THE WALK MALL STREET NO 6, MUSCAT 138, SULTANATE OF OMAN
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KEY TRANSACTION PROCEDURES & TERMS OF DELIVERY

FREE ON BOARD (FOB)

WHAT IS FREE ON BOARD?

In straightforward terms, the FOB Incoterm represents an arrangement between a buyer and a seller, wherein the cost of the goods sold encompasses the delivery to a designated port, marking the transfer of ownership from the seller to the buyer. To put it differently, as soon as the goods are loaded onto the ship and declared "on board," any potential risk of damage or loss transitions from the seller to the buyer.

FOB is applicable exclusively to shipments utilizing ocean freight. Within FOB terms, the buyer assumes both the responsibility and cost of the goods starting from the moment they depart from the seller's premises until they reach the specified destination port.

WHAT IS THE DIFFERENCE BETWEEN FOB ORIGIN AND FOB DESTINATION?

There are two types of FOB terms: FOB shipping point (or FOB origin) and FOB destination.

FOB Origin means that the buyer takes ownership of the goods at the point of origin and is responsible for any risks associated with transporting them from there.

FOB Destination means that the seller holds onto ownership until it reaches its final destination and is responsible for risk associated with transit.

OBLIGATIONS UNDER THE FOB INCOTERM

Exporter Obligations:

- Packaging and loading the goods as per industry standards.
- Providing necessary shipping documentation for export customs clearance, as well as covering all the export duties and taxes
- Delivering the goods to a designated port
- Covering the origin terminal handling charges (OTHC)

Importer Obligations:

- Paying for the cost of goods
- Covering the freight and insurance costs associated with transportation.
- Handling customs clearance at the port of entry and any import duties or taxes that apply.
- Covering unloading and inland transportation costs to its warehouse or place of delivery
- Import duties, customs clearance, and any other taxes or fees.

FOB POINT OF RISK TRANSFER

The moment at which the transfer of risk shifts from the seller to the buyer hinges on whether FOB origin or FOB destination is employed.

With FOB Origin, the risk of damage or loss transitions from the seller to the buyer upon loading the goods onto the transporting vessel at the origin port. Consequently, any damages, losses, or delays that may arise during transit become the responsibility of the buyer.

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Conversely, under FOB Destination, the transfer of risk takes place upon the goods reaching their destination and being unloaded. In this scenario, the seller assumes responsibility for any associated costs, damages, or losses incurred throughout the transit.

COST, INSURANCE AND FREIGHT (CIF)

WHAT DOES COST, INSURANCE, AND FREIGHT (CIF) ENTAIL?

Cost, insurance, and freight (CIF) constitutes an international shipping arrangement wherein a seller covers the expenses for a buyer's order, including insurance and freight charges, while the goods are in transit. This agreement exclusively pertains to goods transported via waterways, seas, or oceans.

The merchandise is shipped to the buyer's designated port as stipulated in the sales contract. Once loaded onto the vessel, the risk of loss or damage shifts from the seller to the buyer. Nevertheless, the responsibility for insuring the cargo and covering freight costs remains with the seller.

CIF bears similarities to carriage and insurance paid to (CIP); however, CIF is specifically designed for sea and waterway shipments, whereas CIP is applicable to various modes of transport, including truck shipments.

GRASPING THE CONCEPT OF COST, INSURANCE, AND FREIGHT (CIF)

The contractual stipulations of CIF delineate the point at which the seller's liability concludes and the buyer's liability commences. CIF is exclusively employed for the shipment of goods overseas or via a waterway.

The seller is tasked with covering the expenses and freight associated with transporting the goods to the buyer's designated port of arrival. Typically, exporters with direct access to shipping vessels opt for CIF. Nonetheless, the buyer also bears responsibilities, as outlined below.

SELLER'S OBLIGATIONS

According to CIF terms, the seller is accountable for the following responsibilities:

- Procuring export licenses for the product.
- Facilitating product inspections.
- Bearing any charges or fees associated with shipping and loading the goods to the seller's port.
- Covering packaging costs for exporting the cargo.
- Settling fees for customs clearance, duty, and taxes related to exporting.
- Assuming the cost of shipping the freight via sea or waterway from the seller's port to the buyer's designated port of arrival.
- Undertaking the cost of insuring the shipment up until the buyer's port of destination.
- Taking responsibility for any damage or destruction to the goods.

Additionally, the seller is obliged to deliver the goods to the ship within the agreed-upon timeframe and furnish proof of delivery and loading.

BUYER'S DUTIES

Upon the goods' arrival at the buyer's destination port, the buyer takes on the responsibility for the expenses linked to importing and delivering the goods. These costs encompass:

- Unloading the product at the port terminal.
- Transferring the product within the terminal and to the delivery site.
- Covering custom duty charges associated with importing the goods.
- Meeting charges for transporting, unloading, and delivering the goods to the final destination.

RISK TRANSFER CONSIDERATIONS

It is crucial to recognize that in international shipping, the transfer of risk and cost between the buyer and seller varies depending on the type of shipping agreement in place. Specifically, under CIF, the points of risk and cost transfer differ. The precise terms outlined in the contract dictate when the liability for the goods shifts from the seller to the buyer.

As the seller bears the expenses of shipping, freight, and insurance until the cargo reaches the buyer's designated port, the cost transfer occurs upon the goods' arrival at the buyer's port. However, the transfer of risk takes place from the seller to the buyer when the goods are loaded onto the vessel. Even though the seller is responsible for obtaining insurance, the buyer assumes ownership of the goods upon loading onto the ship. If any damage occurs during transit, it is the buyer's responsibility to file a claim with the seller's insurance company.

UNIQUE CONSIDERATIONS

Given that the buyer shoulders the risk only upon the loading of the cargo onto the vessel, specific scenarios may render a CIF agreement less suitable. Notably, situations involving containerized cargo shipments present challenges. In these instances, goods might remain in a container for an extended period before loading onto the vessel at the seller's port.

In such cases, CIF poses a risk to the buyer because the goods may not be insured while residing in the container awaiting vessel loading. Consequently, CIF agreements may not be the most appropriate choice for shipments involving containerized cargo due to the potential exposure to risk during this interim period.

SHIP-TO-SHIP (STS) TRANSFER OPERATION

A Ship-to-Ship (STS) transfer operation refers to the process of transferring cargo between seagoing ships positioned alongside each other, either while stationary or in motion. This method is commonly employed for the transfer of various cargoes, including crude oil, liquefied gas (LPG or LNG), bulk cargo, and petroleum products. It is essential to note that the term "STS transfer" is specifically used in the context of civilian merchant vessels, distinguishing it from underway replenishment, a term utilized by the US Navy for similar but typically more complex operations between naval vessels while underway.

While the majority of cargo operations occur between a ship and a land-based terminal, there are instances where transferring cargo directly between two ships in open seas becomes advantageous. This maneuver is termed a ship-to-ship operation. In this scenario, one vessel serves as the terminal (the delivering vessel, often referred to as STBL or Mother Vessel), while the other moors alongside, acting as the recipient (the daughter vessel). This method allows for flexible and efficient cargo transfers, especially in locations where land-based terminals may not be readily available or practical.

REASONS FOR LIGHTENING A VESSEL:

- Harbor Entry or Re-floating: Lightening a vessel may be necessary before entering a harbor with shallow waters or for re-floating purposes, especially if the ship is carrying a heavy load that needs to be reduced for safe navigation.
- Bunkering Operations: To facilitate bunkering operations, where the vessel needs to take on fuel, it may be advantageous to lighten the ship to ensure safe and efficient fuel transfer.
- Time Constraints: In cases of tight schedules, lightening a vessel can help save time by enabling quicker and more efficient cargo handling, especially in busy ports or during critical operational timelines.
- Commercial Transactions: Commercial reasons, such as changes in cargo ownership during transit, may necessitate lightening a vessel. This allows for the smooth transfer of cargo ownership while the ship is still at sea.
- Emergency Situations: Following a grounding or similar incidents, lightening a vessel becomes crucial for emergency reasons. Removing part of the cargo helps in refloating the ship and minimizing potential damage.
- Sanctions Evasion: Unfortunately, in some cases, vessels may be lightened for the purpose of evading sanctions. By transferring cargo at sea, parties involved may attempt to bypass legal restrictions imposed on certain ports or destinations.

It's important to note that while lightening a vessel can be a practical solution for various operational and safety reasons, any attempt to use this process for illegal activities, such as sanctions evasion, is subject to international laws and regulations.

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DUE DILIGENCE IN SHIP-TO-SHIP TRANSFER OPERATIONS

Ship-to-ship (STS) transfer operations, whether conducted at open sea or outer port limits (OPL), involve several parties, including the participating vessels, the Service Provider supplying STS equipment, and the qualified Mooring Master (Person in Overall Advisory Control, POAC). Despite the absence of direct contractual relationships among these entities, both Masters are responsible for ensuring safety. Consequently, the exercise of due diligence before commencing the STS operation is imperative, serving as the primary means to guarantee safety. Due diligence should be observed in various phases of the Ship-to-Ship operation:

- **Ship Nomination and Clearance Requests:** Ensuring that nominated ships are fit for the transfer operation and obtaining necessary clearance requests.
- **Appointment of Service Provider and POAC:** Selecting a competent Service Provider and qualified Mooring Master to oversee the operation.
- **Technical Advice to the Master:** Providing technical advice to the Master by the technical Operator of the vessel.
- **Risk Assessment Procedure:** Conducting a comprehensive risk assessment to identify and mitigate potential hazards.
- **Assessment of the STS Location:** Evaluating the suitability and safety of the chosen STS location.

The level of due diligence exercised is guided by SOLAS Chapter IX (the ISM Code), emphasizing the assessment of "objective evidence" to ensure safety. This evidence includes past STS records, crew experience, lessons learned from incidents, performance data of vessels and Service Providers, and adherence to industry best practices. Access to such data is facilitated by relevant services, some of which are open-source.

While the term "due diligence" may lack precision, its application becomes crucial during incident investigations or litigation. Technical operators must be able to demonstrate compliance with both commercial guidelines and statutory requirements, thereby justifying their commitment to safety.