

# BUSINESS LAW

## Contracts for the international sale of goods II

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# CISG - obligations of the seller

- deliver the goods required by the contract
- transfer the property in the goods
- hand over the documents related to the goods

# CISG – obligations of the seller

- **place of delivery**
  - autonomy of the parties,
  - seller's place of business at the time of the conclusion of the contract
  - carriage of goods involved: the place of handing over to the first carrier
- **time of performance**
  - if it is a fixed date
  - period of time
  - within a reasonable time

# CISG – obligations of the seller

## **conformity of the goods**

- seller must deliver goods which are of the quantity, quality, description, package required by the contract
- if not stipulated:
  - (1) fit for the purpose for which goods of the same description would ordinarily be used
  - (2) fit for particular purpose that was made known to the seller
  - (3) have the same qualities as the sample had, if there was a sample provided by the buyer

# CISG - obligations of the buyer

- (1) to take the delivery (art. 60), which means, that the buyer has to
  - (i) do all the acts which could reasonably be expected of him in order to enable the seller to make delivery,
  - (ii) take over the goods, during which the buyer has the right and obligation to examine the goods (within as short a period as is practicable in the circumstances) (art. 38); and have to give a notice within a reasonable time (subjective deadline, but there is two years objective (final) deadline as well) if the goods are not conforming.
- (2) to pay the price
  - price generally charged:
    - (i) at the time of the conclusion of the contract,
    - (ii) for such goods sold under comparable circumstances,
    - (iii) in the trade concerned



# CISG – breach of contract

- **fundamental breach** (art. 25): it is a breach which results in such detriment to the other party as substantially to deprive him [or her] of what he [or she] is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result
- legal consequence
  - fundamental breach
    - avoidance with one-sided statement immediately
    - require substitute goods
  - ordinary breach
    - price reduction
    - repair of the goods
    - exceptionally avoidance

# CISG - damages

If a party to the contract suffers damages due to the breach of the contract by the other party, he or she is entitled to damages (art. 74)

sum equal to the **loss + loss of profit**

limitation > such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract

# CISG – passing of risk

passing of risk related to the goods

If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale.

If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place

For goods in transit: when/where the contract is concluded, in any other case: where/when the buyer takes over the goods

Unless otherwise agreed, loss or damage to the goods after the risk has passed to the buyer does not discharge him or her from his or her obligation to pay the price (unless it is due to an act or omission of the seller)



# INCOTERMS

- stands for „international commercial terms“
- international written usages published by the ICC
- newest version 2020
- applicable only if agreed by the parties (e.g. INCOTERMS 2020 FOB Hamburg International Port)
- only in international contracts
- regulates:
  - place and time of handing over/taking over the goods
  - bearing of costs
  - passage of risk

# INCOTERMS 2020

**EXW Ex Works** The **seller/exporter** makes the goods available to the buyer in its own warehouse, and is only responsible for packing the goods. The **buyer/importer** therefore bears all of the costs and responsibilities from the moment the goods cross the warehouse prior to loading. Insurance is not mandatory, but should it be required, it would be taken out by the buyer, as the buyer bears the risk.

**FCA Free Carrier** The **seller** delivers the goods to an agreed place and bears the costs and risks up to the point of delivery of those goods at the agreed place, including the cost of export clearance. The seller is responsible for inland transport and export customs clearance, unless the designated place is the seller's premises (FCA warehouse), in which case the goods are delivered there and loaded onto the means of transport arranged by the buyer at the buyer's expense. The **buyer** bears the costs from loading on board to unloading, including insurance, if taken out, because he bears the risk when the goods are loaded onto the first means of transport.

**FAS Free Alongside Ship** The **seller** delivers the goods to the port of origin loading dock, and bears the costs up to delivery, as well as being responsible for export customs procedures. The **buyer** is responsible for loading on board, stowage, freight and other costs up to delivery at destination, including import clearance and insurance, if taken out, as it is not mandatory. The buyer also bears the risk once the goods are in the loading dock prior to being loaded onto the ship.

**FOB Free On Board** The **seller** bears the costs until the goods are loaded onto the ship, at which point the risks are transferred as well as responsibility for export clearance and costs at origin. The seller also arranges the transport although the buyer bears the cost. The **buyer** is responsible for the cost of freight, unloading, import clearance and delivery at destination as well as insurance should he take it out. The transfer of risk occurs when the goods are on board.

**CFR Cost and Freight** The **seller** is responsible for all costs until the goods arrive at the destination port, including export clearance, costs at origin, freight and usually unloading costs. The **buyer** is responsible for import procedures and transport to destination. He also bears the risks from the moment the goods are on board, hence, although it is not mandatory, the buyer usually takes out insurance.

**CIF Cost, Insurance and Freight** As with CFR the **seller** bears all the costs up to arrival at the destination port, including export clearance, costs at origin, freight and usually unloading. However, unlike CFR, the seller must also arrange insurance even though the risks transfer to the buyer once the goods are loaded on board. The **buyer** bears the import and transport to destination costs.

**CPT Carriage Paid To** The **seller** bears the costs until the goods are delivered to an agreed place, i.e., they are responsible for all of the costs at origin, export clearance, the main transport and usually, costs at destination. The **buyer** is responsible for import procedures and insurance if taken out as it is not mandatory. The risk is transferred to the buyer once the goods are loaded onto the first means of transport arranged by the seller.

























**CIP Carriage and Insurance Paid To** The **seller** bears the costs up to delivery at an agreed place at destination, i.e., the costs at origin, export clearance, freight and also insurance which is mandatory. The **importer** is responsible for import clearance and delivery at destination and takes on the risk when the goods are loaded onto the first means of transport.

**DPU Delivered at place Unloaded** The **seller** bears the costs and risks arising at origin, packing, loading, export clearance, freight, unloading at destination and delivery at the agreed point. The **buyer** is responsible for import clearance procedures.

**DAP Delivered At Place** The **seller** bears all the costs and risks of the operation apart from import clearance and unloading at destination, i.e., all costs at origin, freight and inland transport. The **buyer** is only responsible for import clearance and unloading.

**DDP Delivered Duty Paid** The **seller** bears all costs and risks from packing and checking in their warehouses to delivery at final destination, including export and import clearance, freight and insurance, if taken out. The **buyer** only has to receive the goods and usually unloads them, although this can also be done by the seller.

***Please, look carefully at the table on the next slide. It illustrates well that the passage of risk does not coincide always with the transfer of the goods to the buyer. ->>***

										
EXW	EX WORKS  AGREED PLACE									
FCA	FREE CARRIER  AGREED PLACE									
FAS	FREE ALONGSIDE SHIP  PORT OF LOADING									
FOB	FREE ON BOARD  PORT OF LOADING									
CFR	COST AND FREIGHT  PORT OF DESTINATION									
CIF	COST, INSURANCE AND FREIGHT  PORT OF DESTINATION									
CPT	COST PAID TO  PLACE OF DESTINATION									
CIP	CARRIER AND INSURANCE PAID TO  PLACE OF DESTINATION									
DPU	DELIVERED AT PLACE UNLOADED  PLACE OF DESTINATION									
DAP	DELIVERED AT PLACE  PLACE OF D.									
DDP	DELIVERED DUTY PAID  PLACE OF D.									
SELLER'S OBLIGATION: 				TRANSFER OF RISK: 			BUYER'S OBLIGATION: 			

# Thank you!



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