



CHAPTER 2:

INT'L SALE OF GOODS CONTRACT

READING MATERIALS

1. Richard Schaffer, Filiberto Agusti and Lucien Dhooge (2014) - *International Business Law and Its Environment* (See Chapter 4 – p.86-119)
2. Ray August, Don Mayer and Michael Bixby (2013) *International Business Law: Text, cases and readings* (See Chapter 10- p.559-609)
3. Indira Carr and Peter Stone (2018), *International Trade Law* (See Chapter 2 – p.60-94)
4. Nguyễn Minh Hằng, *International Business Law* (2012) (See Chapter 3)

READING MATERIALS

LEGAL DOCUMENTS

- 1. Law on Commerce 2005**
- 2. Law on Foreign Trade Management 2017**
- 3. Civil Code 2015**
- 4. Decree No. 69/2018/NĐ-CP dated on 15 May 2018**
- 5. United Nations Convention on Contracts for the international sale of goods (1980) [CISG]**
- 6. Incoterms 2020, Incoterms 2010**
- 7. Unidroit principles of International Commercial Contracts (PICC) 2016**

I. FUNDAMENTALS OF INT'L SALE OF GOODS CONTRACT

INT'L SALE OF GOODS CONTRACT

= SALE OF
GOODS CONTRACT + “INTERNATIONALITY”

1.2. INTERNATIONAL CHARACTER

1.2.1. Parties

1.2.2. Object

1.2.3. Payment currency

**1.2.4. Governing law and dispute
settlement body**

1.2.INTERNATIONAL CHARACTER

1.2.1. Parties

- CISG: Art 1.1, Art 10**
- Vietnam's law:**

1.2.INTERNATIONAL CHARACTER

→ What if a party has more than one place of business?

Ex: A buyer in Austria (a CISG State) purchased goods from the **Swiss branch** of a company with **headquarters in Liechtenstein** (notably: a non-CISG Contracting State) (CLOUT case 261)

1.2. INTERNATIONAL CHARACTER

1.2.2. Object

- CISG:
- Vietnam's law: Law on Commerce 2005
 - Art 27.1: Can be delivered across borders

Remark: Country's border – customs border (Export Processing Zone; commercial and industrial Zone...)

1.2. INTERNATIONAL CHARACTER

1.2.3. Payment currency

- Payment currency can be foreign to at least one party to the contract**

1.2. INTERNATIONAL CHARACTER

1.2.4. Governing law and dispute settlement body

II. REQUIREMENTS FOR A VALID CONTRACT

II. REQUIREMENTS FOR A VALID CONTRACT

- 1. Parties to the contract**
- 2. Forms of the contract**
- 3. Content of the contract**
- 4. Objects of the contract**

1. PARTIES TO THE CONTRACT

- VN: Decree No. 69/2018/NĐ-CP
- Competence to enter into a contract:
 - + Legal representative
 - + Authorized representative

1. PARTIES TO THE CONTRACT

- Exceed the sphere of authorization?
- The legal representative knows but shows no objection within a reasonable period?

See more:

- Art 142-143 Civil Code 2015
- Resolution No. 04/2003 of the Judges Council of the Supreme People's court

Article 674 *CIVIL CODE*

1. The capacity for civil acts of individuals shall be determined in accordance with the law of the country of which such person holds nationality, except in the case provided in clause 2 of this article.
2. Where a foreign individual establishes or performs civil transactions in Vietnam, the capacity for civil acts of such foreign individual shall be determined in accordance with the law of Vietnam.
3. The determination of whether an individual has lost capacity for civil acts, has difficulties in being aware of, or controlling his or her own acts or has restricted capacity for civil acts in Vietnam must comply with the law of Vietnam.

CIVIL CODE

Article 19 *Capacity for civil acts of individuals*

The capacity for civil acts of an individual shall be the capability of the individual to establish and exercise civil rights and perform civil obligations through his or her acts.

Article 20 *Adults*

1. Adults are persons who are eighteen (18) or more years of age
2. An adult shall have full capacity for civil acts except in the circumstances provided in articles 22, 23 and 24 of this Code.

CIVIL CODE

Article 22 *Loss of capacity for civil acts*

1. Where a person is incapable of being aware of or controlling his or her own acts due to any mental or other illness, a court shall, based on the conclusion of forensic mental examination and at the request of a person with related rights or interests, or a relevant agency or organization, issue a decision declaring the former person as a person who has lost capacity for civil acts.

Where the basis on which a person has been declared as having lost the capacity for civil acts no longer exists, the court shall, at the request of such person or any person with related rights or interests, or a relevant agency or organization, issue a decision revoking the decision declaring the loss of capacity for civil acts.

2. Civil transactions of a person who has lost the capacity for civil acts must be established and performed by his or her legal representative.

ART 142 CIVIL CODE

1. A civil transaction entered into and performed by an unauthorized person shall not give rise to rights and obligations with respect to the principal, except in one of the following cases:
 - (a) The principal has recognized the transaction;
 - (b) The principal knew but has not objected within a reasonable period;
 - (c) The principal is at fault, resulting in the fact that the transacting person did not know or could not have known that the person who entered into or performed the civil transaction with him or her was unauthorized.
2. Where a civil transaction established or performed by an unauthorized person does not give rise to rights and obligations with respect to the principal, the unauthorized person must, nevertheless, fulfil obligations to the person with whom he or she transacted, unless such person knew or should have known that the representative was unauthorized but still carried out the transaction.
3. A person having transacted with an unauthorized person has the right to terminate unilaterally the performance of or to rescind the civil transaction entered into and to demand compensation for any loss and damage, except where such person knew or should have known that the representative was unauthorized but still carried out the transaction or in the case prescribed in clause 1(a) of this article.

ART 143 CIVIL CODE

1. A civil transaction entered into and performed by a representative beyond his or her scope of representation shall not give rise to rights and obligations of the principal with respect to that part of the transaction which exceeded the scope of representation, except in one of the following cases:

- (a) The principal has agreed;
- (b) The principal knew but has not objected within a reasonable period;
- (c) The principal is at fault, resulting in the fact that the transacting person did not know or could not have known that the person entered into or performed the civil transaction with him or her beyond the scope of representation.

2. Where a civil transaction established or performed by a representative beyond the scope of representation does not give rise to rights and obligations with respect to that part of the transaction established or performed which exceeded the scope of representation, the representative must fulfil obligations to the person with whom he or she transacted with respect to that part of the transaction which exceeded the scope of representation, unless such person knew or should have known that the scope of representation was exceeded but still carried out the transaction.

3. A person having entered into a transaction with such representative has the right to terminate unilaterally or rescind the civil transaction with respect to that part which is beyond the scope of representation or with respect to the entire transaction and demand compensation for any loss and damage, except where such person knew or should have known that the scope of representation was exceeded but still carried out the transaction or in the case prescribed in clause 1(a) of this article.

Mechel Metal Supply Ltd. v. Metal Construction Jsc

- Feb2003, Metal Construction JSC (A) (VN), represented by Mr Ngô Văn Kèn entered into a contract with Mechel Metal Supply Ltd (Lichtenxtain) (B)
- A failed to open the L/C within the time limit. The goods were made available at destination port but A failed to take delivery. B then sold the goods to another company at a lower price.
- B brought A to the ICC

- **A's arguments:**

- The contract is invalid as Mr Ken is not the legal representative. He is merely the director of the dependent unit of company A.
- Mr Ken failed to advise the Board of Management of the existence of contract.

- **B's arguments:**

- In the past, Mr Ken, acting as an authorized legal representative, used to conclude the contract with Company B.
- Mr Ken declares that he advised the Director of the contract by phone.

2. FORM OF THE CONTRACT

- **Written form or equivalent:** Viet Nam (Art 27.2, Law on Commerce), China, Argentina, Chile, Belarus, Hungary, Ucraina...
- **The US:** (Art 2.201, UCC): a contract for the sale of goods for the price of \$500 or more shall be made in writing
- **CISG 1980:** Art 11 & Art 96

3. CONTENT OF THE CONTRACT

A. Are there any clauses mandatory in the contract?

B. The content must not be contrary to the laws

A. Mandatory clauses in the contract

- **Viet Nam:** Art 398 – Civil Code
- **CISG 1980:** Art 19.3

COMMERCIAL LAW 1997

Article 50 Principal Contents of Contracts for Sale and Purchase of Goods

Contracts for sale and purchase of goods must contain the following principal contents:

1. Name of goods;
2. Quantity;
3. Specifications, quality;
4. Price;
5. Method of payment;
6. Location and time for delivery and receipt of goods.

In addition to the principal contents stipulated in this article, parties may agree on other contents of the contract.

4. OBJECT OF THE CONTRACT

- Goods banned from export and import**
- Goods imported and exported under conditions**
- Goods freely imported and exported**

(See more: Appendix 1-3 – Decree 69/2018/NĐ-CP)

III. OFFER AND ACCEPTANCE

OFFER AND ACCEPTANCE



The diagram illustrates the process of forming an international sales contract. It features a large, light blue arrow pointing to the right. Inside this arrow, there are three elements: a green rounded rectangle at the top containing the word 'OFFER', a purple rounded square in the middle containing a white plus sign '+', and a blue rounded rectangle at the bottom containing the word 'ACCEPTANCE'. To the right of the arrow's tip, the text 'INT'L SALE OF GOODS CONTRACT' is displayed in bold, black, uppercase letters.

OFFER

+

ACCEPTANCE

**INT'L SALE OF
GOODS
CONTRACT**

Forms:

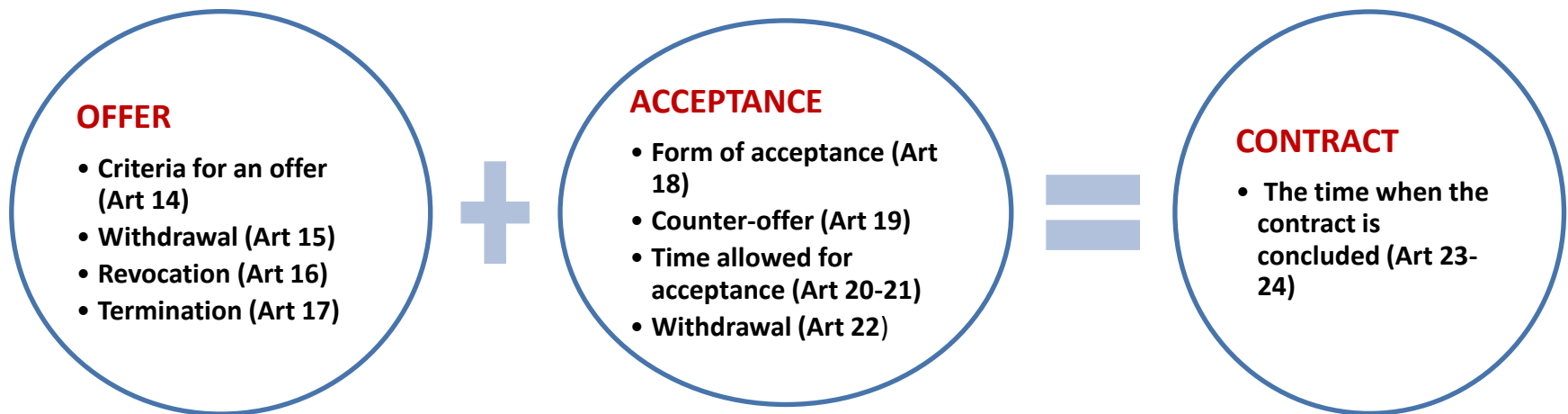
- **Offer + Acceptance = Contract**
- **Offer signed by both the seller and buyer = Contract**

1. OFFER

+ CISG 1980: Art.14 → Art.24

+ Civil Code 2015: Art.386 → Art. 397

Contract formation under the CISG



1. OFFER

- 1. Criteria for an offer**
- 2. Withdrawal and revocation of an offer**

1

Criteria for an offer

- Việt Nam: Art 386 Civil Code
- CISG 1980: Art 14

ART 386.1

Offer to enter into a contract means a clear expression by the offeror of its intention to enter into a contract and to be bound by such offer made to another determined party or to the public (hereinafter collectively referred to as the offeree).

ART 14 CISG 1980

- (1) A proposal for concluding a contract **addressed to one or more specific persons** constitutes an offer if it is sufficiently definite and indicates the **intention of the offeror to be bound** in case of acceptance. A proposal is **sufficiently definite** if it **indicates the goods** and expressly or implicitly fixes or makes provision for determining the **quantity and the price**.
- (2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

REMARKS

- **Inquiries**
- **Mass distribution of a catalogue of merchandise**
- **Brochures**
- **Advertisement**

**→DISCLAIMER SHOULD BE PROVIDED SUCH AS:
The following advertisement does not
constitute an offer but an invitation to
negotiate with the seller.**

ART 14 VS ART 55 – OPEN PRICE CONTRACT

‘Where a contract has been **validly concluded** but **does not expressly or implicitly fix or make provision for determining the price**, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.’

ART 14 VS ART 55 – OPEN PRICE CONTRACT

Case law:

In the majority of cases, the courts and arbitral tribunals came to the conclusion that a contract had been formed while in rare cases a different result was reached

2

WITHDRAWAL REVOCATION

AND

- CISG: Art 15.2, Art 16**
- VN: Art 389, Art 390 Civil Code**

WITHDRAW

REVOKE



OFFER REACHES

DISPATCHES ACCEPTANCE



2 EXCEPTIONS (Art.16.2)

ART 389 CIVIL CODE 2015

An offeror may modify or withdraw an offer to enter into a contract in the following cases:

- (a) The offeree receives notice of modification or withdrawal of the offer prior to or at the same time as receipt of the offer;
- (b) The offeror clearly specified the circumstances in which the offer could be modified or withdrawn and such circumstances have in fact arisen.

ART 390 CIVIL CODE 2015

An offeror may revoke the offer to enter into a contract if such right was specified in the offer and the offeree receives the notice of revocation of the offer prior to the offeree providing a notice of acceptance of the offer to enter into the contract.

2. ACCEPTANCE

+ CISG 1980: Art.14 → Art.24

+ Civil Code 2015: Art.386 → Art.397

2. ACCEPTANCE

- 1. the offeree shall accept the entire content of the offer**
- 2. the acceptance must be received within the time limitation set forth in the offer**
- 3. the acceptance shall not be withdrawn**



The offeree shall accept the entire content of the offer

- Civil Code 2015: Art 392, 393**
- CISG 1980: Art.19.2; Art.19.3**

ART 393 CIVIL CODE 2015

“Acceptance of an offer to enter into a contract means a reply by the offeree accepting the entire contents of the offer”

→ ‘Mirror image’ rule



2

**THE ACCEPTANCE MUST BE
RECEIVED WITHIN THE TIME
LIMITATION SET FORTH IN THE
OFFER**

- CISG: ART.18, ART.21**
- VN: ART 394**

FORMS OF ACCEPTANCE

- **Written forms**
- **Oral form**
- **Performing an act**
- **SILENCE = ACCEPTANCE?**
 - + **CISG (Art 18.1)**
 - + **VN (Art 393 Civil Code)**

DISCUSSION

A requests B to set out the conditions for the renewal of a contract for the supply of wine, due to expire on 31 December. In its offer B includes a provision stating that “if we have not heard from you at the latest by the end of November, we will assume that you have agreed to renew the contract on the conditions indicated above”. Discuss.

DISCUSSION

Under a long-term contract for the supply of wine B regularly met A's orders without expressly confirming its acceptance. On 15 November A orders a large stock for New Year. B does not reply, nor does it deliver at the requested time.

Discuss whether B is in breach.



3

**The acceptance shall not be
withdrawn**

- VN: Art 397 Civil Code**
- CISG: Art 22**

DISCUSSION

The Polish seller (Y) sent an offer to the Vietnamese buyer (X). The offer is valid until 30th May.

26/5: X accepted the offer on one condition – that Y might reduce the price

29/5: X accepted the entire content of the initial offer

27/5: Y concluded the contract with another buyer.

X claims for damages.

IV. DRAFTING AN INTERNATIONAL SALE OF GOODS CONTRACT

IV. DRAFTING AN INTERNATIONAL SALE OF GOODS CONTRACT

Opening

Terms and conditions

- Object-related terms
- Finance-related terms
- Transport-related terms
- Legal-related terms
- Additional terms

CONTRACT No ...	
Place, Date ...	
<u>Between:</u>	Name: ... Address: ... Tel: ... Fax: ... Email: ... Represented by ... Hereinafter called as the SELLER
<u>And:</u>	Name: ... Address: ... Tel: ... Fax: ... Email: ... Represented by ... Hereinafter called as the BUYER
The SELLER has agreed to sell and the BUYER has agreed to buy the commodity under the terms and conditions provided in this contract as follows:	
Art.1: Commodity:	
Art.2: Quality:	
Art.3: Quantity:	
Art.4: Price:	
Art.5: Shipment:	
Art.6: Payment:	
Art.7: Packing and marking:	
Art.8: Warranty:	
Art.9: Inspection:	
Art.10: Force majeure:	
Art.11: Claim:	
Art.12: Arbitration:	
Art.13: Other terms and conditions:	
... (Loading terms/loading and discharging rate; Performance Bond, Insurance; Penalty)	
For the BUYER	For the SELLER

1. Opening

1.1. Type/name of contract

1.2. Contract number

1.3. Time and place

1.4. Contract parties

1.5. Definitions

1.6. Preamble

1. Opening

1.1.Type/name of contract

- ❖ Export – Import contract
- ❖ Sale/Purchase contract
- ❖ International sale of goods contract

1.2. Contract number

- ❖ Contract No. 105/2021
- ❖ Contract No. PETECH/2021-15

1. Opening

1.3. Time and place

- HCMC, 15th May, 20...
- 15th March 20.. in Indonesia

What is the purpose of time and place?



1. Opening

1.4. Contract parties

1.4.1. Seller

- Name of company and its legal form
- Country of incorporation and (if appropriate) Trade register number
- Address
- Tel, Fax, Email
- Represented by (surname and first name, address, position, legal title of representation)

→ *Represented by Mr. Nguyen Van A – Vice Director ???*

1.4.2. Buyer:...

1. Opening

1.5. Definitions (If applicable)

- “Foreign Currency” means a currency of a country other than that in which the Plant is to be installed.
- “Plant” means machinery, apparatus, materials and all things to be provided under the Contract for incorporation in the works.

1. Opening

1.6. Preamble/Whereas clause

Whereas: The seller and buyer, each with full corporate authority, certifies, represents and warrants that each can fulfill the requirements of this agreement and respectively provide the products and the funds referred to herein, in time and under the terms agreed to hereafter;

or

Whereas: The seller and the buyer both agree to finalize this contract under the terms and conditions; and the product offered for sale is subject only to the terms and conditions contained in this contract and strictly confidential between the buyer and the seller and it is therefore agreed as follows:

2. Terms and conditions

2.1. Commodity/Scope of supply

2.1.1. Industrial products

- **Commodity + origin**
 - *Japanese motorbike*
 - *Swiss watch*
- **Commodity + main specifications**
 - *12 inch colored TV*
- **Commodity + brand name**
 - *Sony Trinitron TV*
 - *HP Probook 2430s*

2. Terms and conditions

2.1.2. Agricultural products

- **Commodity + scientific name**
 - Tra, Swai, Sutchi catfish, Striped Catfish, Silver striped catfish:
Pangasius hypophthalmus
 - Basa, basa catfish, bocourti, Bocourti fish, Bocourti catfish:
Pangasius pangasius
- **Commodity + origin**
 - *Vietnamese rice*
- **Commodity + use/usage**
 - *Wheat powder for human consumption*
 - *Rice paste (base element for preparation of spring roll)*
- **Commodity + main specifications**
 - *Skinless whole dried squid*

2. Terms and conditions

2.1. Commodity/Scope of supply

Combination of some options to clearly identify the contract object -> for facilitation of contract performance and avoid misunderstanding/disputes.

- *Vietnamese long grain white rice of 10% broken, crop 2005*
- *Two-litre multi rice cooker, Natio brand, model FX12, made in Japan, 2003*

DISCUSSION

A dispute arose between a Vietnamese seller and the British buyer.

+ Pre-contractual documents:

Raw, Unoxidised Tapioca Starch, Industrial Grade

+ Contract:

Raw, Unoxidised Tapioca Powder, Industrial Grade

DISCUSSION

Plaintiff, a Swiss corporation, entered into contracts to purchase chicken from B.N.S. International Sales Corporation. Defendant was a New York corporation. The English language contracts called for the delivery of “chicken” of various weights as follows:

**‘US Fresh Frozen Chicken, Grade A, Government Inspected, Eviscerated
2½-3 lbs. and 1½-2 lbs. each**

75,000 lbs. 2½-3 lbs.....@\$33.00

25,000 lbs. 1½-2 lbs.....@\$36.50 per 100 lbs. FAS New York

When the birds were shipped to Switzerland, the 2-lb. sizes were not **young broiling chickens** as the plaintiff had expected, but **mature stewing chickens** or **fowl**. The plaintiff protested, claiming that in German the term *chicken* referred to young broiling chickens.

DISCUSSION

Defendant notes that the contract called not simply for chicken but for "US Fresh Frozen Chicken, Grade A, Government Inspected." It says the contract thereby incorporated by reference the Department of Agriculture's regulations, which favor its interpretation. The regulation of the Department of Agriculture, 7 C.F.R. § 70.300-70.370, entitled, "Grading and Inspection of Poultry and Edible Products Thereof." and in particular § 70.301 which recited:

"*Chickens*. The following are the various classes of chickens:

**(a) Broiler or fryer . . . (b) Roaster . . . (c) Capon . . . (d) Stag . . .
(e) Hen or stewing chicken or fowl . . . (f) Cock or old rooster . . .**

The question was: What kind of chicken did the plaintiff order? Was it "broiling chicken," as the plaintiff argued, or any chickens weighing 2 lbs., as the defendant argued?

***Frigaliment Importing Co., Ltd. v. B.N.S. International Sales Corp.*, 190 F. Supp. 116 (S.D.N.Y. 1960).**

2.2. Quantity

2.2.1. Measurement unit

- Countable:
 - Single: 100 bales; 200 parcels; 1000 barrels,...
 - Collective: 5 dozens of eggs; 7 tens of oranges

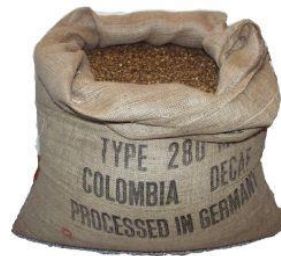


Box

Crate



bag



bale



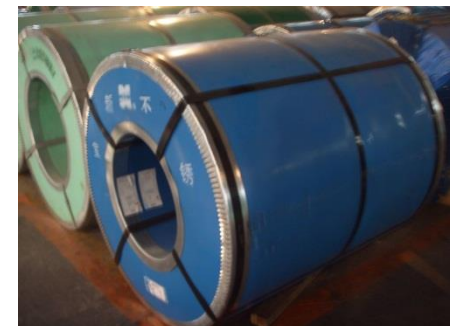
Drum



Barrel



Case



Roll

2.2. QUANTITY

2.2.1. Measurement unit

- Uncountable:
- **Metric system (international system):** Length (mm, cm, dm, m); Weight (g, kg, MT).
- **Imperial system (UK) and Customary measure (US):** Length (yard, feet, inches, mile); weight (pound, ounces, LT, SL).
- Note: 1MT = 1000 kg; 1 LT = 2240 pounds (1016 kg); 1 ST = 2000 pounds (907 kg).

2.2. QUANTITY

2.2.2. Ways of stipulation

a. By exact figure: valuable and countable goods

- *100 motorbikes*
- *15.000 Barrels only*
- *525.000 UK Gallons only*

b. By approximate figure: with tolerance

- Tolerance: Any quantity delivered between the tolerance shall not be deemed a breach of contract.
- *Expression: “±...”, “**about**”, “**approximately**”, “**more or less**”...*
- Associated stipulation
 - ✓ Party to choose tolerance: Seller-Buyer-Vessel Charterer's option?
 - ✓ Price of the tolerated quantity: Contract price? Market price?

2.2. Quantity

2.2.2. Ways of stipulation

b. By approximate figure: with tolerance

- *500 MT \pm 5% at the buyer's option;*
- *1000MT approximately 5% at the buyer's option;*
- *10000 MT more or less 5% at the seller's option;*
- *From 950 MT to 1000 MT at the seller's option;*
- *Tolerance 5% more or less at seller's option at contract price.*



TOLERANCE

Article 30 –UCP 600:

- a. “ The word “*about*” or “*approximately*” used in connection with the amount of the credit or the quantity or the unit price stated in the credit are to be construed as allowing a tolerance not to exceed 10% more or 10% less than the amount, the quantity or the unit price to which they refer
- b. A tolerance not to exceed 5% more or 5% less than the quantity of the goods is allowed, provided the credit does not state the quantity in terms or a stipulated number of packing units or individual items and the total amount of the drawings does not exceed the amount or the credit”

STANDARD CONTRACT- COFFEE

Article 1 - Quantity

The quantity shipped or loaded shall be that stated in the contract. A tolerance of 3% in weight, more or less, shall be permitted only if the difference is due to circumstances beyond the control of the sellers.

(European Contract for Coffee – 2018 edition)

STANDARD CONTRACT-COCOA BEANS FCC

The contract quantity is net of any tare and is subject to a tolerance of plus or minus 1.5 per cent of the weight at time of shipment, with the exception of shipped weight contracts where the tolerance is plus or minus 0.5 per cent. For in store/on truck/on railcar/on barge contracts the tolerance is based on the weight at the time of delivery.

Weight tolerance

Where the net landed weight exceeds the contract quantity by 1.5 per cent or more, the Buyer shall have the option to refuse the total excess over the contract quantity or accept it at the market value at the close of business on the last day of weighing. Where the net landed weight is less than the contract quantity by 1.5 per cent or more the total shortfall shall be the subject of a settlement based on the difference between the contract price and the market value on the last day of weighing provided that the market price at the close of business is higher than the contract price.

STANDARD CONTRACT – GAFTA 100

‘QUANTITY:2% more or less.

Sellers shall have the option of shipping a further 3% more or less than the contract quantity. The excess above 2% or the deficiency below 2% shall be settled on the quantity thereof at shipment at market value on the last day of discharge of the vessel at the port of destination; the value to be fixed by arbitration, unless mutually agreed. Should Sellers exercise the option to ship up to 5% more, the excess over 2% shall be paid for provisionally at contract price. The difference between the contract price and the market price calculated in accordance with the provisions of this clause shall be adjusted in a final invoice. In the event of more than one shipment being made, each shipment shall be considered a separate contract, but the margin on the mean quantity sold shall not be affected thereby.’

FRANCHISE (Exemption rate)

Franchise vs Tolerance

Example:

'Franchise for Shipping Weight Terms for cocoa beans in bags only

Parties must agree a franchise representing the weight loss which could be expected due to natural shrinkage during the voyage. In the event that Parties do not agree, a franchise of 1.5% shall apply'

(Article 8.3.3 – Contract Rules for Cocoa beans issued by Federation of Cocoa Commerce -FCC)

2.2. QUANTITY

2.2.3. Methods to determine quantity

2.2.3.1. Gross weight

Gross weight = net weight + tare

2.2.3.2. Net weight

- Net net weight: without any package;
- Semi net weight: with direct package;
- Gross weight for net: negligible package cost;
- Legal net weight: Gross weight – tare determined by Customs officers.

2.2. QUANTITY

2.2.3. Methods to determine quantity

2.2.3.3. Theoretical weight

$M \text{ (mass)} = D \text{ (density)} \times V \text{ (volume)}$

2.2.3.3. Commercial weight

Goods whose mass is sensitive to moisture change.

Commercial Weight

G_0 : Commercial Weight

G_1 : Actual Weight

W_0 : Standard moisture

W_1 : Actual moisture

$$G_0 = G_1 \times \frac{100 + W_0}{100 + W_1}$$

Example: Quantity of cotton in contract: 120 MT, standard moisture stipulated in the contract is 10%. Actual moisture at the loading time is 15%. Commercial weight?

2.2. QUANTITY

DRAFTING A QUANTITY CLAUSE

- Specify content: exact/approximate (if it is approximate weight, there must be stipulation on tolerance).
- Select the method to determine quantity (gross/net/theoretical/commercial weight)
- Inspection of goods:
 - Place of inspection: shipped weight/landed weight;
 - Inspector: Parties' representatives or intermediary; + Inspection cost distribution
 - Certificate of quantity: preliminary or final

2.2. QUANTITY

E.g. Quantity of Vietnam export coffee:

- 5000 MT +/- 5% at the seller option;
- Tolerance's price is determined at time of delivery;
- The mentioned above quantity is understood as gross weight for net;
- Quantity is to be determined at the unloading port by Continent Inspection Service Co.; Ltd.
- Inspection cost shall be at Buyer's account.
- C/Q issued at the unloading port shall be final and binding both parties.

2.3. QUALITY

2.3.1. By technical documents

“Motorbikes with qualifications as stipulated in the technical document No 345, published in 20.., provided by the manufacturer, including design, manual/instructions with signatures and stamps of the two parties.

Those technical documents are in English and Vietnamese and are an integral part of the contract”.

2.3. QUALITY

2.3.2. By specification

“Brand-new motorbikes of 110cm³, maximum speed of 150km/h, fuel consumption of 1,6l/100km, automatic start, available in 3 colors of blue, red and yellow as illustrated in the enclosed pictures.”

2.3.3. By trademark/trade name

Honda Spacy 125cm³

2.3. QUALITY

2.3.4. By sample

- Provided by seller or buyer;
- In case of sample given by the buyer, the seller will have to produce counter samples for delivery.

“The rice shall be of quality as per sample No..., provided by the seller on April 24th 20... with two parties’ signatures. The sample shall be made into three pieces, each party keeps one and the remaining shall be kept by a third party appointed by the two parties.”

2.3. QUALITY

2.3.5. By description

- Case: Not standardized products with quality rather stable.

“White rice of long grain with natural flavor

- ✓ *Broken: 15% max*
- ✓ *Different color grain: 4%max*
- ✓ *Moisture: 15%max*
- ✓ *Mixture: 5 grains/kg max”*

2.3. QUALITY

2.3.6. By the main ingredient/content

- Case: mines, chemicals, processed foods...

“Malaysian white urea:

- *Nitrogen: 45% min;*
- *Kali: 15% min;*
- *Moisture: 15% max;*
- *Mixture: 1% max.”*

2.3. QUALITY

2.3.7. By prior inspection/examination

- Case: Commodity with small quantity, not standardized like: liquidated goods, auctioned ones.

- ✓ *Inspected – approved.*

- ✓ *As it is.*

- ✓ *As it is and where it is.*

2.3. QUALITY

- Choice of ways to stipulate quality depends on:
 - ✓ Nature of goods;
 - ✓ Trade practices;
 - ✓ Relevant power between the parties.

2.3. QUALITY

DRAFTING A QUALITY CLAUSE

- Define quality of goods (use one of / a combination of the above methods)
- Inspection of quality
 - *Place of inspection*: place of manufacture; place of delivery; place of destination; place of use
 - *Inspector*: Manufacturer; representatives of parties; intermediary organization
 - *Inspection cost*
 - *Certificate of quality*: preliminary/final

DISCUSSION

- 1. Quality inspection is conducted at the seller's country**
- 2. Quality inspection is conducted by Company X at the seller's country**
- 3. Quality inspection conducted by Company X at the seller's country is binding**
- 4. Quality inspection is conducted at the buyer's country**
- 5. Quality inspection is conducted by Company X at the buyer's country**
- 6. Quality inspection conducted by Company X at the buyer's country is binding**
- 7. Quality inspection is conducted by both Company X at the seller's country and Company Y at the buyer's country. Survey report issued by Y is binding.**

2.3. QUALITY

E.g.: Quality of Vietnam export rice

- Broken: 35% max;
- Moisture: 14,5% max;
- Foreign matter: 0,4% max;
- Crop: Summer Autumn crop 2011
- Quality of goods is to be determined at the loading port by Vinacontrol Haiphong. Inspection charges shall be borne by the Seller.
- C/Q issued by Vinacontrol shall be final and binding both parties

2.4. DELIVERY/SHIPMENT

2.4.1. Time of Delivery

- *Specific time of delivery*
 - **On a specific date:** On May 5th, 20..
 - **No later than/Before a specific date:** Before May 5th;
 - **In a specific period of time:** Within 2 months since the contract date/ From 1st to 20th of August;
- *Unspecific time of delivery*
 - **Conditional delivery:** Subject to the opening of L/C;
Subject to export License
 - **Prompt/Quick/ASAP/Immediately:** UCP 600 – Art 3

2.4. DELIVERY/SHIPMENT

2.4.2. Place of Delivery

- *Basis to determine place of delivery*
 - International commercial terms
 - Means of transport;
 - Intentions of parties in the contract
- *Content of place of delivery*
 - Place/port of loading
 - Place/port of discharge
- *Methods to denote*
 - Single port/Multiple ports
 - Specified port(s)/Optional port(s).

2.4. DELIVERY/SHIPMENT

2.4.3. Notice of Delivery

- Frequency, time and content of notice;
- Parties' liability subject to failure of notice;
- Customary: single notice (F, D); triple notices (C);

2.4.4. Delivery instructions/ Other delivery terms

- Transshipment (not) allowed;
- Partial shipment (not) allowed;
- Stale B/L (not) accepted; [Stale B/L: Presented to its consignee, or at a bank, after the last date specified in the relevant letter of credit and which, therefore, is not acceptable as a valid document.]
- Loading/Unloading advice (if necessary).

Transshipment is the unloading from one vessel and reloading to another vessel during the carriage from the port of loading to the port of discharge. If it doesn't occur between these two ports, unloading and reloading is not considered to be transshipment.

(Art 104 ISBP 681)

Partial shipment is the shipment on more than one means of conveyance within the same mode of transportation, even if the means of conveyance leave on the same day for the same destination.

(Art 81 ISBP 681)

2.4. DELIVERY/SHIPMENT

- **DRAFTING A DELIVERY TERM:**

Necessary information

- Applicable Incoterms (by reference to most recent version of the Incoterms at date of conclusion of the contract)
- Time of delivery
- Place of delivery
- Advice/Notice of delivery
- Delivery instructions

2.4. DELIVERY/SHIPMENT

E.g. Delivery:

Delivery as per FOB, Incoterms 2010

- Time of delivery: No later than June 30th 2012;
- Port of delivery: Haiphong, Vietnam
- Port of discharge: Main ports in Europe
- Seller should without delay inform Buyer by fax when the goods are ready for delivery. Within 48 hours prior to vessel's arrival, Buyer should inform Seller of details of ship number, ETA and loading conditions. Within 24 hours after the loading of goods on board, Seller should inform Buyer of B/L date and number.
- Partial shipment and stale B/L are not accepted.

2.5. PRICE

□ Price currency

- Parties' agreement: Export/Import countries' currency or a third country's currency;
- Customary: E.g.: USD (Crude oil); GBP (Metals)
- Often determined by the stronger party;
- Often of stable value;
- May differ from payment currency.

2.5. PRICE

❑ Four methods to stipulate prices:

- ✓ Fixed price;
- ✓ Deferred fixing price;
- ✓ Flexible price;
- ✓ Sliding scale price.

2.5. PRICE

2.5.1. Fixed price

- *“Unit price: 250 USD/MT.*

Total price: 250 USD/MT x 200MT = 50.000 USD

(In words: fifty thousand US dollar only)

This price shall be understood to be FOB Haiphong Port, Incoterms 2020, including packaging.”

- *“Unit price: 250 USD/MT, FOB Haiphong Port, Incoterms 2020, including packaging.”*

2.5. PRICE

2.5.2. Deferred price

- Included information: time, place and how to identify prices.
- Case: price fluctuates, market power belongs to buyer.
“Coffee price shall be identified as the trading price at London Commodity Exchange at the time of delivery.”

2.5. PRICE

2.5.3. Flexible price

- Adding: time, place, identification of price difference and allowed tolerance.

“Unit price: 600 USD/MT

Total price: 600 USD/MT x 500MT= 300.000 USD

At the time of delivery, if coffee price on the London market is of 5% different from this price then market price shall be applied.”

2.5. PRICE

2.5.4. Sliding scale price

- Case: Goods needs long time to produce and of high value.

“The initial price of the ship is GBP 5 million, of which 50% is for materials, 40% for manpower and 10% for fixed cost. This price shall be recalculated upon delivery by the formula given by European Economic Committee as follows:

$$P1 = P_o (a + b.M1/M_o + c.S1/S_o)$$

Reference materials for parties are magazine of ABC, published by XYZ Association within 20 days upon delivery of the ship.”

2.5. PRICE

DRAFTING A FIXED PRICE CLAUSE

Necessary information:

- Price currency
- Unit price: Include the Incoterms rule applied and charges (not) included;
- Total price: in number and in words;
- Discount (if any)

2.5. PRICE

DRAFTING A FIXED PRICE CLAUSE

Vietnam export rice price

- Price currency: USD
- Unit price: USD 410/MT as per FOB Haiphong Port, SRV, Incoterms 2010, packing charges included.
- Loading, unloading costs and any other surcharges arising from the contract, whether at the loading or unloading charges shall be at Buyer's account.
- Total price: Approximately USD 410,000.

(In words : About four hundred and ten thousand United States Dollars only).

2.6. PAYMENT

❖ **Payment currency**

- Payment currency is price currency
- Payment currency is not price currency

❖ **Time of payment**

- Advance payment
- Prompt payment
- Deferred payment

❖ **Mode of payment**

- Transfer
- Collection
- Documentary credit

2.6.1. Time of Payment

a. Advance payment

- Payment made after the contract signing but before delivery date.
- Purpose: as Performance Bond, guaranteeing the contract performance.
- Note:
 - Payment before the delivery from 10 to 15 days.
 - The delivery date: of the first shipment
 - No interest on the advanced payment amount
 - Seller only makes delivery when getting the notice of credit available.

2.6.1. Time of Payment

b. Deferred payment

Payment shall be made x days after:

- the delivery date
- the date of document presentation
- the date of taking delivery
- the date of guarantee completion

2.6.1. Time of Payment

c. Combined/mixed time of payment

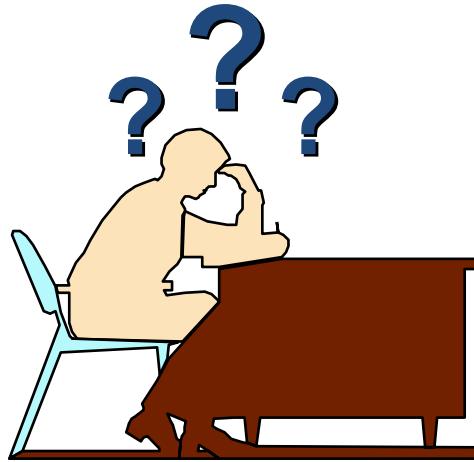
- X1 days after the contract becomes effective, the Seller shall pay 3% of the contract value.
- X2 days before the first shipment, the Seller shall pay 5% of the contract value.
- Right after the first shipment, the Seller shall pay 5% of the contract value.
- Right after the last shipment, the Seller shall pay 10% of the contract value.
- The Buyer will keep 10% of the contract value and pay that upon the completion of guarantee obligation. The remaining shall be paid in 4 years, each year an equal amount.

2.6.2. Mode of payment

- a. Open account
- b. Remittance
 - Mail transfer – MT
 - Telegraphic transfer – T/T or TTR
- c. Collection
 - Clean collection
 - Documentary collection
- d. Documentary credit
- e. Advance payment

5.6.2. Mode of payment

Buyer Takes
All the Risk



Seller Takes
All the Risk



Who Should Take the Risk?

a. Open account

- Seller ships the goods and all the necessary shipping and commercial documents directly to a buyer who agrees to pay a seller's invoice at a future date.
- Open account is typically used between established and trusted traders.

b. Remittance

- Mail transfer – MT

Remittance order is in a form of a letter sent by post.

- Telegraphic transfer – T/T or TTR

Remittance order is in a form of a telegraphic message sent by Telex or SWIFT.



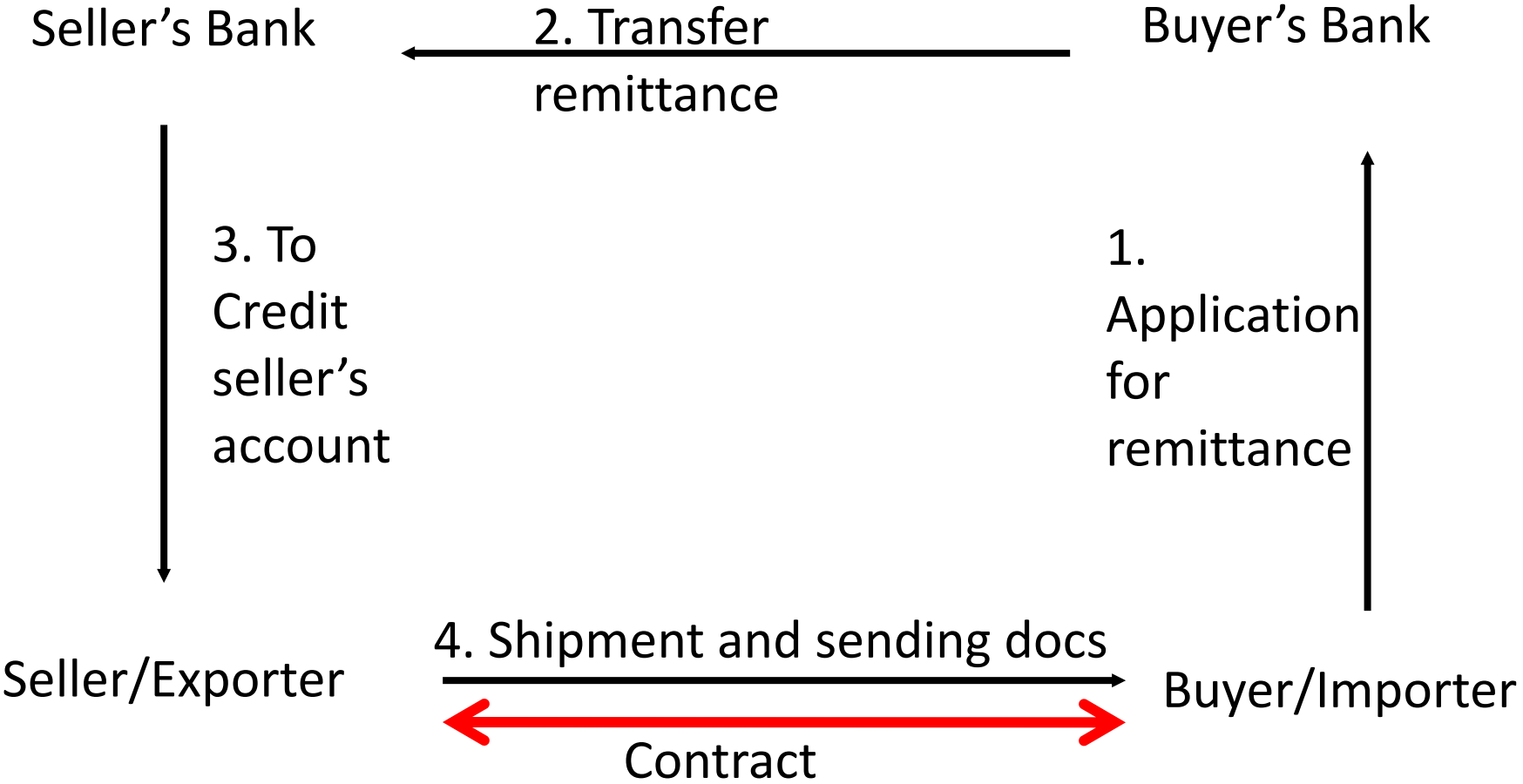
b. Remittance

Two types of remittance:

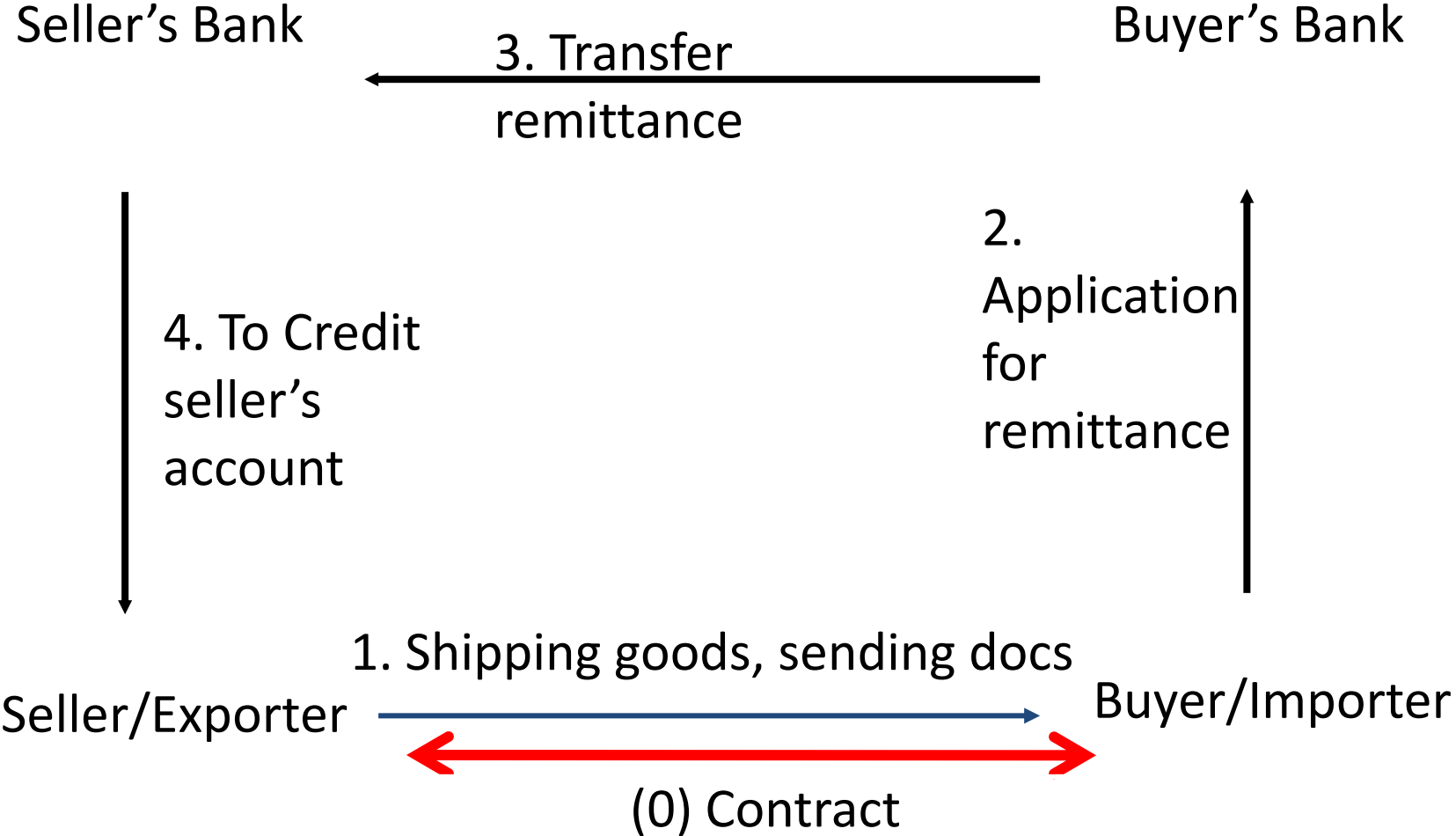
- Mail transfer remittance: M/T
 - Rarely used nowadays
 - Low cost, Low speed
 - Risky
- Telegraphic transfer Remittance: T/T (wire/Telex/Swift)
 - Popular
 - Costly, Speedy
 - Safe



Procedure of Transfer remittance:
a – Remittance before shipping goods



Procedure of Transfer remittance:
b – Remittance after shipping goods



Procedure of Transfer remittance

c – Mixed Remittance: before and after shipping goods

Term of payment:

- Make payment by T/T
- Within 01 week after signing contract, buyer should remit in advance 20% contract value.
- 80% remaining value will be transferred to seller upon receiving docs.
- Pay to account:
- A/C name:
- A/C No. (USD):
- Swift code:
- Bank name:
- Bank address:

b. Remittance

- Wordings

“Within 7 days upon receipt of the copy of the shipmaster’s confirmation from Seller that the goods have been dispatched, the Buyer shall instruct BOC to remit the full contract value by T/T to Seller’s account at VCB Hà Nội.”

Within 01 week after receiving the seller's notice of shipment, buyer should remit 100% contract value by TT to seller's account at Bank X.

Payment by T/T within 7 days after receiving shipping documents (original) to Kolon company, account No... at Vietcombank, branch HCM.

Payment should be made upon buyer's receiving following shipping docs:

- 3/3 clean Bill of Lading, shipped on board, marked Freight prepaid.
- Commercial invoice: 3 copies
- Packing list: 3 copies
- Certificate of origin issued by Korean Commercial Chamber

C- COLLECTION

The URC 522 are the Uniform Rules for Collections:

Sub- Article 2(a): Collection means the handling by banks of documents as defined in Sub-Article 2(b) in accordance with instructions received, in order to:

- Obtain payment and/or acceptance
- (or) Deliver documents against payment and/or against acceptance
- (or) Deliver documents on other terms and conditions.

C- COLLECTION

Sub- Article 2(b):

"Documents" means financial documents and/or commercial documents:

1 "Financial documents" means bills of exchange, promissory notes, cheques, or other similar instruments used for obtaining the payment of money;

2 "Commercial documents" means invoices, transport documents, documents of title or other similar documents, or any other documents whatsoever, not being financial documents

Types of Collection

Sub- Article 2(c):

"**Clean collection**" means collection of financial documents not accompanied by commercial documents.

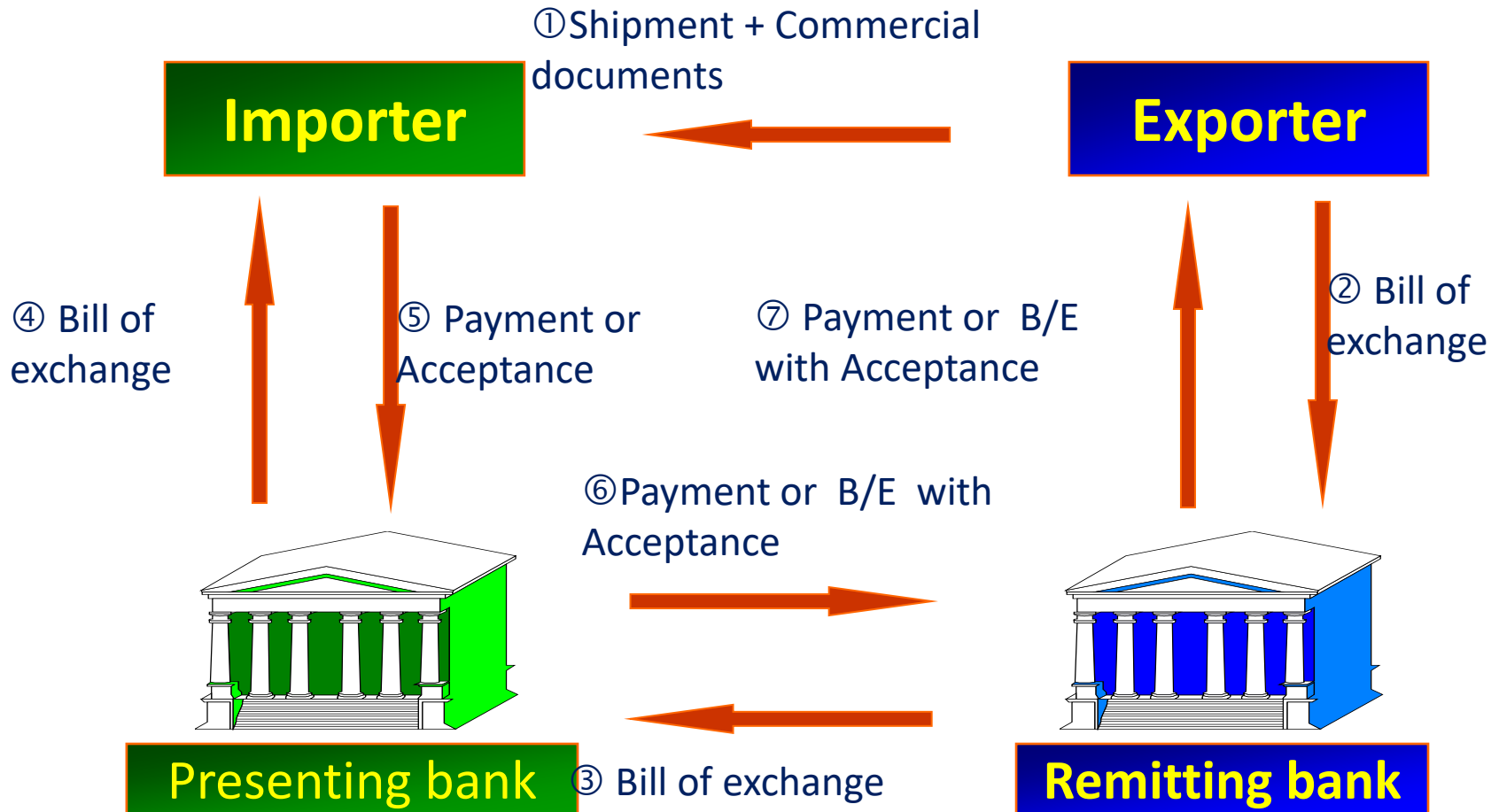
Sub- Article 2(d):

"**Documentary collection**" means collection of:

- (1) Financial documents accompanied by commercial documents;
- (2) Commercial documents not accompanied by financial documents.

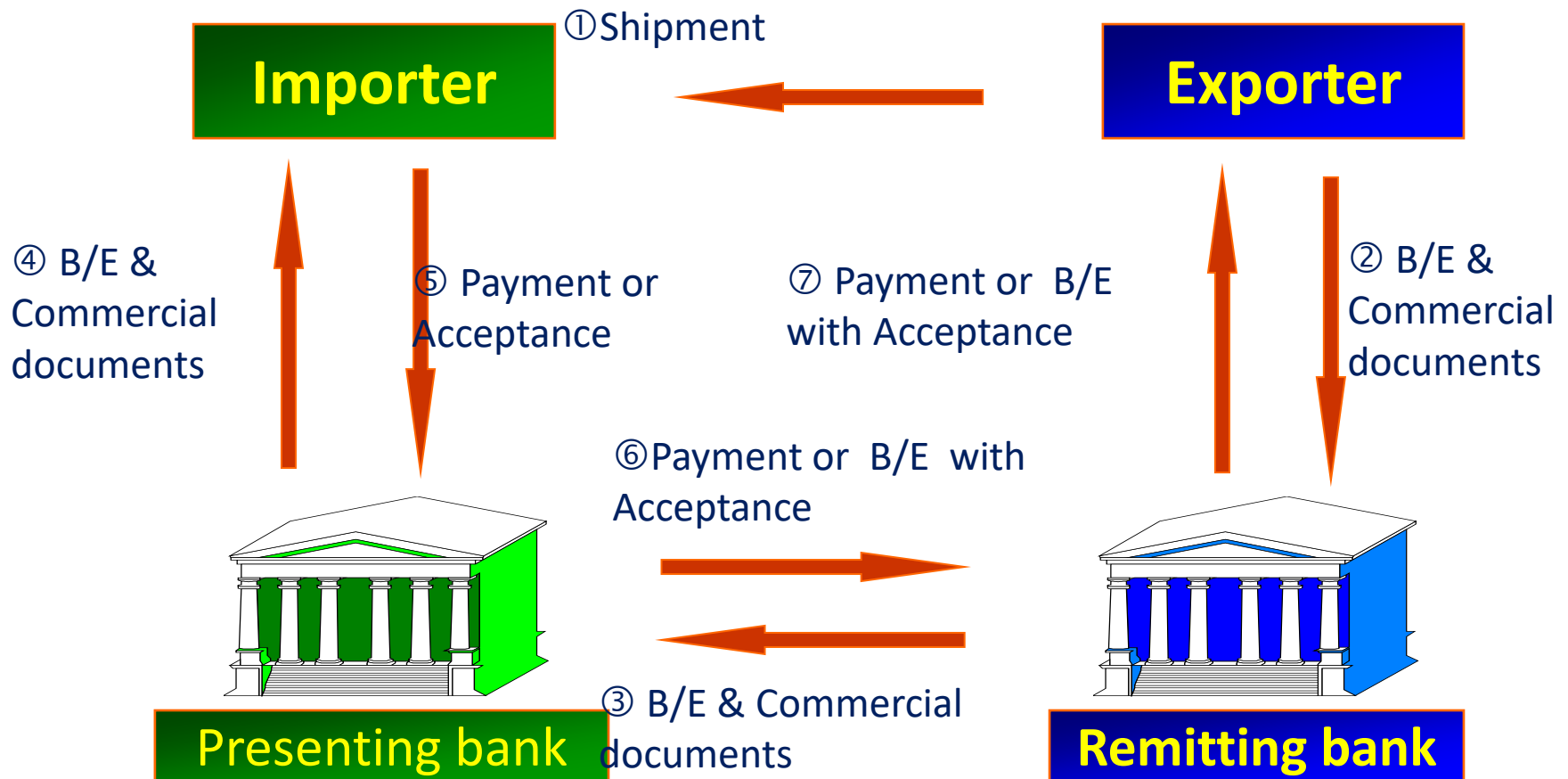
c. Collection

❖ Clean collection



c. Collection

❖ Documentary collection



c. Collection

- **Wordings**

Payment shall be made by D/P through BOC Hongkong Bank upon Seller's presentation of the following documents:

- At sight B/E drawn on Buyer;
- Commercial invoice: 3 copies;
- Certificate of quality : 3 copies;
- Certificate of quantity : 3 copies;
- Full set (3/3) of clean shipped onboard B/L.

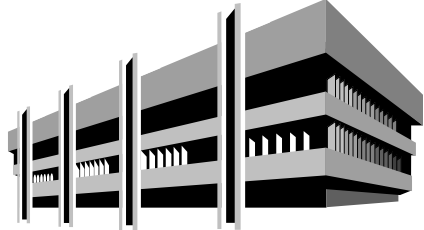
d. Documentary credit

Definition

- Documentary credit is as assurance of payment by the bank.
- It is an arrangement under which the bank, at the request of the buyer or on its own, undertakes to make payment to the seller provided specific Documents are submitted.
- Documentary Credits in Popular Language are known as LETTER OF CREDIT (L/C).

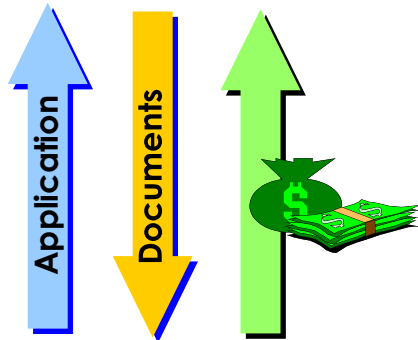
4. Procedure of Documentary Credit

Issuing / Opening Bank



Letter of credit (sight/time)

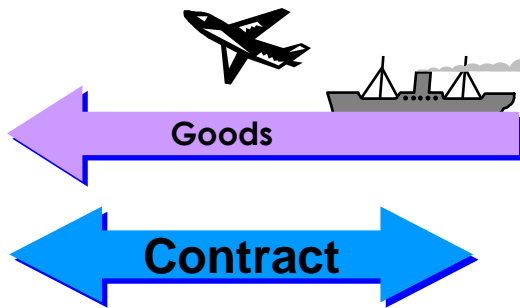
Documents



Applicant / Buyer
Importer

Goods

Contract

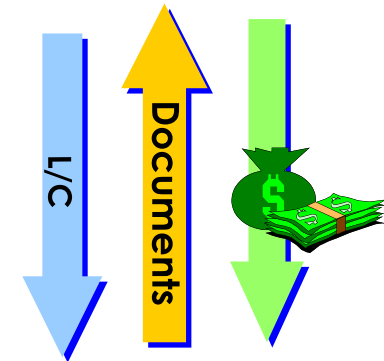


Advising Bank

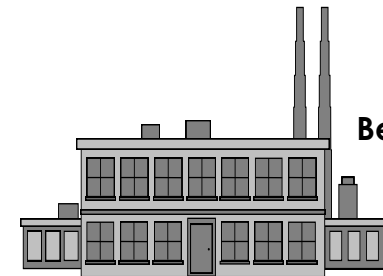


L/C

Documents



Beneficiary
Seller
Exporter



d. Documentary credit

- Types of L/C

Revocable L/C vs Irrevocable L/C

A revocable L/C can be cancelled, revoked or amended without the consent of the beneficiary or the applicant up to moment of payment.

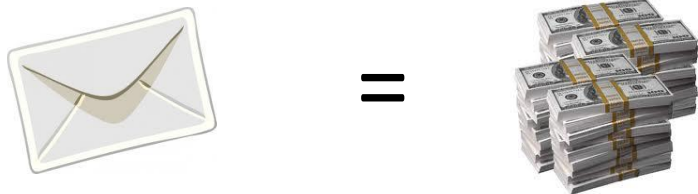
An irrevocable letter of credit cannot be amended or cancelled without the consent of the issuing bank, the confirming bank, if any, and the beneficiary.

d. Documentary credit

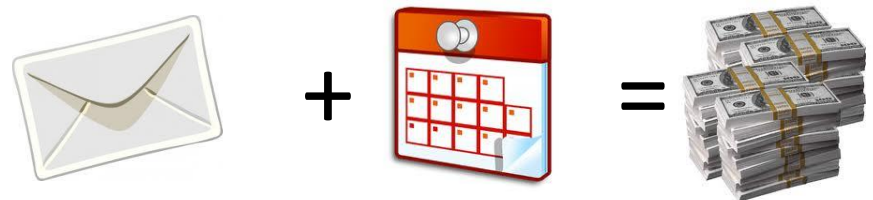
- Types of L/C

L/C at sight vs L/C with deferred payment

A L/C at sight is payable once it is presented along with the necessary documents.



An L/C with deferred payment shall be payable for a number of days as of the date of document presentation.



d. Documentary credit

- **Types of L/C**

- Without recourse L/C

The advising bank will not be able to recover the money paid to the beneficiary in case the issuing bank does not pay the advising bank.

- Confirmed L/C

Issuing bank's authenticity has been confirmed by the advising bank.

d. Documentary credit

- **Types of L/C**

- Revolving L/C

The amount becomes available again without issuing another L/C and usually under the same terms and conditions.

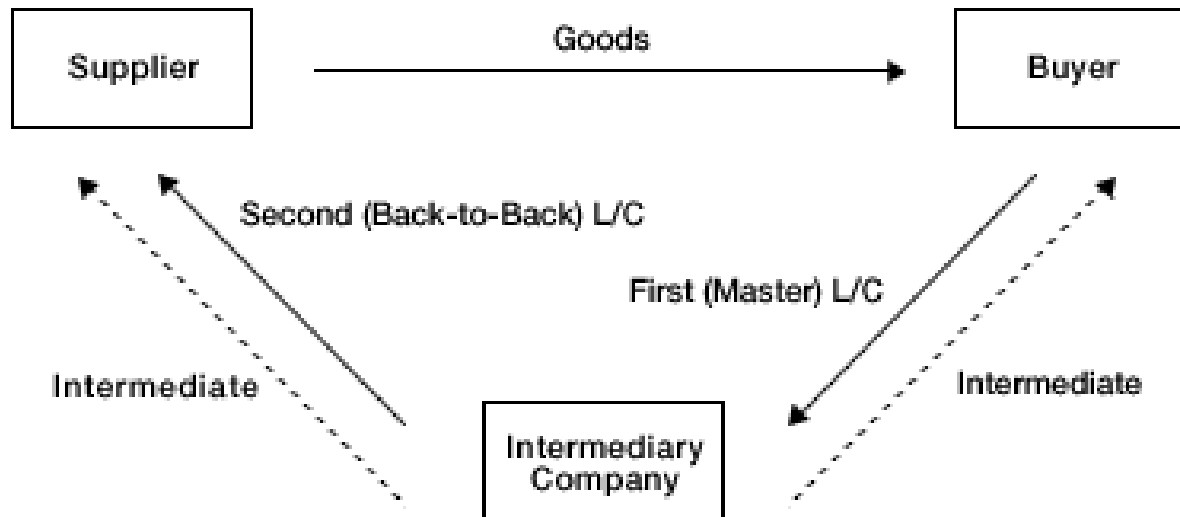
- Transferable L/C

The rights and obligations of the beneficiary are transferred to another party.

d. Documentary credit

- **Types of L/C**

- Back to back L/C



- Stand by L/C

It is a guarantee issued in format of LC by issuing bank, not at all documentary credit.

d. Documentary credit

- Wordings

Payment: in GBP by irrevocable at sight L/C opened at Natwest, 120 Hight street, Harborn, Birmingham, UK, advised by Vietcombank, 198 Tran Quang Khai, Hanoi, Vietnam to the favour of the seller. L/C must reach the seller no later than 15 days before expected shipment and valid 30 days since opened. TTR is accepted. The L/C shall be available for payment upon presentation of the following documents:

- Bill of exchange at sight, drawn under the buyer;
- Full set of B/L marked clean, on board, freight prepaid;
- Insurance policy for 110% contract value covering “all risks”
- Invoice in triplicate;
- Packing list in duplicate;
- Phytosanitary certificate in duplicate.



MODEL ARBITRATION CLAUSE

“Any dispute arising out of or in relation with this contract shall be resolved by arbitration at the Vietnam International Arbitration Centre (VIAC) in accordance with its Rules of Arbitration”.

“Any dispute arising out of or in relation with this contract shall be resolved by arbitration at the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry (VIAC) in accordance with its Rules of Arbitration”.

Parties may wish to consider adding:

- (a) the place of arbitration shall be [city and/or country].
- (b) the governing law of the contract [is/shall be] the substantive law of [].
- (c) the language to be used in the arbitral proceedings shall be [].