



**SILESIA
UNIVERSITY**

SCHOOL OF BUSINESS
ADMINISTRATION IN KARVINA

International Business Law

International purchase-sale (2)
(Requisites, rights and duties)

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Requisites of contract form (art. 11)

- Doesn't have to be concluded or proven in written form
 - Can be proved by other means, included witnesses

- Doesn't require any other formal requisites

Purchase contract content requisites

- **Contractual parties**
 - Identification
 - „...see below as seller/buyer“
- **The will of both parties to enter into the contract**
 - „Parties above have decided....“
- **The object of contract – description of goods**
 - Can be specified by the reference to the catalogue, or samples...
 - Machines – has to be also description with technical specification
 - „internal part of the contract is description of contractual subject which is technical file attached in the Annex No. ...“

Purchase contract content requisites

Quality

- Beware of using some of abbreviations
 - E.g. F.A.Q. – *fair average quality* usually means that goods can contain also not quality parts and still have label as fair average

Quantity

- Fixed
- Approximately specified – raw materials, agricultural crops in loose form
 - Some practices concerning loss due to drying up – e.g. grain or evaporation, etc.
 - Important is to give the brutto weight which is including packaging as well as netto

Purchase contract content requisites

– Packaging

- It is regularly considered as seller's duty
 - Responsible for proper ensuring the goods in transport
 - There is a need to consider if the packaging is already included in the price
 - Questions regarding packaging might contain other modifications, such as INCOTERMS

– Pricing

- Directly
- Supportive – price of that goods on the market (Article 55)

– Payment and Delivery terms

Seller's duties

Article 30:

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

1. The obligation to **deliver goods**

- It is mentioned in the contract as **delivery term**
 - Determination of **place, time and way** to transfer and taking delivery
 - CISG art. 31 – 33 (incomplete, e.g. doesn't regulate e.g. who pays for transportation, packaging, etc) in practice INCOTERMS are used

2. The obligation **hand over documents**

3. The obligation to **transfer ownership rights**

- Other duties may arise from the contract
 - The obligation to install, assembly, guarantee inspections, training, etc.

Place of delivery

Article 31: If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

- (a) if the contract of sale involves carriage of the goods - in handing the goods over to the first carrier for transmission to the buyer;*
- (b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place - in placing the goods at the buyer's disposal at that place;*
- (c) in other cases - in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.*

1) In the place **specified in the contract**

- In International Business it's typical that place of delivery **differs from** final destination of goods

2) If there is no place of delivery defined in the contract

- and the contract contains transportation – at the place of **handover of goods to the first carrier (art. 31 a)**
- and the contract doesn't contain transport
 1. In the place where is **warehouse**- if it's goods which both parties knew where it is located (31 b)
 2. In other cases the place is **the seller's place of business (31 c)**

Passing of risk

Article 66

Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

Article 67

(1) **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. ...

Article 68

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract..

Article 69

(1) **In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods** or, if he does not do so in due time, **from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.**(2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

(3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

Article 70

If the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

Delivery time

Article 33: The seller must deliver the goods:

- (a) if a date is fixed by or determinable from the contract, on that date;*
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or*
- (c) in any other case, within a reasonable time after the conclusion of the contract.*

1. The **date** specified in the contract
 - **Fixed** transactions („21.9.2009 FIX“)
2. If there is delivery period in the contract, then **anytime in that period** (seller sets the exact date)
 - **delivery** trades – exact or approximate delivery times (e.g. during September, or after harvest time in 2009)
 - **prompt** trades - „immediately“ it means usually within 7 days after concluding the contract
3. In other cases **in reasonable time** after concluding the contract
 - The time period usual in comparable cases

Fixed – convenient for buyer X Period – convenient for seller

Late delivery

There might be two kinds of situation:

1. Buyer delivered goods late and **delivery time was set as fixed**
– then late delivery means significant breach of contract
 - Buyer has right to withdraw from the contract and claim damages (art. 74-77)
2. Buyer didn't deliver goods on time, but **fixed clause was not included in the contract** – in that case buyer breached the contract in insignificant way
 - Buyer can claim own rights which are in art. 46 – 52 (e.g. insist on performing, set additional delivery time...). The right to claim damages is kept (art. 74-77)

Early delivery (art. 52)

Article 52(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

- Buyer is not obliged to take over early delivered goods
- Problem: if he took over and wants to return, then has to:
 - Take all possible measures appropriate to circumstances to preserve goods
 - Inform the seller

Quality and quantity of goods (art.35/1)

Article 35(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

- **Duty to deliver** doesn't mean only to get something to certain place on time but
- Seller is obliged to deliver goods **in quality, quantity and type** which is written in the contract and also the goods **has to be packed** or anyhow preserved as the contract specify

Quality and quantity of goods (art.35/2)

*(2) Except where the parties have **agreed** otherwise, the goods do not conform with the contract unless they:*

- (a) are fit for the **purposes** for which goods of the same description would ordinarily be used; ...*
- (c) possess the qualities of goods which the seller has held out to the buyer as a **sample** or model;*
- (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.*

Unless the parties arrange otherwise the procedure with goods is according to the contract if...

1. It is suitable for **purposes** for which is used the same implementation (or special purpose)
2. It has characteristics of goods which the seller presented as **a sample**
3. It is stored for transport of wrapped in a way usual for transportation of that kind of goods

If those points are breached, then goods have factual defects

Documents of goods handover (art. 34)

Article 31: If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

- Hand over must be according the contract – in the place, time and form
- Documents which are typically handed over
 - Manual
 - Technical documentation
 - Certificate of origin
 - Certificate of quality control
 - Documents relating to transport
 - Insurance certificates

Ownership transfer

Art. 41: The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim

Art. 42: The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware,

Seller's obligation to deliver goods which **must not be limited**

- **By right of third person**
 - Unless buyer agrees
 - **By right arising from intellectual property rights**
 - To exclude liability the buyer has to prove that he didn't know about branches and he couldn't know
 - *E.g. dutch buyer bought textiles from italian seller. Buyer sold him goods to end customers and was sued for copyright infringement*
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- If this duty is not followed then the goods have **legal defects**
 - Ownership transfer can be postponed till payment: so-called **ownership right reservation**

Buyer's duties

Art. 53: The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

- **To pay** the purchase price
 - In required amount, currency, time and place

- **To take delivery**

Art. 60: The buyer's obligation to take delivery consists:

(a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and

(b) in taking over the goods.

- Do all necessary steps so the seller could deliver goods
 - E.g. send traffic instructions
- The very act of taking the deliver
 - Note: in case of early delivery can buyer refuse

Paying the price

- **Amount**
 - In the contract (directly or indirectly)
 - Otherwise the purchase price which is normally charged in the time of contract concluding in certain industrial area
- **Time**
 - In the contract (date / period)
 - before, during, after deliver of goods
 - Otherwise in the time when seller allows the buyer to keep the goods and documents
 - Buyer can postpone it until checking the goods

Paying the price

Payment place

- In the contract
 - E.g. bank account (in practice: *the payment is consider to be paid after the money gets to the other account*)
- In place of **taking over the delivery** or documents if the price is supposed to be paid like that
- Or in the place of business of the seller

Means

- Cash payments
- Cashless payments
 - Clean payments (bank transfers)
 - Documentary payments (documentary credit or encashment)
 - Bills and checks

Example NewAge

Company Furniture, s.r.o. (buyer) which is settled in Karviná sell and buy furniture. They have been using form contracts for a long time with NewAge Ltd. Company which has headquarters in Great Britain (seller). However their production hall are in Washington, USA.

25.2.2003 those companies made a deal on **supply garden furniture** of brand NewGarden 102Pk1, which included:

“Place of delivery: Baltimore, Maryland, USA”

“The responsibility for any loss or damage of goods passes to the buyer in the moment of unloading the goods in Hamburg, Germany”

On 3.3. 2003, unfortunately, the hurricane Dave hit a ship of one supply and captain found out that all the cargo was damaged by salt water from the sea. While unloading the goods in Hamburg, one representative of company Furniture, s.r.o. noticed that the colour of the furniture is damaged. Due to that he demanded reduction of the purchasing price by 10% and paying for repairing the damaged furniture. Company NewAge rejected this claim with reasoning that furniture was damaged during transport.

In the contract was also included this clause:

”Any disputes arising from this particular contract shall be settled by the Arbitration court attached to the Economic Chamber of the Czech republic and Agricultural Chamber of the Czech republic in Prague”

Questions and answers



Q: Consider the application of Vienna Convention for example above – Furniture s.r.o. and NewAge Ltd.

A: The settlement of NewAge Ltd. is not important. Enough is to know the place of business (production hall) in the territory of a member state.

Q: Would be using of Vienna Convention differs if the production halls and administrative office settled in London, GB?

A: Yes, Great Britain is not one of the contractual parties of Vienna Convention

Q: Consider the validity of the arbitration clause

A: It is valid. The selection of arbitrators will be made according to Rules of Court of Arbitration

Questions and answers

Q: Consider an argument of NewAge Ltd. They claim it's not their responsibility because the damage was made during the transport

A: According to art. 36 (Vienna Convention), the seller takes the responsibility for goods to the moment of transfer of risks

○ In case that the contract involves also a transport (which was the case) the responsibility passes on the buyer in the moment of handing over to the first transporter. Parties however contractually agreed that the moment is landing in Hamburg. Upon this time the responsibility had the seller = NewAge Ltd.

Q: Consider how the claims of Furniture s.r.o. would change in case the contract was signed 8.3.2003, i.e. during transport of goods and there was no clause, but just: "Place of delivery. Hamburg"

A: The moment of transferring risks is regulated by art. 68, according which the transfer is in the moment of signing the contract

○ Goods was damaged 3.3.2003 and the contract was signed on 8.3.2003. The claims of Furniture s.r.o. doesn't change, because the damage was made when the seller took the responsibility