sustain, and costs incurred by the exporter in
connection with that lawsuit, must be brought in the arbitration.
Most US buyers will not agree to arbitrate disputes in the exporter’s
home country.

These and other clauses must be drafted properly, in accordance with what the exporter
desires and the applicable law. Some of the GTS clauses will have to be made more conspicuous
than others, and a separate notice placed on the front of the exporter’s order and/or order
confirmation form that particular types of clauses are contained in the GTS.

While there is nothing wrong with the exporter placing its GTS on the back of its
customer invoices, it simply is not enough, legally. The GTS should be on the back of the
exporter’s order and/or order acknowledgment form, which the buyer should sign in the
appropriate place and send (e.g., fax) back to the exporter-----as a condition to the exporter
accepting the order. Without the buyer’s written agreement to the GTS, most key GTS clauses
will not be binding and enforceable under American law.

To repeat, certain key clauses that GTS for the US market will contain will not be
legally valid and enforceable unless the buyer accepts them in writing.

Actually, the same applies for key provisions GTS provisions that the seller will want
under the laws of most other countries as well. The domestic laws of many countries will
require that. But in addition, there is an international convention that some 70 countries (most
if not all of your trading partners) have adopted that will apply to international sales of goods
unless the parties, in their contracts (or GTS) state otherwise. It is the United Nations
convention on the international sale of goods. It contains a section stating, in essence, that any
important, special clauses that a party (e.g., the seller) wants to impose on the buyer must be
specifically agreed to the buyer, in order to be part of the contract. The only way to prove the
buyer’s specific agreement is to get him to sign a document, or the GTS themselves, stating
that it accepts the seller’s GTS in toto. That Convention section appears to have been
borrowed from US sales law—we have a very similar provision in our “Uniform Commercial
Code.”

So, in short, the buyer will have to sign and return to you your GTS. If properly
drafted, the first GTS agreed to in writing by your buyer can apply to all sales to that buyer
thereafter----and possibly, even to previous sales (e.g., where the buyer has not paid yet paid
you).
As mentioned later, some countries’ laws require the buyer to sign the same GTS twice: once to accept the entire GTS; and once again, to the effect that the buyer accepts particular, specified GTS clauses that are viewed as onerous or particularly restrictive for the buyer.

PART III. ONE GTS NOT ONLY FOR US EXPORT SALES BUT ALSO FOR SALES TO CANADA, MEXICO, SOUTH AND CENTRAL AMERICA AND THE CARIBBEAN

Exporters may wish to have one GTS that can be used for export sales not only to the US customers, but also to customers in Canada, Mexico, South and Central America and the Caribbean (which we will call, for short, “OWHC”, meaning “Other Western Hemisphere Countries”). By making certain adaptations of GTS for US customers, it is certainly possible to create GTS protecting the seller’s interests for use with customers in the USA and these OWHC.

The same arbitration clause (AAA’s International Arbitration Rules with arbitration to be held in a US city, like New York City) and applicable law clause (law of a US state, like New York State) can be used for sales to the OWHC. This technique would allow the exporter to centralize in one place, under one procedure, all of its export sales to the US and OWHC. Absent that technique, the exporter would have to face the unpleasant and impractical prospect of suing buyers (e.g., for non-payment) in a plethora of different US states, Canadian provinces, and foreign countries. It would also permit the exporter to defend in one place, all claims of the buyer relating to the seller’s goods (e.g., for product liability damages where an injured person sues the buyer, but not the exporter, and the buyer is seeking indemnification against the exporter). The GTS might say, as a fallback, that if any country among the OWHC to which the exporter sells is not a party, along with the USA, to a treaty facility the execution and enforcement of commercial arbitration awards rendered in the USA, then the exporter reserves the right to sue the buyer in his own country. Most of the important countries among the OWHC are bound by such a treaty. Most, if not all, OWHC countries’ laws allow person (e.g., company) from that company to freely agree to the law that will govern its contracts.

If the exporter has its home base in one of the OWHC, it might prefer not to have arbitration against OWHC customers held in a US city but elsewhere, perhaps in its own country---and have US arbitration just against US buyers. Obviously, in this short guide, all possible variations and every individual situation cannot be discussed.

Under the laws of OWHC where English is not the national language, nationals and residents (including companies) of those countries can validly sign contracts, like GTS, in English. Those countries will typically require a certified translation in that language if and when, for example, the document will be used in official proceedings, such before a court of that country. It is possible that buyers in such countries will refuse to sign and return GTS in English, in which case the exporter might have to have a GTS version in that foreign language (e.g., Spanish or Portuguese).
The provisions of the GTS for US customers dealing with the “security interest” (see Part II above) will not apply in OWHC countries other than all or most of Canada (which has a mechanism quite similar to the US “security interest) only the USA has that mechanism for securing debts. For those OWHC countries, the GTS discussed in this section will have to have some special provisions dealing with security for payment.

If one or more particular OWHC countries are important markets for the exporter, this writer would suggest that a draft of the GTS be sent to a competent lawyer each of those countries for confirmation that it contains nothing contrary to that country’s laws, and possibly other suggested GTS modifications, additions or deletions.

As with the GTS for the USA, the buyer wherever located OWHC should accept in writing your GTS. As mentioned, there is a provision in the UN convention on the international sales of goods that, in effect, requires that for most provisions in GTS that are “special”, which means, in essence, those that you, the seller will have inserted to protect your interest and reduce your risks, plus certain others.

PART IV. ONE GTS FOR ALL SALES ANYWHERE IN THE WORLD

Introduction

Recently, after preparing GTS for the US market for certain European clients, they asked: Could you create for us one GTS that we could use for our worldwide sales----sales to customers anywhere in the world? My answer was “yes”, but that it would take some degree of legal research and time to create a good finished product. In each case, we received the “green light” from the client to proceed and did so.

Some Particular Points Regarding GTS for Worldwide Use (“Worldwide GTS”)

For example, if the exporter is located in Europe, then the Worldwide GTS might state:

- For sales to US customers and OWHC customers, the points discussed above would continue to apply, including regarding arbitration and applicable law (arbitration under the AAA’s International Arbitration Rules, in a designed US city, with e.g., New York substantive law).
- For sales by the (European) exporter to any other parts of the world, the Worldwide GTS might state that all claims and disputes will be resolved by arbitration in a city in the exporter’s home country, and with substantive laws of the exporter’s home country applying to such sales.
and to the provisions of the Worldwide GTS applicable to such sales. The arbitration would still be pursuant to the AAA’s International Arbitration Rules. The AAA has access to potential arbitrators residing in most countries, including in the exporter’s country, who are fluent both in English and that country’s language. Some are lawyers, some are business people, some experts in other fields. The AAA has no difficulty in administering international arbitrations of this type.

Worldwide GTS will also deal with various other points, some of which have been mentioned in the Part III but would require adaptation to the fact the GTS are for worldwide application. One European client of ours requires, for its customers in a Germany and Switzerland, that the English language Worldwide GTS we prepared for them be translated to German.

Yes, all of your export buyers must specifically accept and agree to your GTS in writing. Otherwise, the GTS’ key clauses designed to reduce your risks, protect you and give you advantages, will probably not be legally enforceable. The reasons for that conclusion have been explained earlier.

Some foreign countries’ laws may require the buyer to sign a statement that it agrees to and accepts and is legally bound by specific GTS provisions that, under those laws, are considered “onerous” or that limit significantly the buyer’s rights and remedies; as well as a separate signed statement that the buyer accepts the GTS provisions as a whole. Or, there may be some more or less similar legal requirements. These will have to be checked in advance.

**PART V: ARE SPECIALLY CREATED GTS SUITED FOR “SALES ON CONSIGNMENT”?**

In the simplest of terms, a “consignment” involves placement by the exporter (consignor) of a stock of goods in the consignee’s possession for which the consignee does not pay for until it sells the goods.

First of all, exporters should be extremely wary of placing a valuable stock of goods on consignment with someone. It is a dangerous practice, particularly, but not only, under American law. It may prove difficult to know when the consignee has sold goods from the consignment stock, and thus, to get paid, there may be negative tax consequences for the consignor; and, to protect the consignor’s ownership interest in the consignment stock, certain legal measures will have to be implemented, depending on the country concerned. In the USA, a form (UCC financing statement) will have to be completed and filed in one or more registers stating that the exporter owns the goods and describing them; and, the consignee should be required to post a sign close to the consignment stock’s location stating that they are the exporter’s property. Moreover, American law is rather
complicated and somewhat unclear regarding “consignment transactions” (e.g., the distinctions between true consignments and “sale or return”)

Regarding the specific question posed above, if the exporter is determined to establish a “consignment sale relationship” then a formal written contract is the best way to handle that, not GTS. There would be too many specific points to cover, it would be difficult if not impossible to define the consignment stock in GTS, and such GTS could well be confusing because many of its other provisions would apply to straight sales, not consignments.

PART VI. THE EXPORTER’S INPUT INTO CREATING AND IMPLEMENTING GTS

The lawyer charged with creating GTS----whether only for the US market, or for the US and other Western Hemisphere markets, or for Worldwide GTS----will want the strong input of his client. The client should be willing to put the necessary time and attention to the matter, so that the final product suits the client’s needs. The lawyer will ask his client various questions, and will want to review the “home country” GTS the client has been using, to see if any particular provisions are useful and discuss them with the client. The lawyer will try to determine from his client particular concerns and past problems with buyers that the client would like to avoid. The lawyer will want his client to review carefully draft GTS and discuss them.

Once the GTS text is completed, the lawyer will take his client’s existing “order” or, most often, “order confirmation form”, and prepare the front page for use with the GTS (which will be placed on the back side of it). By preparation, I mean inserting into it certain language stating that the buyer must sign and date the exporter’s order form or order confirmation form (as applicable) in the appropriate place(s) and fax back a signed copy as a condition to the order being accepted. In addition, the front page will contain certain other wording calling the buyer’s attention to the GTS and the fact they contain certain kinds of provisions. The client will also review, if necessary discuss with the lawyer, and approve the final text of that front page.

The lawyer will typically give the client a copy of the arbitration rules that will apply to disputes and claims between the client-exporter and buyers----for example, the AAA’s International Arbitration Rules.

Once the exporter implements the GTS there will be more to do. If the buyer is a US party, the exporter will want to notify his US lawyer of the impending sale and provide a copy of the order and signed order confirmation. If the client wants to have a “perfected security interest” ----especially, a “perfected purchase money security interest” against its US buyer in the exporter’s own goods, the lawyer will have to prepare pre-printed forms (“UCC financing statements”) and file them in the appropriate register(s) in a timely manner----before the goods are shipped to the buyer. If the GTS state that the seller or its representatives are authorized to sign these forms on behalf of buyer, then that can be done. Before doing those things, the lawyer would ----unless his client instructs him...
otherwise---check to see what prior “security interests” in favor of what creditors covering what “collateral” (pledged assets) are on file against the buyer, and communicate the information to the client. The reason for saying “unless his client instructs him otherwise” is that for smaller sales, the exporter may not want to incur the expense involved with the register search, even though that expense is modest. Not filing UCC financing statements will mean no “perfected security interest” and that the exporter will have no priority vis-à-vis other creditors of the buyer in the “collateral” specified in the exporter’s GTS and that the exporter’s goods (typically part of that collateral) sold to the buyer can be seized and applied by other creditors to their debts against the debtor.

With regard to GTS that also apply to Western Hemisphere countries other than the USA, or Worldwide GTS, if the exporter wants to obtain security for payment from the buyer from one of those countries, he should notify his lawyer, and things will proceed from there.

The exporter does not have to implement security for payment measures with respect to every customer it has and every order it wishes to accept. Rather, the exporter can pick and choose, depending on the size of a particular customer’s order (and of future orders expected from that same customer) along with other factors. The fact that a given customer appears to be a solid credit risk and/or that the exporter has been selling its goods to that customer for a long time without any problems getting paid is not necessarily a determining factor. Many companies that appear solid become shaky, and file for bankruptcy or bankruptcy reorganization.

PART VII. THE GTS DISCUSSED IN THIS GUIDE ARE NOT TOO COMPLICATED, DIFFICULT OR COSTLY FOR YOU, THE EXPORTER, TO HAVE PREPARED AND IMPLEMENT

Some exporters may think that the types of GTS discussed in this guide are too complicated and too difficult to put into actual commercial practice. They may feel that too much time, attention and cost (legal fees, etc.) are required to create and implement them. Some exporters may think: “Many of my customers will never agree to, sign and return the GTS”. Or, “Some of my customers may object to particular clauses in the GTS----what will I do than?”

This writer would suggest that for many, if not most, serious exporters, the time, attention and cost of properly prepared GTS offering substantial protection of the exporter’s interests, are well worthwhile.

Perhaps some customers will not sign and return the GTS of the type described herein. The European clients for which this writer prepared Worldwide GTS have, to date, not experienced this problem, including with its US customers. Where a customer objects to your GTS, you can find out which specific GTS clauses are in issue, and negotiate an acceptable solution----or decide not to
apply your GTS to that customer or not sell to that customer unless it accepts your GTS. You have many options if you do have well prepared GTS. Not having them can reduces your options—and the remaining ones may not be particularly appealing or practical.

PART VIII. USING THE SPECIALLY CREATED GTS FOR SALES TO YOUR DISTRIBUTORS

If the exporter has, or will have, distributors for its products in one or more countries, the corresponding GTS described in this guide can be used in connection with products sold to the distributor. There will normally be a proper, written distributorship contract between the exporter and the distributor. The GTS can be made part of the distributorship contract, and to the extent necessary, clauses in the GTS that, through negotiations or for other practical reasons, are not applicable to sales to and the relationship with, the distributor, can be eliminated or modified in the distributorship contract. Using the GTS in that way, as part of the distributorship contract, can make it easier to prepare the agreement.

If you use sales agents or sales representatives to generate orders for your products, they do not buy and resell. So you would not use your GTS in your, the exporter’s, relationship with them. You would use them in connection with the orders from customers that your sales agents or representatives generate.

PART IX. GTS FOR US SUBSIDIARIES OR AFFILIATES OF FOREIGN COMPANIES

A final point before closing merits attention. Many (non-US) companies have, or will have, subsidiaries or affiliated or joint venture companies within the United States. GTS specially prepared for them, in connection with their sales to US customers and customers elsewhere will usually be very valuable for them. If the customer is a distributor of the US subsidiary or affiliate, they can also be beneficial as part of the distribution contract. GTS for US subsidiaries and affiliates will typically have most of the features set forth in Part I but possibly with some adaptations and other special provisions.

Copies of the American Arbitration Association’s International Arbitration Rules are available upon request from the author of this Guide.