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**FB JURIS LAW FIRM**

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# **INTERNATIONAL BUSINESS LAW**

**Legal guide to doing business internationally**

**INTERNATIONAL BUSINESS AGREEMENT**

13 October 2023



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***I thank the schools that give me the opportunity to teach and my students who are an inexhaustible source of inspiration. FB***

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# MATERIALS / UPDATES

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**This Keynote presentation will be regularly completed, improved and updated. Find the latest version and complementary materials (notes, references, Internet links, guides, templates...) on the website [i-law.co](https://i-law.co):**

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# INTERNATIONAL BUSINESS AGREEMENT

**Great freedom but possibly great uncertainty  
if the parties do not define precisely  
the governing law and the competent courts.**

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# **INTERNATIONAL BUSINESS AGREEMENT**

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**Great freedom but possibly great uncertainty  
if the parties do not define precisely  
the governing law and the competent courts.**

# QUESTIONS

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**What is the definition of a contract?**

**What is an international contract?**

**What are the specificities of the international contract?**

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# OBJECTIVES

- # Define the international contract.**
- # Know the legal regime of the international contract.**
- # Remember to define the governing law and the competent courts.**

# SUMMARY

- # Several criteria can be used to identify an international contract.**
- # The international agreement has a specific legal regime.**
- # The international contract is characterised by a very high degree of contractual freedom.**

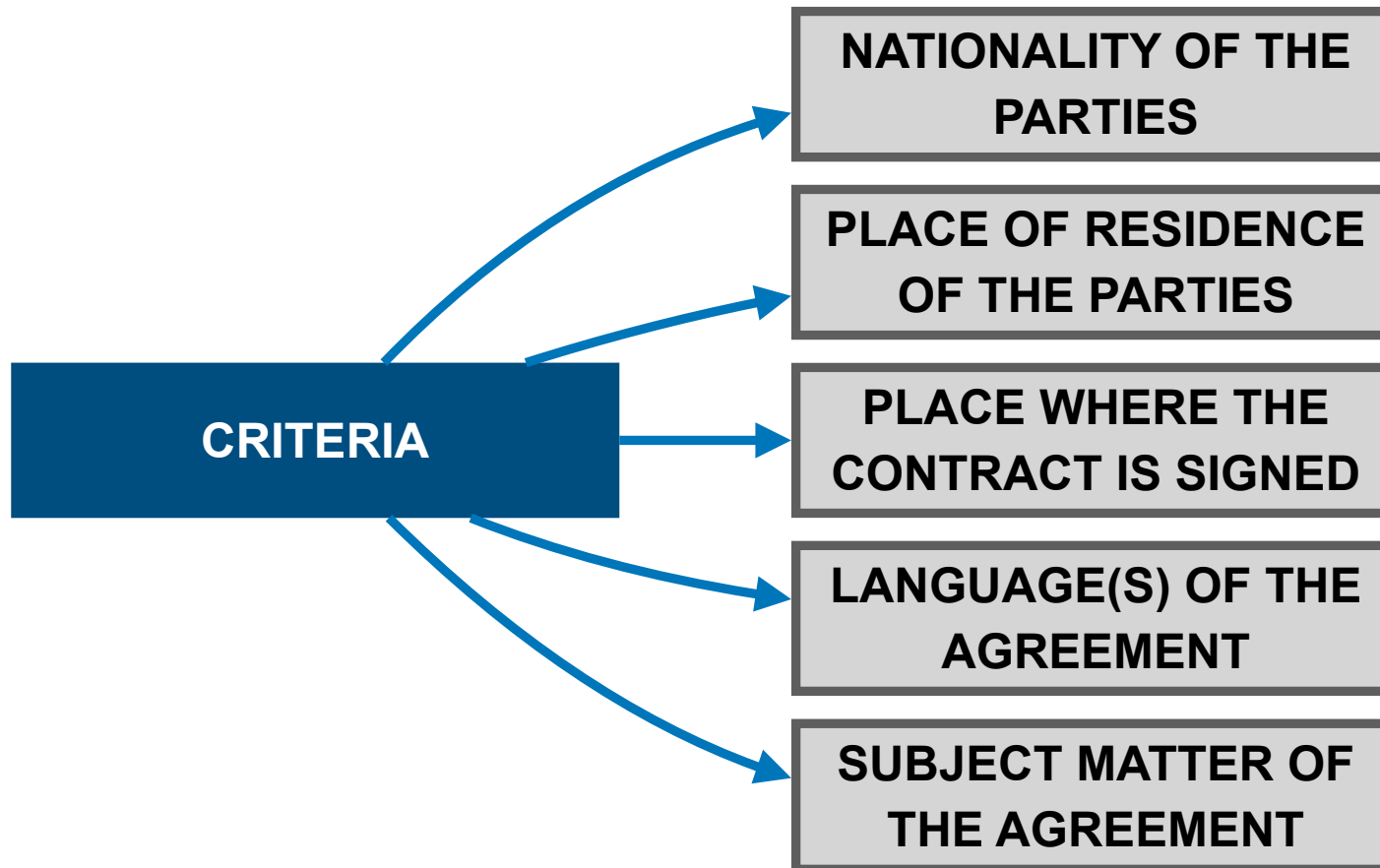
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# UNIDROIT

**UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL  
CONTRACTS (2016): + READ**

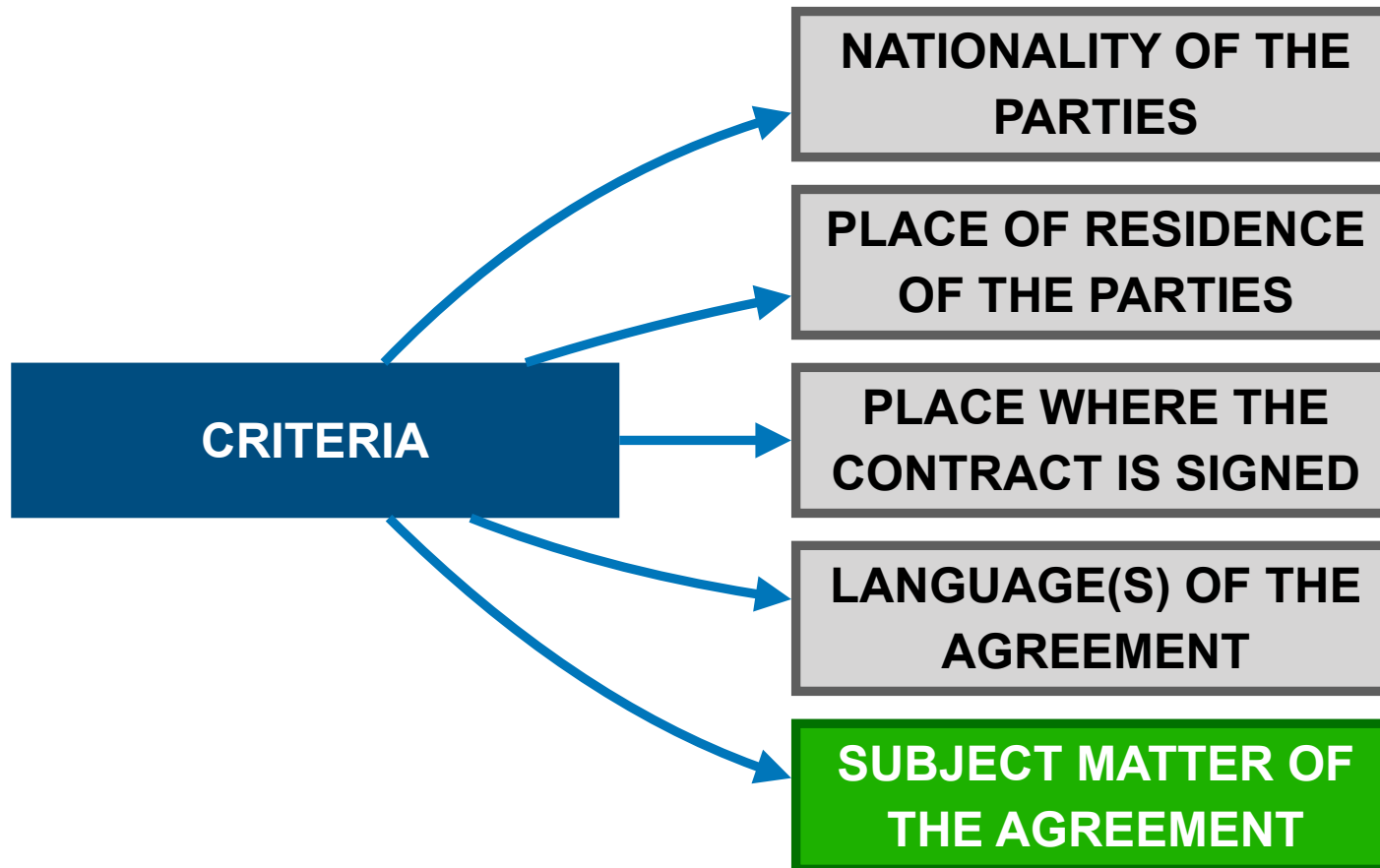
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# INTERNATIONAL AGREEMENT



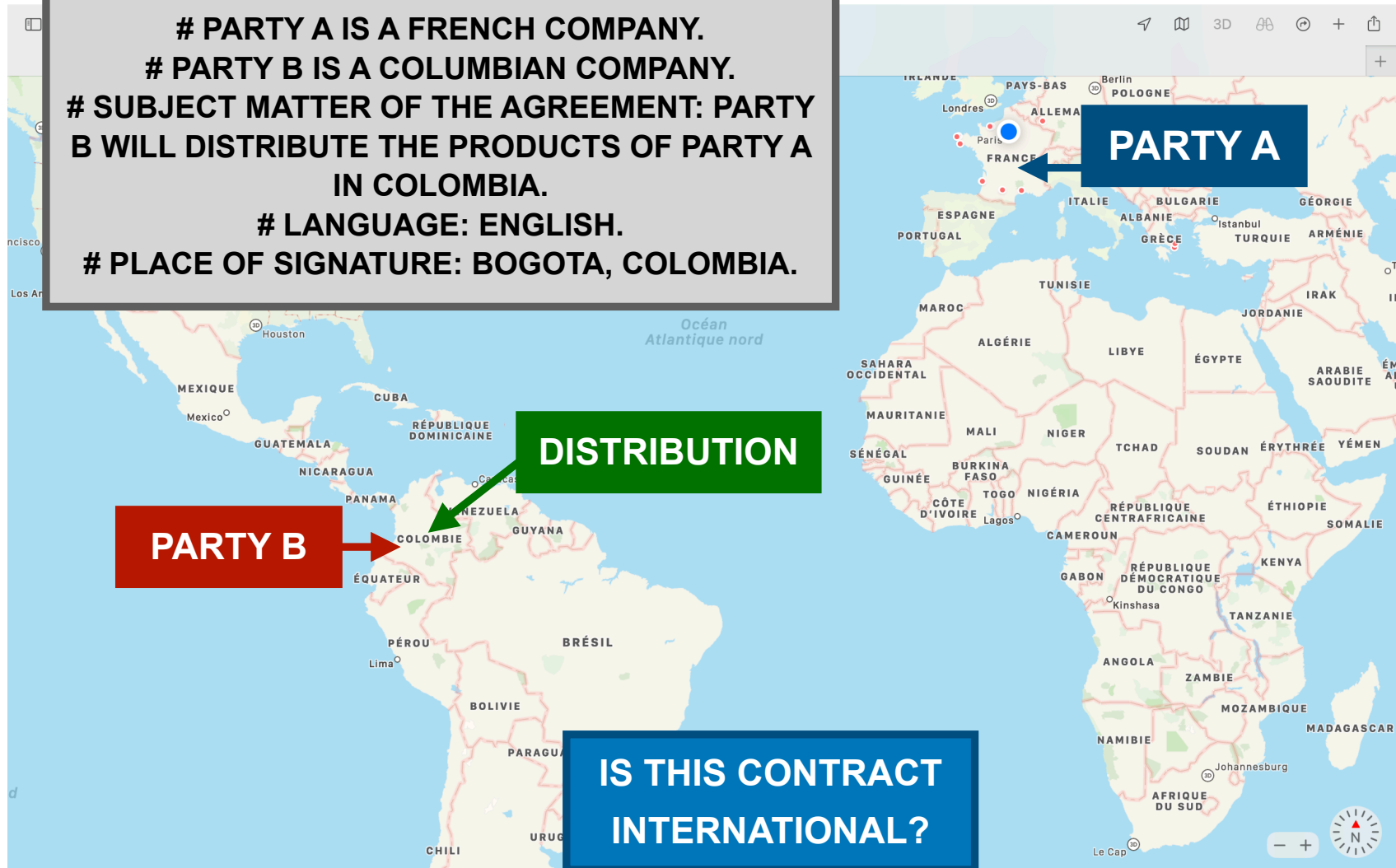
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# INTERNATIONAL AGREEMENT



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**# PARTY A IS A FRENCH COMPANY.**  
**# PARTY B IS A COLUMBIAN COMPANY.**  
**# SUBJECT MATTER OF THE AGREEMENT: PARTY B WILL DISTRIBUTE THE PRODUCTS OF PARTY A IN COLOMBIA.**  
**# LANGUAGE: ENGLISH.**  
**# PLACE OF SIGNATURE: BOGOTA, COLOMBIA.**



**# PARTY A IS A FRENCH COMPANY.  
# PARTY B IS A TURKISH COMPANY.  
# SUBJECT MATTER OF THE AGREEMENT:  
PARTY A (LESSOR) WILL RENT PREMISES TO  
PARTY B (LESSEE) IN PARIS.  
# LANGUAGE: FRENCH.  
# PLACE OF SIGNATURE: PARIS, FRANCE.**



**# PARTY A IS AN IRANIAN COMPANY.**  
**# PARTY B IS AN INDIAN COMPANY.**  
**# SUBJECT MATTER OF THE AGREEMENT: PARTY B WILL SELL PRODUCTS TO PARTY A.**  
**# LANGUAGE: ENGLISH.**  
**# PLACE OF SIGNATURE: NEW DELHI, INDIA.**





**# PARTY A IS A FRENCH COMPANY.**  
**# PARTY B IS A FRENCH CITIZEN RESIDING IN HONG KONG.**  
**# SUBJECT MATTER OF THE AGREEMENT: PARTY B WILL DISTRIBUTE THE PRODUCTS OF PARTY A IN CHINA (MAINLAND).**  
**# LANGUAGE: ENGLISH.**  
**# PLACE OF SIGNATURE: HONG KONG.**

**PARTY A**

**DISTRIBUTION**

**PARTY B**

**IS THIS CONTRACT INTERNATIONAL?**

**# PARTY A IS A FRENCH COMPANY.  
# PARTY B IS A FRENCH COMPANY.  
# SUBJECT MATTER OF THE AGREEMENT:  
PARTY B WILL DISTRIBUTE THE PRODUCTS OF  
PARTY A IN THE USA.  
# LANGUAGE: FRENCH.  
# PLACE OF SIGNATURE: PARIS, FRANCE.**



**PARTY A**

**PARTY B**

**DISTRIBUTION**

**IS THIS CONTRACT  
INTERNATIONAL?**

**# PARTY A IS A FRENCH COMPANY.**  
**# PARTY B IS THE FRENCH SUBSIDIARY OF A COMPANY INCORPORATED IN NEW YORK (USA).**  
**# SUBJECT MATTER OF THE AGREEMENT: PARTY A WILL PROVIDE ADVISORY SERVICES TO PARTY B (IT SERVICES).**  
**# LANGUAGE: FRENCH.**  
**# PLACE OF SIGNATURE: PARIS, FRANCE.**

**MOTHER COMPANY OF PARTY B**

**PARTY A**

**PARTY B**

**SERVICES**

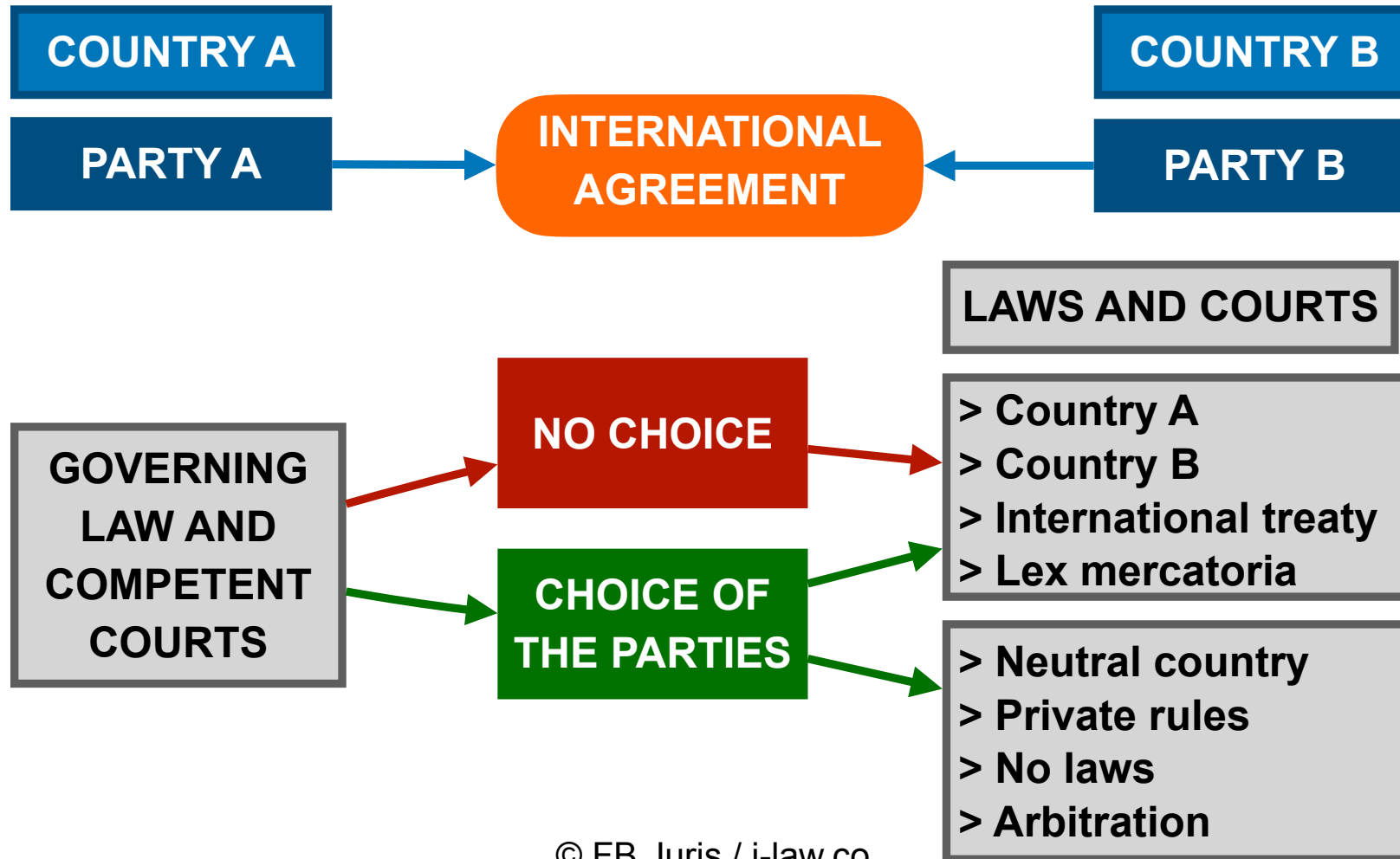
**IS THIS CONTRACT INTERNATIONAL?**



**# PARTY A IS A FRENCH COMPANY.  
# PARTY B IS A FRENCH COMPANY.  
# SUBJECT MATTER OF THE AGREEMENT:  
PARTY B WILL DISTRIBUTE THE PRODUCTS OF  
PARTY A IN FRANCE.  
# LANGUAGE: ENGLISH.  
# PLACE OF SIGNATURE: NEW YORK, USA.**

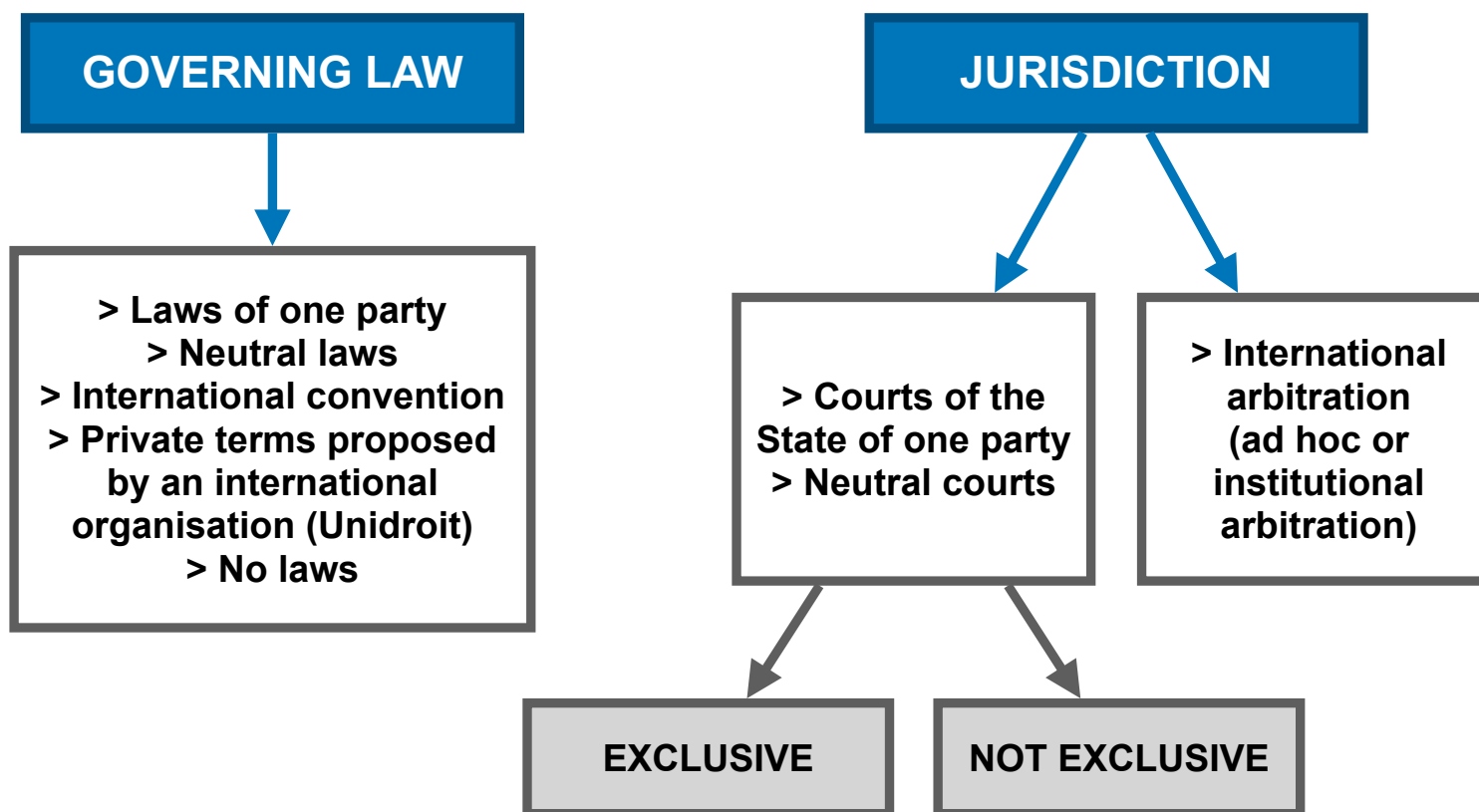


# INTERNATIONAL AGREEMENT



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# INTERNATIONAL CONTRACT: GOVERNING LAW AND JURISDICTION



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# **CLAUSE: GOVERNING LAW**

**THIS CONTRACT IS GOVERNED BY THE LAWS OF FRANCE.  
IT SHALL BE ENFORCED AND INTERPRETED PURSUANT TO THESE  
LAWS.**

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# **CLAUSE: GOVERNING LAW**

**THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.**

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## **CLAUSE: GOVERNING LAW AUTONOMOUS INTERNATIONAL CONTRACT (CONTRACT WITHOUT LAW)**

**The Parties expressly state that the Contract, which governs international relationships and operations, shall be construed and interpreted as an independent international contract, governed exclusively by the rules expressly defined by the Parties, as far as possible.**

**Thus the Parties intend the Contract to be performed, enforced, interpreted and judged exclusively pursuant to its provisions, excluding as far as possible any provisions whatsoever, notably State or regional or international provisions, not explicitly mentioned by this Contract, except in case of obvious gap in the Contract, in which case the Parties expressly acknowledge that exclusively French law shall apply to fill in the gap only to the extent that is needed, this notwithstanding the place where the Contract may have effects, with the sole exception of the imperative rules of the State where the Contract may have effects.**

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# **CLAUSE: EXCLUSIVE JURISDICTION**

**IN CASE OF ANY LITIGATION ARISING IN RELATION WITH THIS CONTRACT,  
THE PARTIES HEREBY GRANT EXCLUSIVE JURISDICTION TO THE COURTS  
OF PARIS (FRANCE).**

**THIS CLAUSE PROVIDING FOR AN EXCLUSIVE JURISDICTION SHALL BE  
GIVEN THE BROADEST EFFECT AND SHALL APPLY IN ANY CASE,  
INCLUDING IN CASE OF LITIGATION RELATING TO THE PRE-  
CONTRACTUAL PHASE OR IN CASE OF EMERGENCY OR PROTECTIVE  
PROCEEDINGS, AND NOTWITHSTANDING THE EXISTENCE OF OTHER  
DEFENDANTS OR GUARANTEES.**

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# CLAUSE: PROROGATION OF COMPETENCE

IN CASE OF ANY LITIGATION ARISING IN RELATION WITH THIS  
CONTRACT, THE PARTIES HEREBY GRANT **XXX**

**OPTION 1: EXCLUSIVE JURISDICTION**

**OPTION 2: JURISDICTION**

**OPTION 3: NON-EXCLUSIVE JURISDICTION**

**TO THE COURTS OF PARIS (FRANCE).**

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# CLAUSE: PROROGATION OF COMPETENCE

IN CASE OF ANY LITIGATION ARISING IN RELATION WITH THIS CONTRACT, THE PARTIES HEREBY **GRANT JURISDICTION** TO THE COURTS OF PARIS (FRANCE).

IN THE EUROPEAN UNION, THE JURISDICTION IS PRESUMED EXCLUSIVE (article 25 of EU Regulation n° 1215/2012)



WHERE THE EU REGULATION N° 1215/2012 IS NOT APPLICABLE, THE PROROGATION OF COMPETENCE IS NORMALLY NOT EXCLUSIVE

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# CLAUSE: PROROGATION OF COMPETENCE

IN CASE OF ANY LITIGATION ARISING IN RELATION WITH THIS CONTRACT, THE PARTIES HEREBY **GRANT EXCLUSIVE JURISDICTION** TO THE COURTS OF PARIS (FRANCE).

THE CASE MAY STILL BE REFERRED TO THE COURT OF JUSTICE OF THE EUROPEAN UNION AND/OR TO THE EUROPEAN COURT OF HUMAN RIGHTS (REFERENCES FOR PRELIMINARY RULINGS)



THESE COURTS ARE INTEGRATED TO THE JUDICIAL SYSTEMS OF THE STATES MEMBERS

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# ICC ARBITRATION CLAUSE

All disputes arising out of or in connection with the present Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by XXX [OPTION 1: one or more // OPTION 2: three] arbitrators appointed in accordance with the said Rules.

The place of the arbitration shall be XXX [TO BE SPECIFIED].

The language of the arbitration shall be XXX [TO BE SPECIFIED].

The law applicable to the merits shall be XXX [TO BE SPECIFIED, FOR EXAMPLE: the governing law specified above].

No award or procedural order made in the arbitration shall be published.

**<https://iccwbo.org/publication/standard-icc-arbitration-clauses-english-version/>**

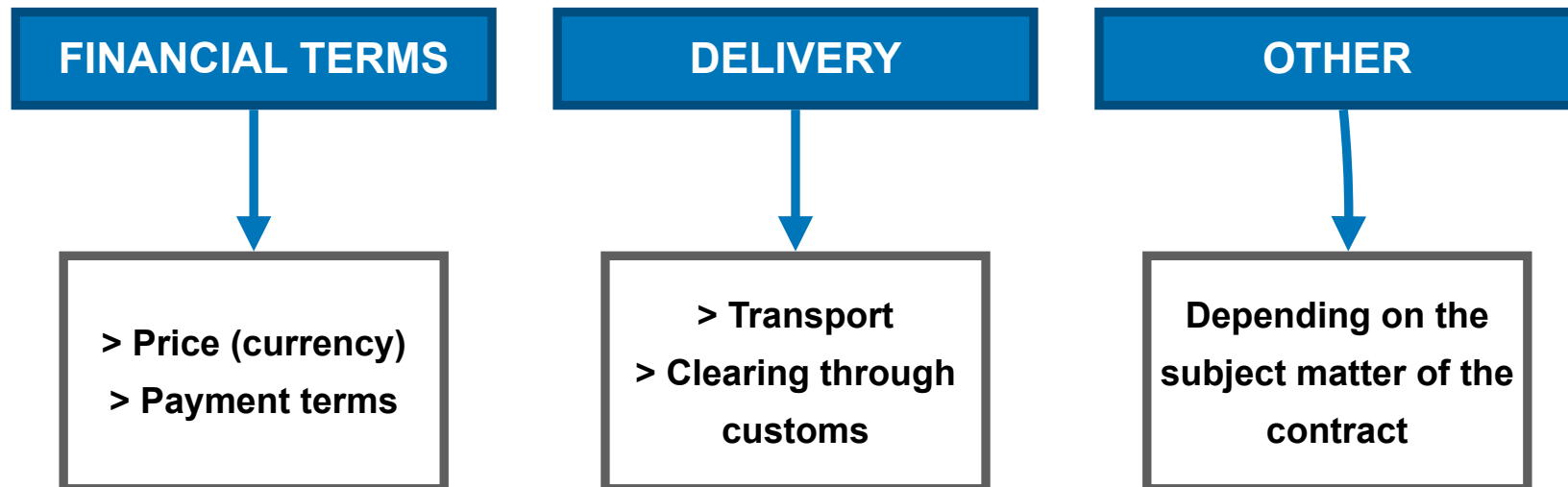
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# INTERNATIONAL BUSINESS CONTRACT: SPECIFIC CLAUSES



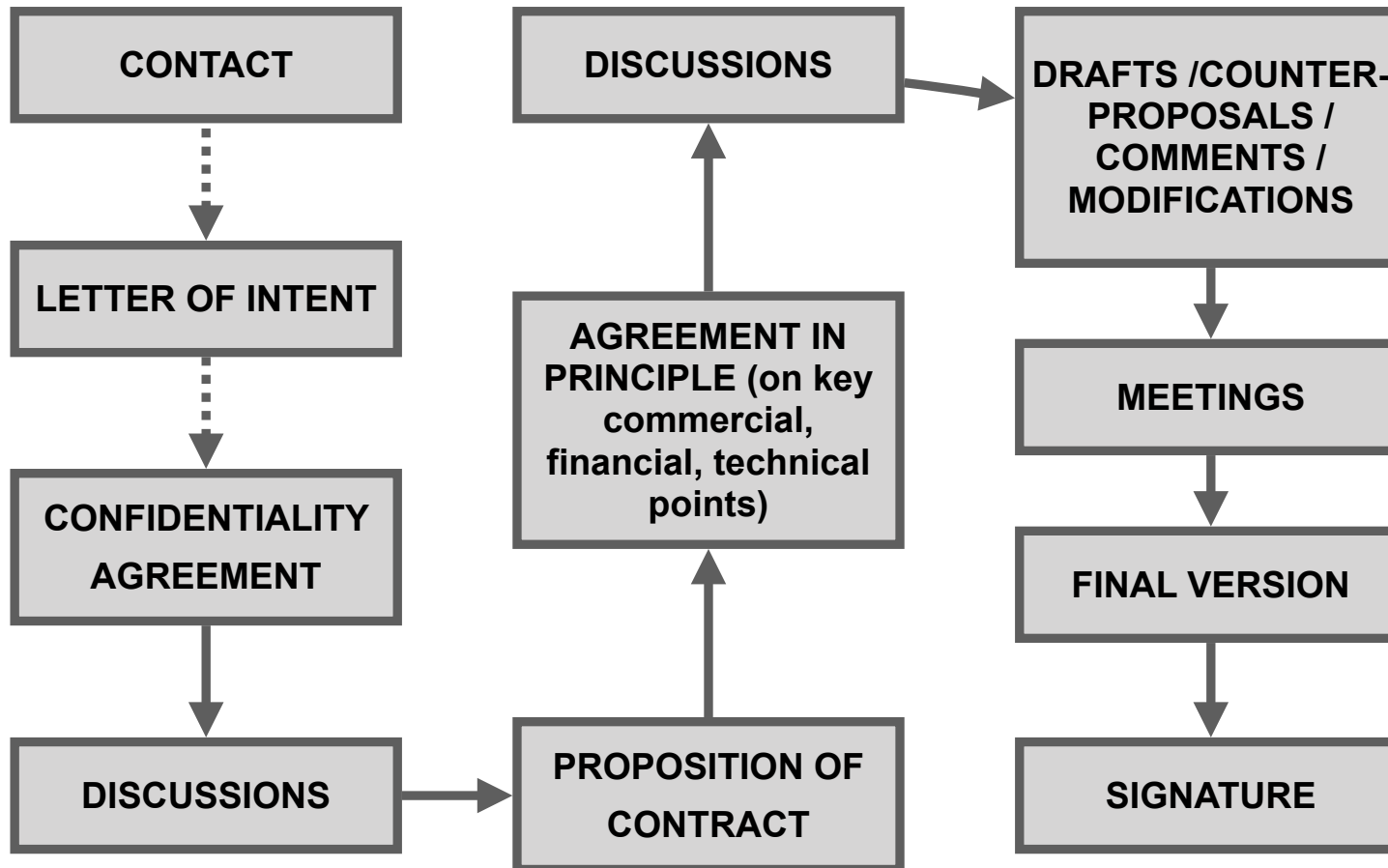
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# INTERNATIONAL BUSINESS CONTRACT: OTHER SPECIFIC CLAUSES



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# NEGOTIATION: TYPICAL PROCESS



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