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## **CONCLUDING A CONTRACT FOR THE DELIVERY OF AGRICULTURAL PRODUCTS**

**Formulation of the problem.** The conclusion of a contract for the delivery of agricultural products for the parties to the contract is an important step in their economic activity. Given certain risks in the form of adverse climatic conditions that may jeopardize the performance of the contract, an important step before concluding a contract is to check the contracting party for integrity, reliability, solvency. As the implementation and conclusion of the contract are separated by a significant period of time, as the process of production or cultivation of agricultural products is quite long, the parties need to take a number of steps to determine such conditions that will satisfy the interests of both parties.

**Analysis of recent research and publications.** The characteristics of the procedure for concluding a civil contract, in particular its stages, have been studied by such scholars as V.V. Alyamkin, S.O. Borodovsky, S.A. Denysov, N.V. Fedorchenko, O.O. Merezko and others.

**The purpose of the article.** The purpose of the article is to determine the procedure and stages of concluding a contract for the delivery of agricultural products.

**Presenting main material.** There is no consensus in the doctrine of contract law regarding the characteristics of the procedure for concluding a civil contract, in particular its stages and their content. O.O. Merezko argues that in modern contract law, concluding a contract through the acceptance of the formal offer is not the only option, because the contractual practice involves more complex legal and analytical actions [1, p. 101]. Such scientists as G. Verdnikov and V.I. Skarho, examining the supply contract, distinguish the following stages: 1) pre-contractual contacts of the parties; 2) proposal to enter into an agreement (formal offer); 3) acceptance of the formal offer (acceptance); 4) resolution of the pre-contractual dispute. In their opinion, the formal offer and acceptance are mandatory, and the first and fourth stages are not mandatory [2, p.51-55]. S.O. Borodovsky in his dissertation research noted that the general order of the procedure for concluding a business contract consists of the stages of formal offer and acceptance characteristic of a civil contract, and in some cases this procedure may be supplemented by stages of

drawing up and reviewing the protocol of differences and court decision on a pre-contractual dispute [3, p. 12].

Examining the supply contract V.V. Alyamkin argued that the process of concluding a supply contract in its content cannot be unified within two, three, four or more stages, as is usually the case in the literature. This process is a long process of reconciling the will to establish a contractual relationship and determine the terms of a future contract. In a market economy, it must be flexible and take into account the possibility of changing consumer demand, fashion trends and so on. [4, p.17].

In our opinion, three stages are used in the studied contract: pre-contractual contacts of the parties; formal offer; acceptance. With regard to the fourth stage - pre-contractual disputes, such disputes are not currently heard in the courts. The selection of three stages is theoretical. Such a division is not enshrined in the Civil Code of Ukraine, but for the contract for the delivery of agricultural products, it is important because each of these stages takes place in contractual practice. Thus, pre-contractual contacts are an element of marketing, advertising, presentations, exhibition activities, etc. The conclusion of economic contracts - economic, psychological, legal activities, the purpose of which is to establish a contractual obligation on acceptable or advantageous terms.

At the stage of pre-contractual contacts, the purveyor establishes the production capacity of the manufacturer, work experience, determines the volume of products that will be grown and transferred to him or his designated recipient, agrees on product performance, on deadlines and more. To do this, the other party may provide the developer of the draft contract (mostly the manufacturer) with the necessary technical and other documentation, etc.

The preparatory stage includes such actions as advertising (public offer), marketing research, comparison of benefits of goods of different producers, use of the personal factor (acquaintances, friendly relations), carrying out economic calculations, checks (audit) or other channels of establishment of reliability and the main solvency of the purveyor. Some of these functions in today's conditions are performed by the internal security services of the entrepreneur. This stage is important for the contract technique, because due to prudent steps and careful study of the contracting party it minimizes the risk of non-performance or improper performance of the contract.

In modern business conditions with their uncertainty, increased property risks, its subjects often make mistakes in choosing contracting parties. In such circumstances, preliminary actions to establish data on financial and issuing activities, to determine the business reputation, production capacity



and to conduct preliminary negotiations are of particular importance. In their process, such circumstances may be established that may serve as grounds for refusing to enter into a contract (lack of the necessary equipment or sufficient land from the manufacturer or unreliability or difficult financial situation of the purveyor, etc.). In such circumstances, the negotiators should be given the right to negotiate in all lawful ways, and without time limit, to suspend them for a period of time to establish the necessary additional information or to refuse to extend and conclude the contract. This is a manifestation of the freedom to conclude a contract and the principle of freedom of contract in general.

It is during the negotiations that potential contracting parties are selected, information on their legal and financial position is collected, prospects of activity are analysed, and so on. The art of negotiation is a very important psychological, social and legal factor. It is of great importance in foreign economic practice. Such activities must comply with the principle of good faith as the main and include: providing the partner with reliable information about himself as the representative and represented, about the product and its properties, compliance with business ethics, non-abuse of rights and implementation without violating the interests of others.

The contract is considered concluded from the moment the parties have agreed on all essential terms. This is preceded by significant marketing, organizational, psychological and legal activities in the process of which a number of rules of contractual techniques should be followed: the manufacturer studies the market of necessary products that are in demand, analyses the dynamics of its economic indicators; the purveyor determines the advantages of the products of certain producers; the parties are studying the possibility of entering other markets and especially international ones; the parties are trying to develop such models of agreements that would take into account their own property interests, guarantee their protection, simplify the reception of evidence and resolve the dispute in essence in their favour; they try to conclude contracts only after the formal offer or acceptance is signed by a qualified lawyer.

According to the Civil Code of Ukraine [5], the contract is concluded by the proposal of one party to enter into an agreement (formal offer) and acceptance of the proposal (acceptance) by the other party. The formal offer is subject to certain requirements set forth in the Civil Code of Ukraine, due to which an offer becomes the formal offer. These requirements apply to both the conclusion of agreements by negotiating terms and the conclusion of accession agreements.

From the content of article 641 of the Civil Code of Ukraine, there are three features of the formal offer:

1) the proposal must be addressed to a specific person.

2) the formal offer must contain all the essential terms of the future contract.

3) the proposal must confirm the firm intention of the offerer to consider himself obliged in case of its acceptance.

According to article 641 of the Civil Code of Ukraine the formal offer to conclude the contract can be made both by the producer and the purveyor.

The formal offer under the contract may be made in writing, orally, by means of data communication, where the latter means information prepared, sent, received or stored by electronic, optical or analogue means, including electronic data interchange, e-mail, telegram, telex and fax.

The procedure for concluding a contract is defined by Chapter 53 of the Civil Code of Ukraine, Chapter 20 of the Commercial Code of Ukraine, current laws and consists in expressing the will of business entities for legal relations, coordination of all terms of the contract and their proper execution - documentation.

As a general rule, consent to enter into a contract on other terms than the formal offer is not an acceptance (Article 646 of the Civil Code), but a new formal offer. The response to the agreement to enter into a contract on terms other than those proposed is a rejection of the received offer and at the same time a new offer to the person who made the previous offer. Therefore, receiving a new formal offer does not bind its addressee and does not oblige the acceptor to consider it. Accordingly, if it is left unanswered, it is a refusal to enter into a contract.

Actions to resolve differences can hardly be seen as a continuation of the acceptance stage. The law stipulates that acceptance must be complete and unconditional (part 1 of article 642 of the Civil Code of Ukraine). The offerer decides whether to continue to agree on the terms of the contract to those that satisfy his interests, or to abandon the contract as economically unreasonable and unprofitable.

The generally accepted form of settling disputes when concluding a contract for the delivery of agricultural products is a protocol of differences. The draft contract signed by the acceptor and the protocol of disagreements attached to it indicate his intention to conclude a contract with the offerer, but on different conditions.

Thus, the protocol of differences states the differences of the parties in assessing the terms of the contract due to objective (different prices in



regional markets) or subjective (unreasonably high price) factors. In case of competition, this is a notice of possible refusal to enter into an agreement if the terms of the protocol of differences are not accepted.

The protocol of disagreements serves as a basis for the acceptor to further agree on the terms of the contract in all possible ways (exchange of letters, telegrams, teletype messages, electronic notifications) or to refuse further negotiations.

It is possible to apply the public principles provided by the Law of Ukraine On Protection of Economic Competition [6] through the recognition of the actions of the acceptor as qualifying as abuse of monopoly (dominant) position.

At the imperative and dispositive conclusion of the contract for the delivery of agricultural products (under the state order) two ways are possible: 1) to consider the state order of the purveyor as the formal offer which can be accepted further to unconditional execution; 2) establish the obligation of the state customer to send the draft contract to the imperatively determined executor of the state order, for example, the state enterprise. There are other options for the method of concluding the contract.

Thus, the process of concluding a contract is multifaceted: it reflects the form of ownership, the legal status of the participant, the limits of their freedom, and so on. Therefore, the process of concluding a contract cannot be limited to two, three, four or more stages, but is a long process aimed at establishing a contractual relationship and determining the terms of the future contract.

At the same time, for a contract, the formal offer and acceptance must be formalized in writing: drafting the contract, signing it, notifying by fax, telephone or other means of communication of their consent to the proposed or agreed terms of the contract. It is possible that the acceptance may be expressed in other actions, including compliance with the terms of the contract (prepayment). Of course, such actions are possible if the party is confident in the decency of another contracting party. The fact of non-sending a written acceptance in this case cannot serve as a basis for recognizing such an agreement as not concluded.

Conclusions: As a result of the study, it was concluded that the conclusion of a contract for the delivery of agricultural products is not limited to the traditional formal offer and acceptance. Before submitting a proposal to enter into a contract, the parties analyse the demand in the market of agricultural products, establish the reliability of the contracting party, negotiate. In practice, there are cases when one of the parties in the last stages of negotiations on

the terms of the contract refused for some reason to conclude it. It is about establishing the identity of the future party to the contract and negotiations: its legal status, organizational legal form, type, business reputation, credit histories, its financial obligations and the state of their implementation, the existence of litigation, etc.

The next stage is the proposal to enter into an agreement (formal offer) and acceptance of the formal offer (acceptance), as a result of which the parties assume the obligations under the contract.

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2. *Verdnikov, V.G., & Skargo, V.I. (1974). The conclusion of the economic contract. Verdnikov V.G., - Soviet Union state and law (pp.51-55). Moscow: Nauka [in Russian]*
3. *Borodovsky, S.O. (2005) Conclusion, amendment and termination of the contract in the civil law of Ukraine: extended abstract of candidate's of juridical sciences thesis: 12.00.03 (p.12). Kharkiv [in Ukrainian]*
4. *Alyamkin V.V. Supply contract under the legislation of Ukraine: civil law aspect: extended abstract of candidate's of juridical sciences thesis: 12.00.03 (p.17). Kyiv [in Ukrainian]*
5. *Civil Code of Ukraine: Law of Ukraine №435-IV (2003, January 16). Retrieved from: <https://zakon.rada.gov.ua/laws/show/435-15#Text>*
6. *Law of Ukraine on protection of economic competition № 2210-III. (2001, January 11). Retrieved from: <https://zakon.rada.gov.ua/laws/show/2210-14#Text>*

**Kostiv I.Ya. Concluding a contract for the delivery of agricultural products.**

The article considers the procedure for concluding a contract for the delivery of agricultural products. In addition to the traditional formal offer-acceptance scheme, special attention is paid to such a stage of concluding a contract as pre-contractual contacts.

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**Key words:** a contract for the delivery of agricultural products, conclusion of the contract, stages, pre-contractual contacts.