

Incoterms y su importancia en los contratos



Felipe Arizon

¿Qué son los Incoterms?

Conjunto de reglas elaborados por la Cámara de Comercio de Paris consistentes en obligaciones y términos para los contratos de compraventas nacionales e internacionales que regulan la posición jurídica de vendedores y compradores. La primera edición fue realizada en 1936, última en 2010.

¿Cuándo se aplican los Incoterms?

Art. 9 Convenio de Viena de compraventa de mercaderías

Artículo 9 1) Las partes quedarán obligadas por cualquier uso en que hayan convenido y por cualquier práctica que hayan establecido entre ellas. 2) Salvo pacto en contrario, se considerará que las partes han hecho tácitamente aplicable al contrato o a su formación un uso del que tenían o debían haber tenido conocimiento y que, en el comercio internacional, sea ampliamente conocido y regularmente observado por las partes en contratos del mismo tipo en el tráfico mercantil de que se trate.

Who is Who?

Agentes intervinientes en una
compraventa internacional

Vendedor & Comprador

Transitario

Transportista terrestre

Agente de Aduanas

Entidad de control

Estibador

Transportista marítimo

Linea regular, liner

Tramp, armador, fletador

Embarcador, receptor, string parties

Banco

Estibador

Aduana

Estructura de los Incoterms

Tipología de Incoterms, según Incoterms 2010:

* Aquellos que se aplican a **cualquier tipo de transporte**:

EXW (Ex works / Franco Fabrica)

FCA (Free carrier/ Franco Porteador)

CPT (Carriage paid to/ Transporte pagado hasta)

CIP (Carriage and insurance paid to / Transporte y seguro pagado hasta)

DAT (Delivered at terminal / Entrega en terminal)

DAP (Delivered at place/ Entrega en lugar)

DDP (Delivered duty paid / Entrega derechos pagados)

* Aquellos que sólo se aplican a **transporte marítimo y fluvial interno**:

FAS (Free along side ship / Franco al costado del buque)

FOB (Free on board / Franco a bordo)

CFR (Cost and freight / Coste y flete)

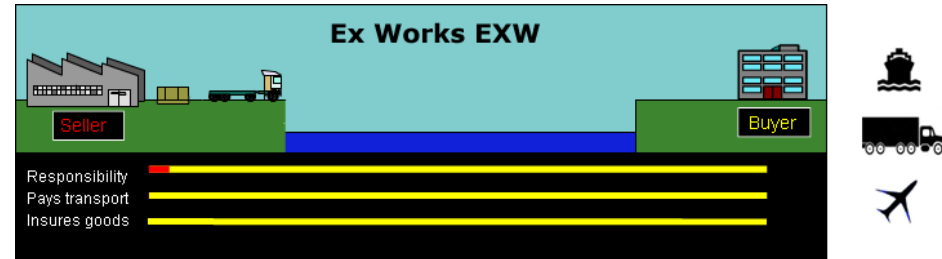
CIF (Cost, insurance and freight / Coste, seguro y flete)

Obligaciones y responsabilidades de las partes (Vendedor y Comprador)

Obligaciones generales de las partes

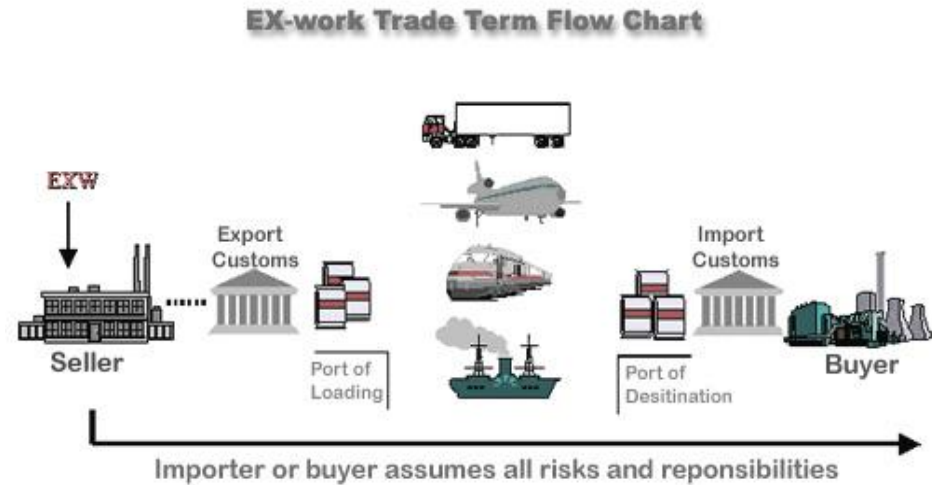
- Licencias, Autorizaciones, seguridad y otras formalidades
- Contrato de transporte y de Seguro
- Entrega
- Transferencia de riesgos
- División de costes
- Avisos a la contraparte
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- Comprobaciones, embalaje, marcas
- Asistencia con la información y costes

EX WORKS



Obligaciones generales de las partes

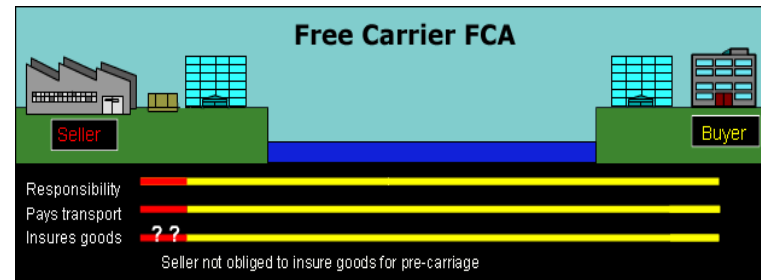
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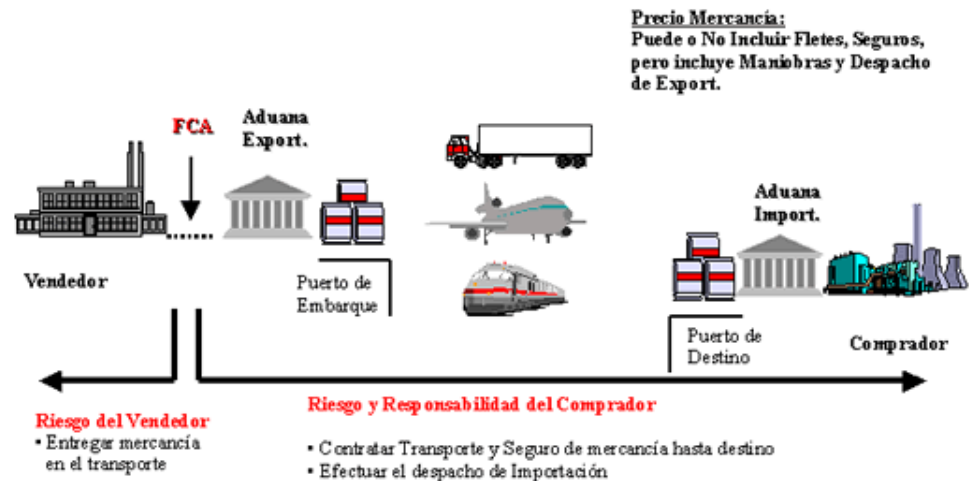
FCA /FREE CARRIER

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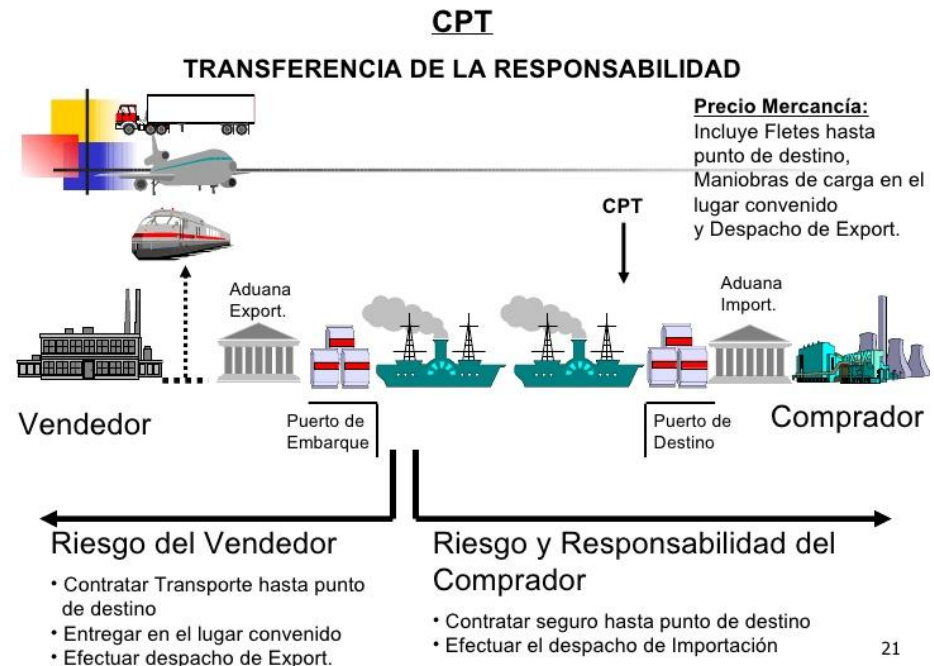
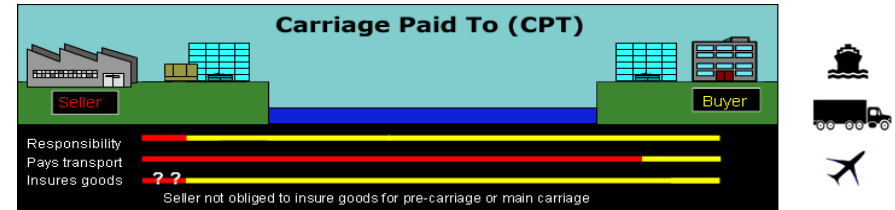
FCA TRANSFERENCIA DE LA RESPONSABILIDAD



CPT, CARRIAGE PAID TO

Obligaciones generales de las partes

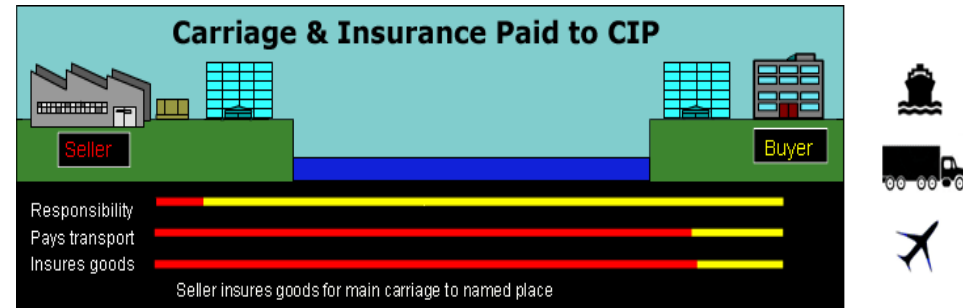
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CIP, CARRIAGE AND INSURANCE PAID TO

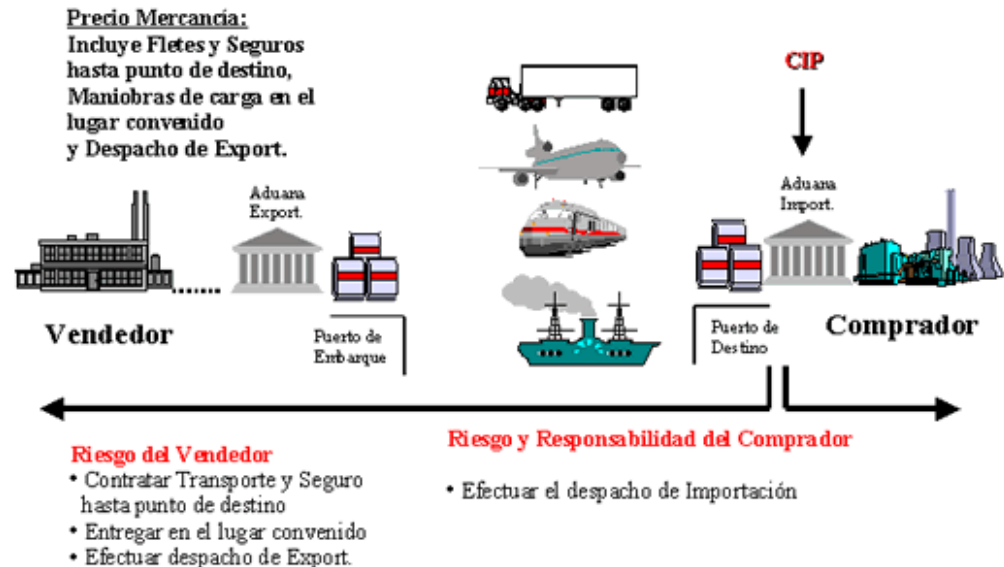
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CIP

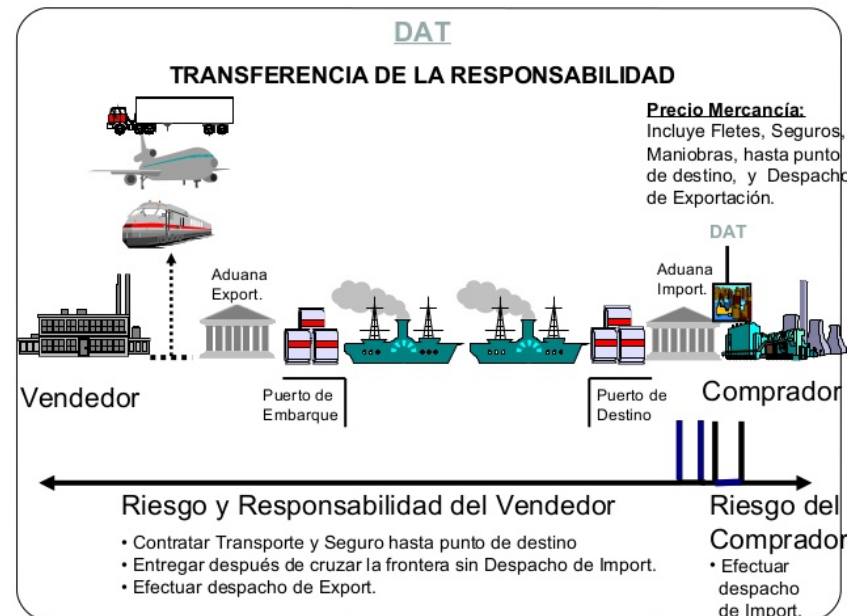
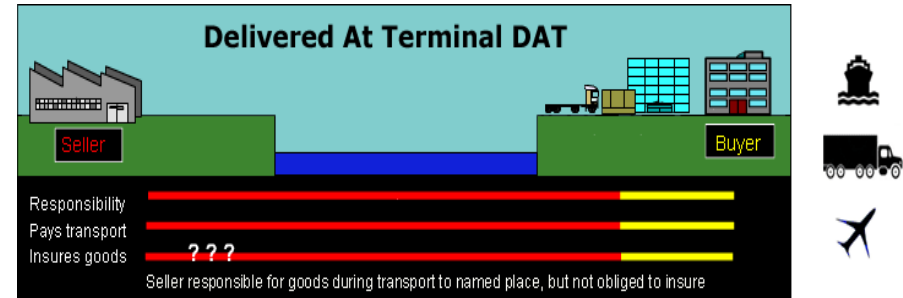
TRANSFERENCIA DE LA RESPONSABILIDAD



DAT, DELIVERED AT TERMINAL

Obligaciones generales de las partes

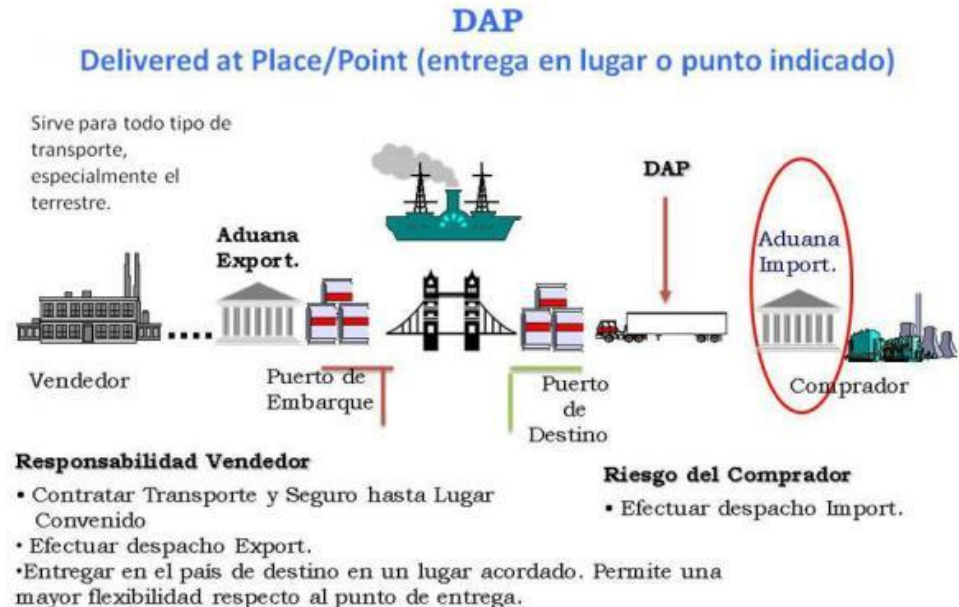
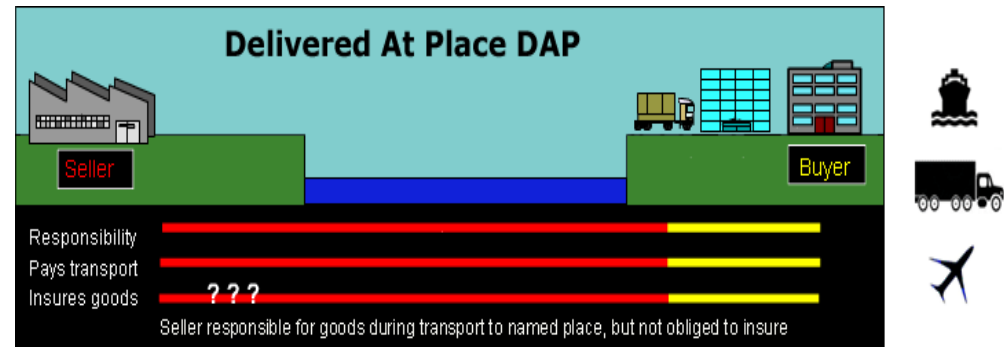
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DAP, DELIVERED AT PLACE

Obligaciones generales de las partes

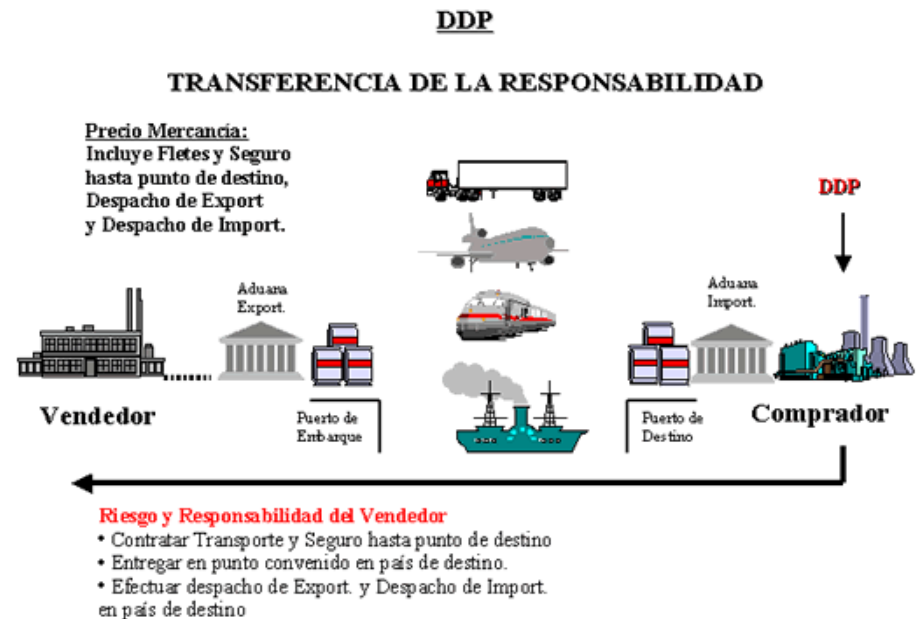
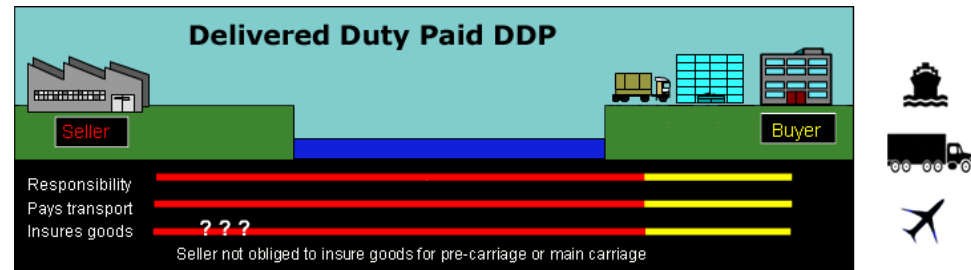
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DDP, DELIVERED DUTY PAID

Obligaciones generales de las partes

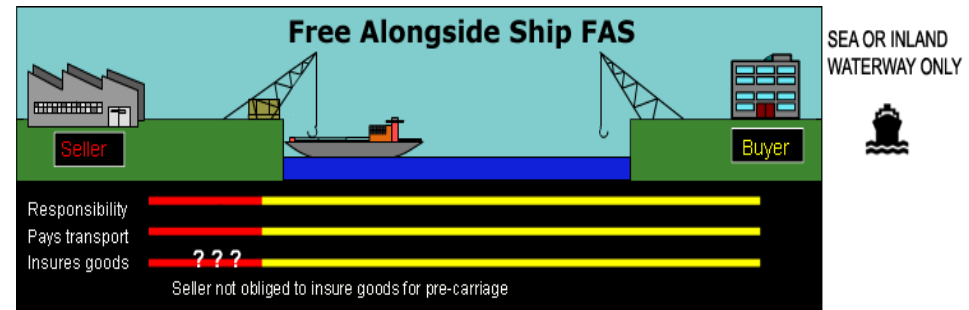
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FAS, FREE ALONG SIDE THE SHIP

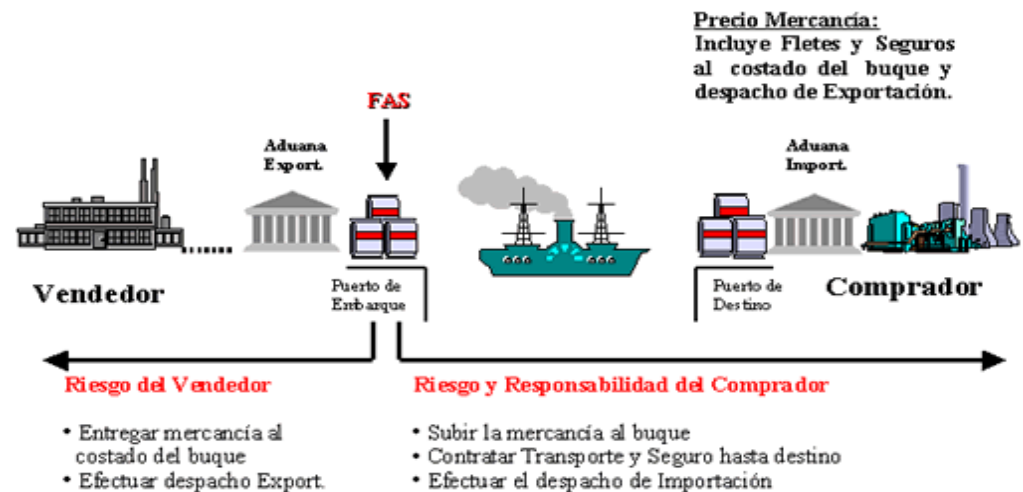
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FAS

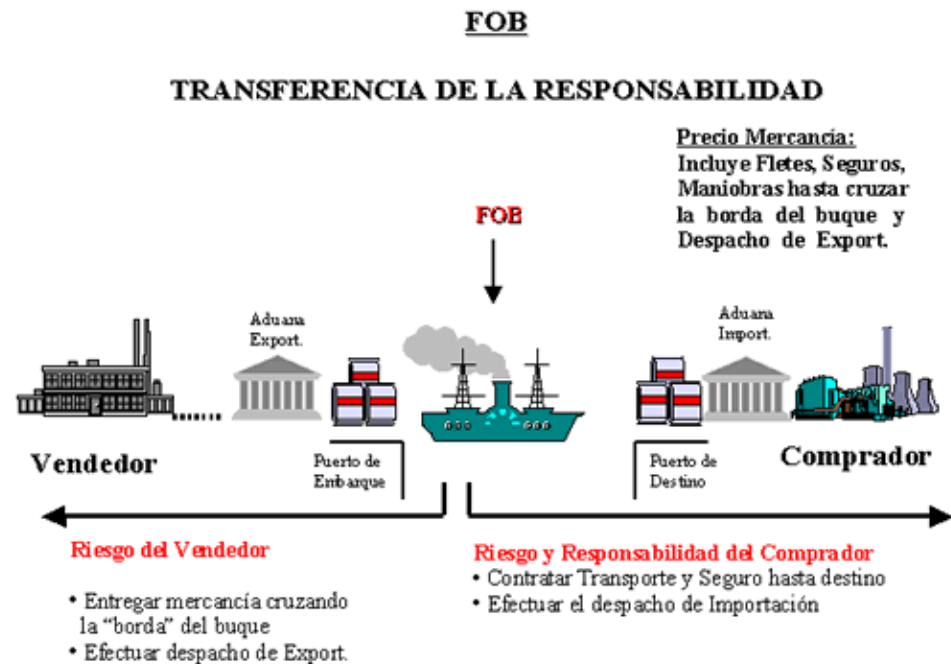
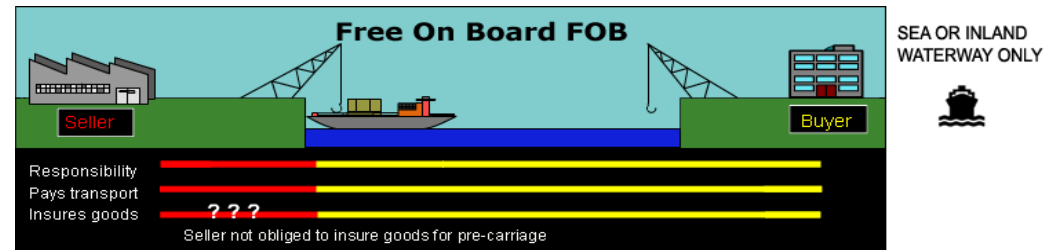
TRANSFERENCIA DE LA RESPONSABILIDAD



FOB, FREE ON BOARD

Obligaciones generales de las partes

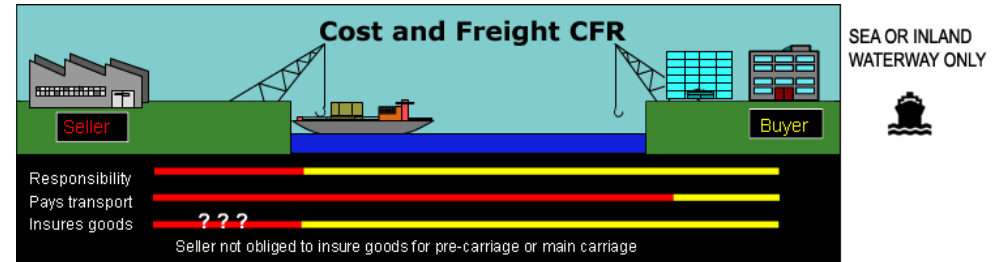
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CFR

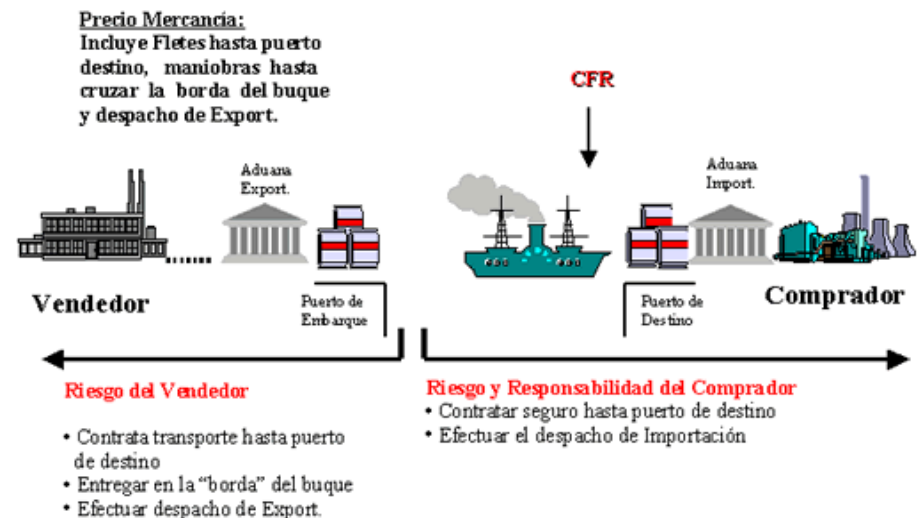
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CFR

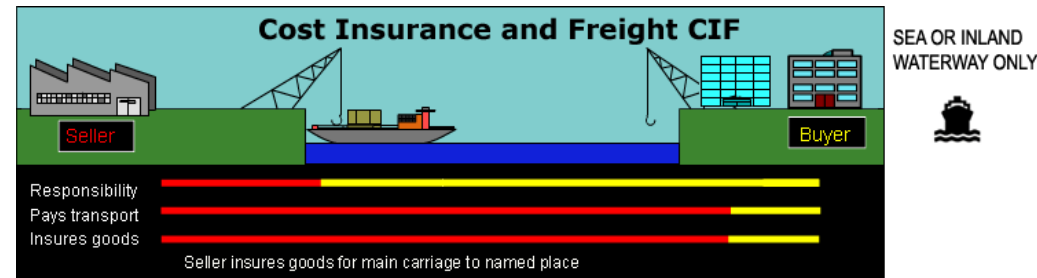
TRANSFERENCIA DE LA RESPONSABILIDAD



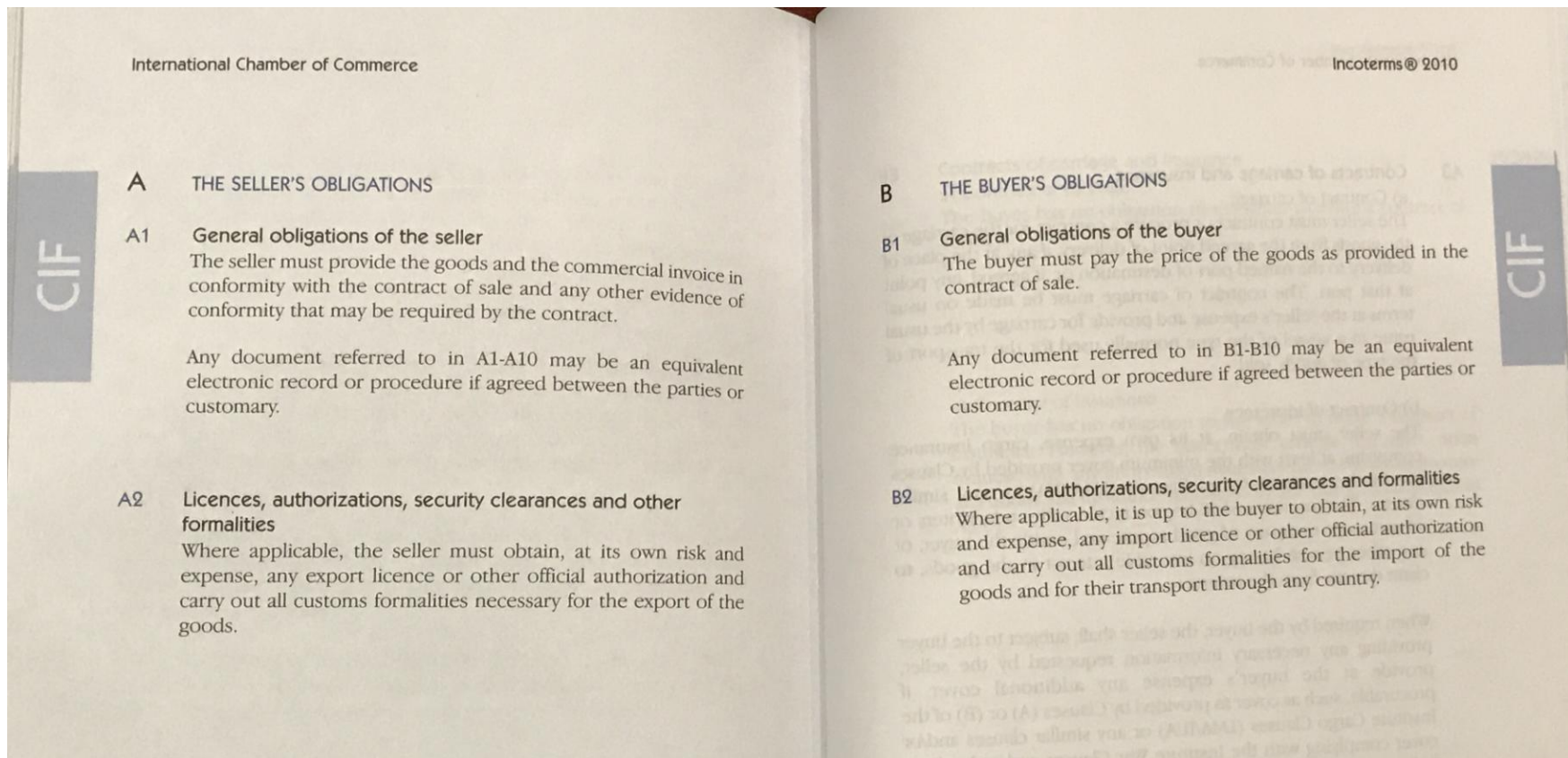
CIF

Obligaciones generales de las partes

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INCOTERM 2010 CIF, en detalle



CIF

A3

Contracts of carriage and insurance

a) Contract of carriage

The seller must contract or procure a contract for the carriage of the goods from the agreed point of delivery, if any, at the place of delivery to the named port of destination or, if agreed, any point at that port. The contract of carriage must be made on usual terms at the seller's expense and provide for carriage by the usual route in a vessel of the type normally used for the transport of the type of goods sold.

b) Contract of insurance

The seller must obtain, at its own expense, cargo insurance complying at least with the minimum cover provided by Clauses (C) of the Institute Cargo Clauses (LMA/IUA) or any similar clauses. The insurance shall be contracted with underwriters or an insurance company of good repute and entitle the buyer, or any other person having an insurable interest in the goods, to claim directly from the insurer.

When required by the buyer, the seller shall, subject to the buyer providing any necessary information requested by the seller, provide at the buyer's expense any additional cover, if procurable, such as cover as provided by Clauses (A) or (B) of the Institute Cargo Clauses (LMA/IUA) or any similar clauses and/or cover complying with the Institute War Clauses and/or Institute Strikes Clauses (LMA/IUA) or any similar clauses.

The insurance shall cover, at a minimum, the price provided in the contract plus 10% (i.e., 110%) and shall be in the currency of the contract.

The insurance shall cover the goods from the point of delivery set out in A4 and A5 to at least the named port of destination.

The seller must provide the buyer with the insurance policy or other evidence of insurance cover.

Moreover, the seller must provide the buyer, at the buyer's request, risk, and expense (if any), with information that the buyer needs to procure any additional insurance.

A4

Delivery

The seller must deliver the goods either by placing them on board the vessel or by procuring the goods so delivered. In either case, the seller must deliver the goods on the agreed date or within the agreed period and in the manner customary at the port.

B3

Contracts of carriage and insurance

a) Contract of carriage

The buyer has no obligation to the seller to make a contract of carriage.

b) Contract of insurance

The buyer has no obligation to the seller to make a contract of insurance. However, the buyer must provide the seller, upon request, with any information necessary for the seller to procure any additional insurance requested by the buyer as envisaged in A3 b).

B4

Taking delivery

The buyer must take delivery of the goods when they have been delivered as envisaged in A4 and receive them from the carrier at the named port of destination.

CIF

CIF

B5

Transfer of risks

The buyer bears all risks of loss of or damage to the goods from the time they have been delivered as envisaged in A4.

If the buyer fails to give notice in accordance with B7, then it bears all risks of loss of or damage to the goods from the agreed date or the expiry date of the agreed period for shipment, provided that the goods have been clearly identified as the contract goods.

B6

Allocation of costs

The buyer must, subject to the provisions of A3 a), pay
a) all costs relating to the goods from the time they have been delivered as envisaged in A4, except, where applicable, the costs of customs formalities necessary for export, as well as all duties, taxes and other charges payable upon export as referred to in A6 d);

b) all costs and charges relating to the goods while in transit until their arrival at the port of destination, unless such costs and charges were for the seller's account under the contract of carriage;

c) unloading costs including lighterage and wharfage charges, unless such costs and charges were for the seller's account under the contract of carriage;

d) any additional costs incurred if it fails to give notice in accordance with B7, from the agreed date or the expiry date of the agreed period for shipment, provided that the goods have been clearly identified as the contract goods;

e) where applicable, all duties, taxes and other charges, as well as the costs of carrying out customs formalities payable upon import of the goods and the costs for their transport through any country, unless included within the cost of the contract of carriage; and

f) the costs of any additional insurance procured at the buyer's request under A3 b) and B3 b).

A5

Transfer of risks

The seller bears all risks of loss of or damage to the goods until they have been delivered in accordance with A4, with the exception of loss or damage in the circumstances described in B5.

A6

Allocation of costs

The seller must pay

a) all costs relating to the goods until they have been delivered in accordance with A4, other than those payable by the buyer as envisaged in B6;

b) the freight and all other costs resulting from A3 a), including the costs of loading the goods on board and any charges for unloading at the agreed port of discharge that were for the seller's account under the contract of carriage;

c) the costs of insurance resulting from A3 b); and

d) where applicable, the costs of customs formalities necessary for export, as well as all duties, taxes and other charges payable upon export, and the costs for their transport through any country that were for the seller's account under the contract of carriage.

A7 Notices to the buyer

The seller must give the buyer any notice needed in order to allow the buyer to take measures that are normally necessary to enable the buyer to take the goods.

A8 Delivery document

The seller must, at its own expense provide the buyer without delay with the usual transport document for the agreed port of destination.

This transport document must cover the contract goods, be dated within the period agreed for shipment, enable the buyer to claim the goods from the carrier at the port of destination and, unless otherwise agreed, enable the buyer to sell the goods in transit by the transfer of the document to a subsequent buyer or by notification to the carrier.

When such a transport document is issued in negotiable form and in several originals, a full set of originals must be presented to the buyer.

A9 Checking – packaging – marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) that are necessary for the purpose of delivering the goods in accordance with A4, as well as the costs of any pre-shipment inspection mandated by the authority of the country of export.

The seller must, at its own expense, package the goods, unless it is usual for the particular trade to transport the type of goods sold unpackaged. The seller may package the goods in the manner appropriate for their transport, unless the buyer has notified the seller of specific packaging requirements before the contract of sale is concluded. Packaging is to be marked appropriately.

B7 Notices to the seller

The buyer must, whenever it is entitled to determine the time for shipping the goods and/or the point of receiving the goods within the named port of destination, give the seller sufficient notice thereof.

B8 Proof of delivery

The buyer must accept the transport document provided as envisaged in A8 if it is in conformity with the contract.

B9 Inspection of goods

The buyer must pay the costs of any mandatory pre-shipment inspection, except when such inspection is mandated by the authorities of the country of export.

CIF

A10 Assistance with information and related costs

The seller must, where applicable, in a timely manner, provide to or render assistance in obtaining for the buyer, at the buyer's request, risk and expense, any documents and information, including security-related information, that the buyer needs for the import of the goods and/or for their transport to the final destination.

The seller must reimburse the buyer for all costs and charges incurred by the buyer in providing or rendering assistance in obtaining documents and information as envisaged in B10.

Incoterms® 2010

B10

Assistance with information and related costs

The buyer must, in a timely manner, advise the seller of any security information requirements so that the seller may comply with A10.

The buyer must reimburse the seller for all costs and charges incurred by the seller in providing or rendering assistance in obtaining documents and information as envisaged in A10.

The buyer must, where applicable, in a timely manner, provide to or render assistance in obtaining for the seller, at the seller's request, risk and expense, any documents and information, including security-related information, that the seller needs for the transport and export of the goods and for their transport through any country.

CIF

Incoterms: ¿La panacea?

No, pero una buena base para regular las obligaciones del vendedor y del comprador en el marco de un contrato de compraventa.

Incoterms no regulan:

- El cobro / Pago
- La transferencia de la propiedad
- Las cláusulas de calidad final
- La resolución de disputas
- Otros detalles de la logística, plazos de nominaciones, preavisos, demoras del buque.

Effective 1st June 2014**Contract No. 114**Copyright
THE GRAIN AND FEED TRADE ASSOCIATION**CONTRACT FOR FERTILISER IN BULK OR BAGS
PARCELS OR CARGOES
TALE QUALE – CIF/CIFFO/C&F/C&FFO TERMS**

*delete/specify as applicable

Date

1 **SELLERS**2 **INTERVENING AS BROKERS**3 **BUYERS**

4 have this day entered into a contract on the following terms and conditions.

1. GOODS

Bulk

Bags

If in bags, in new and/or secondhand bags of suitable strength to withstand ordinary wear and tear to port of destination. Bags of each mark shall be of uniform weight and shall be properly marked.

2. QUANTITY 10% more or less at Sellers' option

In the event of more than one shipment being made, each shipment shall be considered a separate contract, but the margin of the mean quantity sold shall not be affected thereby.

3. PRICE AND DESTINATION

At the price per tonne of 1,000 kilograms gross weight of

*cost, insurance and freight to

*cost, insurance and freight free out to

*cost and freight to

*cost and freight free out to

4. BROKERAGE per tonne, to be paid by Sellers on the mean contract quantitygoods lost or not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract under the terms of the Prevention of Shipment Clause. Brokerage shall be due on the day shipping documents are exchanged, or if the goods are not appropriated then brokerage shall be due on the 30th consecutive day after the last day for appropriation.**5. QUALITY**

*

*As per Manufacturer's Certificate of Analysis to be final at loading

Tolerance as per EC Rules in force at the date of the Contract.

Condition. Shipment shall be made in good condition.**6. COUNTRY OF ORIGIN****7. PERIOD OF SHIPMENT**

As per Bill(s) of Lading dated or to be dated

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The Bill(s) of Lading to be dated when the goods are actually on board. Date of the Bill(s) of Lading shall be accepted as proof of date of shipment in the absence of evidence to the contrary. In any month containing an odd number of days, the middle day shall be accepted as being in both halves of the month.

8. SALES BY NAMED VESSELS

For all sales by named vessels, the following shall apply: -

- (a) Position of vessel is mutually agreed between the Buyers and Sellers;
- (b) The word 'now' to be inserted before the word 'classed' in the Shipment and Classification Clause;
- (c) Appropriation Clause cancelled if sold 'shipped'.

9. SHIPMENT & CLASSIFICATION

Shipment from
direct or indirect, with or without transshipment by first class mechanically self propelled vessel(s) suitable for the carriage of the contract goods, classed in accordance with the Institute Classification Clause of the International Underwriting Association in force at the time of shipment. In case of grab discharge, vessel to be suitable for grab discharge. Vessel's owners shall be Members of a P & I Club, and vessel shall be less than 20 years of age.

10. NOMINATION OF VESSEL(S) FOR CONTRACTS CONCLUDED ON C & F/C&FFO TERMS

(a) At a date agreed between the Parties but in any event prior to the commencement of loading, Sellers shall nominate the intended carrying vessel(s) to Buyers.

(b) Sellers are entitled to substitute the nomination(s) provided that the substituting vessel(s) complies with the terms of this clause.

11. APPROPRIATION

(a) Notice of appropriation shall state the vessel's name, the presumed weight shipped, and the date or the presumed date of the last bill of lading.

(b) The notice of appropriation shall within 2 business days if shipped from European and North African Ports, or 5 business days if shipped from Black Sea Ports, or 8 business days if shipped from any other ports, from the date of the bill(s) of lading be served by or on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract. The Non-Business Days Clause shall not apply.

(c) Notice of appropriation shall, within the period stated in sub-clause (b) be served by or on behalf of subsequent Sellers on their Buyers or on the Selling Agent or Brokers named in the contract, but if notice of appropriation is received by subsequent Sellers on the last day or after the period stated in sub-clause (b) from the date of the last bill of lading, their notice of appropriation shall be deemed to be in time if served: -

- (1) On the same calendar day, if received not later than 1600 hours on any business day, or
- (2) Not later than 1600 hours on the next business day, if received after 1600 hours or on a non-business day.

(d) A notice of appropriation served on a Selling Agent or Brokers named in the contract shall be considered an appropriation served on Buyers. A Selling Agent or Brokers receiving a notice of appropriation shall serve like notice of appropriation in accordance with the provisions of this clause. Where the Shipper or subsequent Sellers serves the notice of appropriation on the Selling Agent, such Selling Agent may serve notice of appropriation either direct to the Buyers or to the Brokers.

(e) The bill of lading date stated in the notice of appropriation shall be for information only and shall not be binding, but in fixing the period laid down by this clause for serving notices of appropriation the actual date of the bill of lading shall prevail.

(f) Every notice of appropriation shall be open to correction of any errors occurring in transmission, provided that the sender is not responsible for such errors, and for any previous error in transmission which has been repeated in good faith.

(g) Should the vessel arrive before receipt of the appropriation and any extra expenses is incurred thereby, such expenses shall be borne by Sellers.

(h) When a valid notice of appropriation has been received by Buyers, it shall not be withdrawn except with their consent.

12. PAYMENT

(a) By cash in of full invoice amount against presentation of shipping documents.

(b) **Shipping documents** - shall consist of - 1. Invoice. 2. Full set(s) of on board Bill(s) of Lading and/or Ship's Delivery Order(s) and/or other Delivery Order(s) in negotiable and transferable form. Such other Delivery Order(s) if required by Buyers, to be countersigned by the Shipowners, their Agents or a recognised bank. 3. For CIF/CIFFO terms Policy (ies) and/or Insurance Certificate(s) and/or Letter(s) of Insurance in the currency of

Shipping War Deviation Clause and/or other recognised official War Risk Clause.

(c) In the event of shipping documents not being available when called for by Buyers, or on arrival of the vessel at destination, Sellers shall provide other documents or an indemnity entitling Buyers to obtain delivery of the goods and payment shall be made by Buyers in exchange for same, but such payment shall not prejudice Buyers' rights under the contract when shipping documents are eventually available.

(d) Should Sellers fail to present shipping documents or other documents or an indemnity entitling Buyers to take delivery, Buyers shall take delivery under an indemnity provided by themselves and shall pay for the other documents when presented. Any reasonable extra expenses, including the costs of such indemnity or extra charges incurred by reason of the failure of Sellers to provide such documents, shall be borne by Sellers, but such payment shall not prejudice Buyers' rights under the contract when shipping documents are eventually available.

(e) Should shipping documents be presented with an incomplete set of bill(s) of lading or should other shipping documents be missing, payment shall be made provided that delivery of such missing documents is guaranteed, such guarantee to be countersigned, if required by Buyers, by a recognised bank.

(f) Costs of collection shall be for account of Sellers, but if Buyers demand presentation only through a bank of their choice, in that event any additional collection costs shall be borne by Buyers.

(g) No obvious clerical error in the documents shall entitle Buyers to reject them or delay payment, but Sellers shall be responsible for all loss or expense caused to Buyers by reason of such error and Sellers shall on request furnish an approved guarantee in respect thereto.

(h) Amounts payable under this contract shall be settled without delay. If not so settled, either party may notify the other that a dispute has arisen and serve a notice stating his intention to refer the dispute to arbitration in accordance with the Arbitration Rules.

(i) **Interest.** If there has been unreasonable delay in any payment, interest appropriate to the currency involved shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled by arbitration. Otherwise interest shall be payable only where specifically provided in the terms of the contract or by an award of arbitration. The terms of this clause do not override the parties' contractual obligation under sub-clause (a).

13. DUTIES, TAXES, LEVIES

Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc., present or future, in country of origin, shall be for Sellers' account. All import duties, taxes, levies, etc., present or future, in country of destination, shall be for Buyers' account.

14. DISCHARGE

(a) **For CIF/C&F terms**, discharge shall be as fast as the vessel can deliver in accordance with the custom of the port, but in the event of shipment being made under liner bill(s) of lading, discharge shall be as fast as the vessel can deliver in accordance with the terms of the bill(s) of lading. The cost of discharge from hold to ship's rail shall be for Sellers' account, from ship's rail overboard for Buyers' account.

(b) **For C&F/FFO/CIFFO terms**, the cost of discharge shall be for Buyers' account.

Discharge shall be at the average rate of tonnes per Weather Working Day, Saturdays, Sundays, Holidays Excepted, Unless Used, (WWD SSHEX UU), in which case actual time used to count. Notice of Readiness (NOR) shall be tendered during ordinary office hours on arrival, Whether In Port Or Not, (WIPON), Whether In Berth Or Not, (WIBON), Whether In Free Pratique Or Not, (WIFPON), Whether Customs Cleared Or Not (WCCON) and laytime shall commence at 0800 hours on the next working day. Rate of demurrage/despach as per Charter Party. In the event of a time charter, the daily hire rate shall be taken as the rate of demurrage, half despach.

(c) If documents are tendered which do not provide for discharging as above or contain contrary stipulations, Sellers shall be responsible to Buyers for all extra expenses incurred thereby. Discharge by grab(s) shall be permitted unless specifically excluded at time of contract. If shipment is effected by lash barge, then the last day of discharge shall be the day of discharging the last lash barge at the port of destination.

15. INSURANCE

15.1 For Contracts Concluded on CIF/CIFFO terms Sellers shall provide insurance on terms not less favourable than those set out hereunder, and as set out in detail in GAFTA Insurance Terms No.72 viz:-

(a) Risks Covered:-	
Cargo Clauses All Risks with	- Section 1 of Form No: 72
War Clauses (Cargo)	- Section 4 of Form No: 72
Strikes, Riots and Civil Commotions Clauses (Cargo)	- Section 5 of Form No: 72

(b) Insurers - The insurance to be effected with first class Underwriters and/or Companies who are domiciled or carrying on business in the United Kingdom or who, for the purpose of any legal proceedings, accept a British domicile and provide an address for service of process in London, but for whose solvency Sellers shall not be

responsible.

(c) **Insurable Value** - Insured amount to be for not less than 10% over the invoice amount, including freight when freight is payable on shipment or due in any event, ship and/or cargo lost or not lost, and including the amount of any War Risk premium payable by Buyers.

(d) **Freight Contingency** - When freight is payable on arrival or on right and true delivery of the goods and the insurance does not include the freight, Sellers shall effect insurance upon similar terms, such insurance to attach only as such freight becomes payable, for the amount of the freight plus 10%, until the termination of the risk as provided in the above mentioned clauses, and shall undertake that their policies are so worded that in the case of particular or general average claim the Buyers shall be put in the same position as if the C.I.F. value plus 10% were insured from the time of shipment.

(e) **Certificates/Policies** - Sellers shall serve all policies and/or certificates and/or letters of insurance provided for in this contract (duly stamped if applicable), for original and increased value (if any) for the value stipulated in (c) above. In the event of a certificate of insurance being supplied, it is agreed that such certificate shall be exchanged by Sellers for a policy if and when required and such certificate shall state on its face that it is so exchangeable. If required by Buyers, Letter(s) of Insurance shall be guaranteed by a recognised Bank, or by any other guarantor who is acceptable to Buyers.

(f) **Total Loss** - In the event of total or constructive total loss, or where the amount of the insurance becomes payable in full, the insured amount in excess of 10% over the invoice amount shall be for Sellers' account and the party in possession of the policy (ies) shall collect the amount of insurance and shall thereupon settle with the other party on that basis.

(g) **Currency of Claims** - Claims to be paid in the currency of the contract.

(h) **War and Strike Risks Premiums** - any premium in excess of 0.50% to be for account of Buyers. The rate of such insurance not to exceed the rate ruling in London at time of shipment or date of vessel's sailing, whichever may be adopted by Underwriters. Such excess premium shall be claimed from Buyers, wherever possible, with the Provisional Invoice, but in no case later than the date of vessel's arrival, or not later than 7 consecutive days after the rate has been agreed with Underwriters, whichever may be the later, otherwise such claim shall be void unless, in the opinion of arbitrators, the delay is justifiable. Sellers' obligation to provide War Risk Insurance shall be limited to the terms and conditions in force and generally obtainable in London at time of shipment.

(i) Where Sellers are responsible for allowances or other payments to Buyers under Rye Terms or other contractual terms (and which risks are also covered by the insurance provided by Sellers), the Buyers, on receipt of settlement, shall immediately return to Sellers the insurance documents originally received from them and shall, if required, subrogate to Sellers all right of claim against the Insurers in respect of such matters.

15.2 For Contracts Concluded on C & F/C&FFO terms Buyers shall be responsible for obtaining insurance cover as per Clause 15.1 above and shall, if required by Sellers, provide evidence to Sellers prior to the commencement of loading that they have obtained suitable cover. If Buyers refuse or fail to provide evidence Sellers are entitled (but not obliged) to cover insurance on the same terms at the Buyers' expense.

16. WEIGHING

The goods shall be weighed in accordance with the GAFTA Weighing Rules No.123, at time and place of discharge at port of destination herein named at Buyers' expense. Sellers have the right to superintend. If discharge is carried out by grab, the method of weighing is to be mutually agreed between Buyers and Sellers and/or their respective agents. In case of damage the discharged weight shall be determined on the basis of an analysis made of samples of the damaged and undamaged part of the goods.

17. EXCESS/DEFICIENCY

Any deficiency over 0.5% on Bill of Lading weight to be paid for by Sellers and any excess over 0.5% of Bill of Lading weight to be paid for by Buyers at Contract Price. Excess/Deficiency to be supported by a certificate from an independent superintendent company.

18. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS

Samples required for the purposes of the contract shall be taken at time of discharge on or before removal from the ship or quay, and analytical instructions shall be given in accordance with the GAFTA Sampling Rules No.124.

19. PREVENTION OF SHIPMENT

"Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on behalf of the government of the country of origin or of the territory where the port or ports named herein is/are situate, restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d) hostilities, or (e) strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of machinery, or (h) fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to

Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure, provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not later than 21 consecutive days before commencement of the shipment period, whichever is later, with the reasons therefor.

If the Event of Force Majeure continues for 21 consecutive days after the end of the shipment period, then Buyers have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than the first business day after expiry of the 21 day period.

If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract shall be automatically cancelled.

If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers shall notify Buyers without delay that the Event of Force Majeure has ceased. Sellers shall be entitled, from the cessation, to as much time as was left for shipment under the contract prior to the occurrence of the Event of Force Majeure. If the time that was left for shipment under the contract is 14 days or less, a period of 14 consecutive days shall be allowed.

The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory evidence justifying the delay or non-fulfilment.

20. CIRCLE

Where Sellers repurchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so repurchased, and the provisions of the Default Clause shall not apply. (For the purpose of this Clause the same goods shall mean goods of the same description, from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for shipment to the same port(s) of destination during the same period of shipment). Different currencies shall not invalidate the Circle.

Subject to the terms of the Prevention of Shipment Clause in the contract, if the goods are not appropriated, or, having been appropriated documents are not presented, invoices based on the mean contract quantity shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after the last day for appropriation, or, should the circle be ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained.

Where the Circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the market price on the first day for contractual shipment and invoices shall be settled between each Buyer and his Seller in the Circle by payment of the differences between the market price and the relative contract price in the currency of the contract. All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained in accordance with this Clause same shall be binding on all parties to the circle. As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract. Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency Clause of his contract, settlement by all parties in the circle shall be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price and the contract price.

21. NOTICES

All notices required to be served on the parties pursuant to this contract shall be communicated rapidly in legible form. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either telex, or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, always subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal appointed pursuant to the Arbitration Clause, that the notice was actually transmitted to the addressee. In case of resales/repurchases all notices shall be served without delay by sellers on their respective buyers or vice versa, any notice received after 1600 hours on a business day shall be deemed

22. NON-BUSINESS DAYS

Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days, which GAFTA declare as Non-Business Days for specific purposes, shall be Non-Business Days. Should the time limit for doing any act or serving any notice expire on a Non-Business Day, the time so limited shall be extended until the first Business Day thereafter. The period of shipment shall not be affected by this clause.

23. DEFAULT

In default of fulfilment of contract by either party, the following provisions shall apply: -

(a) The party other than the defaulter shall, at their discretion have the right, after serving notice in accordance with the Notices Clause to the defaulter to sell or purchase, as the case may be, against the defaulter, and such sale or purchase shall establish the default price.

(b) If either party be dissatisfied with such default price or if the right at (a) above is not exercised and damages cannot be mutually agreed, then the assessment of damages shall be settled by arbitration.

(c) The damages payable shall be based on, but not limited to, the difference between the contract price and either the default price established under (a) above or upon the actual or estimated value of the goods, on the date of default, established under (b) above.

(d) In no case shall damages include loss of profit on any sub-contracts made by the party defaulted against or others unless the arbitrator(s) or board of appeal, having regard to special circumstances, shall in his/her sole and absolute discretion think fit.

(e) Damages, if any, shall be computed on the quantity appropriated if any but, if no such quantity has been appropriated then on the mean contract quantity, and any option available to either party shall be deemed to have been exercised accordingly in favour of the mean contract quantity.

(f) Default may be declared by Sellers at any time after expiry of the contract period, and the default date shall then be the first business day after the date of Sellers' advice to their Buyers. If default has not already been declared then (notwithstanding the provisions stated in the appropriation clause) if notice of appropriation has not been served by the 10th consecutive day after the last day for appropriation laid down in the contract, the Sellers shall be deemed to be in default, and the default date shall then be the first business day thereafter.

24. INSOLVENCY

If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for reconstruction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of which acts being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or the Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that such notice was thus served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out at the market price ruling on the business day following the serving of the Notice. If such notice has not been served, then the other party, on learning of the occurrence of the Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on the first business day after the date when the Act of Insolvency occurred.

In all cases the other party to the contract shall have the option of ascertaining the settlement price on the closing out of the contract by repurchase or resale, and the difference between the contract price and the repurchase or resale price shall be the amount payable or receivable under this contract.

25. DOMICILE

This contract shall be deemed to have been made in England and to be performed in England, notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance with the laws of England. Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief, (save for obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party shall be deemed to be ordinarily resident or carrying on business at the office of The Grain and Feed Trade Association (GAFTA), London, and any party

England, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

26. ARBITRATION

(a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No 125, in the edition current at the date of this contract, such Rules are incorporated into and form part of this Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the application of such Rules.

(b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance with the Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or board of appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any persons claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute or claim.

(c) Nothing contained under this Arbitration Clause shall prevent the parties from seeking to obtain security in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such legal proceedings shall be limited to applying for and/or obtaining security for a claim or counterclaim, it being understood and agreed that the substantive merits of any dispute or claim shall be determined solely by arbitration in accordance with the GAFTA Arbitration Rules, No 125.

27. INTERNATIONAL CONVENTIONS

The following shall not apply to this contract: -

(a) The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967.

(b) The United Nations Convention on Contracts for the International Sale of Goods of 1980.

(c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980.

(d) Incoterms.

(e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.

Sellers.....Buyers.....

20 de junio de 1973



C.A.]
PART I

LLOYD'S LAW REPORTS
Toepfer v. Continental Grain Co.

COURT OF APPEAL
June 19, 20, 1973

ALFRED C. TOEPFER
v.
CONTINENTAL GRAIN CO.

Before Lord DENNING, M.R.,
Lord Justice CAIRNS and
Lord Justice ROSKILL.

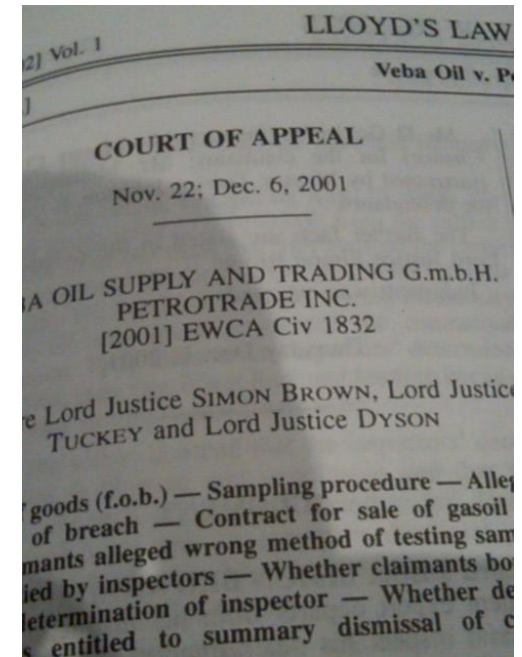
Sale of goods (c.i.f.) — Wheat sold as "No. 3 Hard Amber Durum Wheat quality as per official certificate" — Certificate to be final as to quality — Wheat negligently stated by inspector to be of contract quality — Mistake discovered by buyers — Whether buyers precluded by certificate from claiming damages — London Corn Trade Association Contract form 27.

Where a certificate is to be conclusive as to the quality of goods, the buyer will be precluded from recovering damages from the seller, if, contrary to the statement contained in the certificate, they are not of the contract quality, even if, in fact, the person giving the certificate has been negligent in making it.

The buyers bought from the sellers a quantity of wheat described as No. 3 Hard Amber Durum Wheat of U.S. origin — quality/condition final at loading as per official certificate c.i.f. certain

Amber Durum as referring to numerical grade — Held, Rep. 289), the meaning of the words between the 1 and 2 was a matter of fact between the 1 and 2 (2) the official certificate negligently, wheat was "No. 3" were words of contract (3) the answer was "Yes" Award upheld On appeal by CAIRNS and ROSKILL in certifying Amber Durum of the wheat (13, col. 1 and 2); and was binding (13, col. 2); (2) a mistake afterwards admitted not invalidate as between seller and buyer Appeal dismissed The following judgment:

- Entonces, ¿Cómo podemos controlar o gestionar mejor una cláusula de Calidad Final? La clave está en volver a los conceptos básicos; Autonomía de la voluntad, pacta sunt servanda.
- ¿Confianza en nuestro proveedor? Sí, o no.
 - - Sí, estupendo.
 - - No, entonces debemos limitar las bases del acuerdo
- Calidad final Sí pero:
 - 1) Según método
 - Veba Oil Supply vs Petrotrade, 2002.
 - Compraventa de gasoil
 - Inspector utilizó otro método
 - Diferente al contractual. ¿Error?
 - CA: Resultado no era final
- Salvo error manifiesto o colusión.
- Definir error manifiesto: Si la desviación no es



Mermas

Pagamos en función del BL, pero ¿Cómo se fija el peso del BL?

Calados,
Báscula,
Merma real,
Naturaleza del producto (higroscópicos),
Mermas aparentes,
Calibración básculas.

Bargaining position: out turn clauses



FALLERES IMPORMOP SL

DIF ES B - 14615900

CALLE PEDRO DE DIOS NÂ° 12

CP. 14610 ALCOLEA - CORDOBA

CUENTA BANCARIA:

LA CAIXA NÂ° DE CUENTA 2100 0100 21 0000007105

reciban un cordial saludo fax:955901940 mÃvil:669447774 e-mail: roasasur@hotmail.com

From: "Daito Kenki Sales Co Ltd.-2" <pkttp465@ybb.ne.jp>

To: <roasasur@hotmail.com>

Date: Mon, 2 Apr 2007 14:06:19 +0900

Dear Sir

I would recommend to load PC128US-1 on a 40" Flat rack.

The actual size of PC128US-1 725x246x293Ã @Ã @13,000KGS

To load on in 40' flat rack, we need to dismantle the cabin and arm and bucket.

Machine size: 725x246x250

The sides and the height will exceed from 40" flat rack.

Both sides: Exceed by 3cm (each side)

Height: Exceeds by 40 to 50 cm

PC128US - FOB 2,9 million yen

Payment which has been already made - 957,000 yen

The rest amount 1,943,000 yen

Dismantling fee for 40" (flat rack) 337,000 yen

TOTAL AMOUNT DUE 2,280,000 YEN

Please remit the amount as soon as possible.

If there's a delay in payment, it may rise storage fee which maybe billed.

Mr.Yasumi Ohata

----- Original Message -----

From: Manuel Garvayo

To: Daito kenki selse co.,Ltd-1

Cc: roasasur@hotmail.com

Sent: Wednesday, March 21, 2007 1:24 AM

Subject: Re:

Dear Sir,

As per Shipping Line information pls, find the different types of

figures. Otherwise advise if is necessary to dismantle the machine as you request.

-40' FLAT RACK: 12 x 2,4 x 2,10 m (length x width x height)

Ã E-40' OPENTOP: 12 x 2,3 x 2,2 m (length x width x height)

-40' HIGH CUBE: 12 x 2,3 x 2,6 m (length x width x height).

Door: width: 2,3 y height: 2,57

Awaiting your news

Best rgds

M. Garvayo Servicios Maritimos S.L.

Manuel Garvayo Benito

Ph/Fx + 34 95 2268494

Mb + 34 609 512472

Email : manuel@garvayo.com

----- Original Message -----

From: Daito kenki selse co.,Ltd-1

To: manuel@garvayo.com

Sent: Tuesday, March 20, 2007 3:55 AM

Dear Sir

The size of PC128US becomes below.

Operating Weight:10500kg

Overall Length:7220mm

Overall Width:Ã @2515mm

Overall Height:2850mm

Mr.Yasumi Ohata

Daito Kenki Sales Co.,Ltd.

Representative Director Mr.Yasumi Ohata

336-13 Otoyoshi Cho Masuda-City Shimane Pref 698-0003 Japan

office phone # +81-856-22-0888Ã @Fax # +81-856-31-1344

Cellular phone # +81-90-4147-3695

E-mail pkttp465@ybb.ne.jp

English charge; Keiko Mantoku +81-288-21-8161

Cellular phone # +81-80-3423-8161

E-mail keiko128@sunfield.ne.jp

URL http://www.iwami.or.jp/ohatayas/daitou/english/home.htm

Página 1 de 1

Manuel [REDACTED]

De: "Manuel [REDACTED]" <manuel@[REDACTED]>
Para: "Daito Kenki Sales Co Ltd.-2" <pkttp465@ybb.ne.jp>
CC: <roasasur@hotmail.com>
Enviado: lunes, 02 de abril de 2007 12:21
Asunto: Re:

Dear Sir,

We buyers can no accept other conditions of payment than the one we agree the first time.
As per we agree, the balance of 2.280.000 YEN will be paid, when the container is loaded.

If you now, want to change the agreement, buyer will reject to buy the machinery under you last conditions of payment.
In this case we please you to remit immediately the amount of 957.000 Yen to the buyers Bank.

Note: As per Agent of the buyer Talleres Impormop SI, working with them more than 5 years, we can confirm you that this Company are first class of clients and allways respect his commitments on business.

Awaiting your prompt reply,
Rgds,

For your guidance below, we enclose copy of your confirmation of agreement on Date 17.02.2007:

----- Original Message -----

From: Keiko Mantoku
To: Manuel [REDACTED]
Sent: Saturday, February 17, 2007 1:33 AM
Subject: Re: From Daito Kenki Sales

Dear Manuel,

33% advance payment and the rest against shipping documents - is accepted.
If only you can send us the SWFT bank receipt on Monday - Do you mean Monday Japan time?
This way we will reserve the machine.

We can produce two separated invoices - would 980,000 yen or 1 million yen be good for the first invoice?

Best regards,
Keiko Mantoku

ESTIMADO MANUEL:

ESTO ES LO QUE NOS HA CONTESTADO

reciban un cordial saludo fax:955901940 móvil:669447774 e-mail: [REDACTED]@hotmail.com

From: "Daito Kenki Sales Co Ltd.-2" <pkttp465@ybb.ne.jp>

To: <[REDACTED]@hotmail.com>

Date: Wed, 4 Apr 2007 11:10:30 +0900

¡>>>

I load this machine after I receive payment. It is the same for other exporters

You ask for money refund, I take it as cancellation of contract. The money you had been

already received is earnest and to reserve the machine for you. In this case we would confiscate.

Please send the amount as I have informed within one week of receipt of the mail. Otherwise I will have to sell this PC128UU to others.

This is an external affairs. If you want to bring this case it needs to be adjudicated in Spain

then take the document of a judgment to Japan which may take years to process

If you want to take judicial actions against me without trying to solve this matter together that's fine but I will not be reconciled.

----- Original Message -----

From: Antonio rodrigo asencio
To: pkttp465@ybb.ne.jp
Sent: Monday, April 02, 2007 9:38 PM
Subject: RE:

We know this already one month ago and are waiting for the notification of shipment of the machine. conditions of payment remained clear when they sending pays sign of the machine.

We need that in the maximum space of one week the machine this one embarked and the remaining payment was effecting such which agreed initially.

If not are in agreement I beg return the first payment to us, in opposite case we will take judicial action against you and his company.

M. G. [REDACTED] S.L.

Manuel [REDACTED]

Ph/Fx + 34 95 2268494

Mb + 34 669 447 774

Cliente vende fertilizantes “**FOB Marruecos**”

- Pago diferido
- Control de calidad acordado no a la carga
- Receptor rechaza producto e impide re- exportación por sus contactos con la Aduana.

Resultado: Cliente sin cobrar y sin producto

Mercancía asegurada con seguro de caución.

Cía de Seguros no paga hasta que no se dirima si es un problema de calidad o de impago.

Solución: El contrato preve arbitraje en Madrid, arbitraje ganado.

Cliente cobra del seguro de caución. Sin ese seguro cobrar del marroquí hubiera sido muy laborioso. Cuidado con los pagos diferidos. Utilizar LC o Remesa

*ICC Uniform Customs
and Practice for*

Documentary Credits 2007 REVISION



ICC
International Chamber of Commerce
The world business organisation



ICC Uniform Rules for

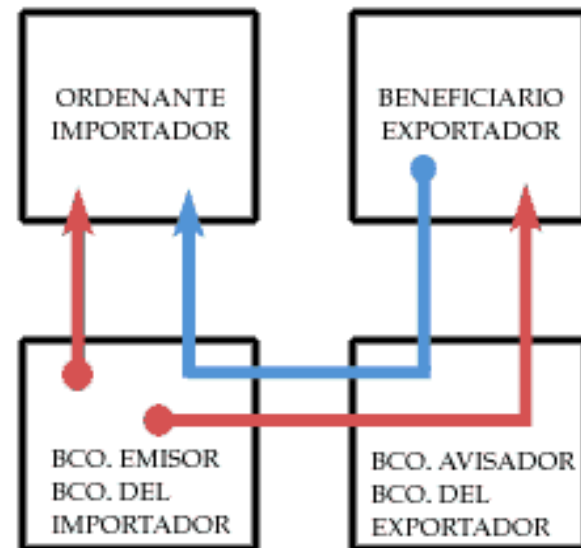
Collections



ICC
International Chamber of Commerce
The world business organisation

Caso reciente: Carta de crédito no confirmada, sub júdice, cooperativa vende producto a empresa sita en Jordania

Funcionamiento y riesgos:



B.O. BOX: 520959 AMMAN 11152 AMMAN - JORDAN

PRODUCT	PRICE	QUANTITY	TOTAL
Wheat straw in bales HS CODE 1213000000	150 EURO/MT CFR AQABA PORT	1000 TONS (+/- 8%)	150,000.00 €

PAYMENT: : Irrevocable Documentary Credit or L/C (Confirmation instructions: without), directly open to "LA CAIXA" CAJA DE AHORROS Y PENSIONES DE BARCELONA and payment 110 days after BL date.

SHIPPING TERM: March - April 2016. Loading at first available vessel after loading in our facilities.
Loading in 40'HC containers.
CFR AQABA PORT (JORDAN).

B. O. CAJA: 520959 AMMAN 11152 AMMAN - JORDANIA

PRODUCTO	PRECIO	CANTIDAD	TOTAL
PACAS DE ALFALFA DESHIDRATADA HS CODE 12141000	227 EUROS/MT CFR PUERTO DE AQABA	1000T (+/-8%)	227,000.00 €

PAGO: Crédito Documentario Irrevocable o L/C (Instrucciones de Confirmación: Sin), abierto directamente a "LA CAIXA" CAJA DE AHORROS Y PENSIONES DE BARCELONA y pago 110 días después de la fecha del BL.

CONDICIONES DE ENVÍO: Marzo - Abril 2016. Carga en el primer buque disponible después de cargar en nuestras instalaciones.
CFR PUERTO DE AGABA (JORDANIA).

En la apertura del credito documentario no confirmado el banco emisor y el comprador pusieron:

“WE WILL EFFECT PAYMENT ON DUE DATE UNDER THIS CREDIT TO THE BENEFICIARY’S BANK IN ACCORDANCE WITH THEIR INSTRUCTION UPON RECEIPT OF THE DOCUMENTS REQUIRED FULLY COMPLYING WITH CREDIT TERMS AND FUNDS FROM APPLICANT”.

Traducción:

“EFECTUAREMOS EL PAGO A LA FECHA DE VENCIMIENTO BAJO ESTE CRÉDITO AL BANCO DEL BENEFICIARIO DE ACUERDO CON SU INSTRUCCIÓN AL RECIBIR LOS DOCUMENTOS REQUERIDOS CUMPLIENDO PLENAMENTE CON LAS CONDICIONES DE CRÉDITO Y LOS FONDOS DEL SOLICITANTE”.

!Muchas **gracias** por vuestra atención!