

Rights and obligations of the parties to a sale of goods contract with an international element – an overview. Obligation to deliver the goods. Passing of risk. CISG. INCOTERMS. The arbitrator.

Case 1

Company DelRon (headquarters and place of business in Havana, Cuba) is a producer and seller of quality Cuban rum. Company Srumy, s.r.o. (registered office and place of business in the Czech Republic) was interested in the offer on their website. The companies are currently negotiating the conclusion of their first sales contract, the subject of which is to be the delivery of several thousand bottles of quality rum. DelRon is interested in having the goods delivered to Algeciras in Spain, as it usually delivers to that port through a transport company with which the Cuban company regularly cooperates. The Czech company agreed but demanded that the goods be delivered by the end of October 2021 at the latest. It is not interested in a later delivery because it intends to sell Cuban rums as a novelty before Christmas on the Czech market.

1. Propose the wording of the delivery conditions in the sales contract using the terms INCOTERMS so that both parties' requirements are met, including the time conditions.
2. Find in the CISG the rule for the delivery of goods if the parties do not choose the INCOTERMS clause in the contract. According to the CISG, determine at the moment of the passing of risk.
3. Since the parties are trading together for the first time and the Cuban company is a little worried that the Czech company will not pay the purchase price, suggest a suitable payment method. Explain the given method of payment and try to suggest its wording.

Case 2

Company Tondama (headquarters and place of business in Olomouc) manufactures ceramic products. The Dutch company Zaar (seat and place of business The Hague) showed interest in these products in March 2021. The parties know each other; in the past, they traded together - in another type of commercial relationship.

1. Propose the wording of the delivery conditions in the sales contract using the INCOTERMS if the Czech company insists on road freight transport. Still, the Dutch company does not want to bear the risk of accidental destruction of goods in the Czech Republic due to the infamous poor condition of Czech roads and highways.
2. Since the parties have traded together in the past, design the method of payment so that the method chosen does not unnecessarily increase the value of the transaction.
3. Propose the wording of the arbitration clause, stating that the parties have agreed that the proceedings shall take place in the Czech Republic before a permanent arbitral tribunal (court of arbitration). The clause should suggest the method of appointing the arbitrators because the parties request that three arbitrators decide the dispute.

Case 3

Crystaloius, a.s. has its registered office and place of business in Kroměříž. It concludes sales contracts with companies that have places of business abroad. Crystaloius does not seem to have a very good lawyer, as the following INCOTERMS clauses have appeared in the contracts concluded. Determine what requirements the clause lacks or what errors it has. Interpret these clauses and consider their validity.

1. FCA Brno-Tuřany
2. EXW INCOTERMS 2020
3. DAP Bd Mansart 15 Dijon INCOTERMS 2019

Case 4

Vinařík, s. r. o. (registered office and place of business in Mikulov) Both a producer and direct seller of wines from South Moravia and a distributor of quality bottled wines of the French company Le Vigneron, s. A. R. L. (registered office and place of business in Beaune, France). Cooperation between the companies began in August 2020. Negotiations on the contract were relatively long, with the companies exchanging several documents because they could not agree on the delivery and payment terms, the method and place of dispute resolution and the required exclusivity. Pre-contractual communication was both in writing and by telephone via Skype. The framework agreement was finally concluded between the companies via e-mail communication in November 2020 for three years with the possibility of extension. Based on the contract, the Czech company obtained authorisation for the exclusive distribution of first-class wine bottles in the Czech Republic. At the same time, Vinařík undertook the obligation to order bottled wines regularly. The contract contained, *among other things*, the following clauses:

- a) *The buyer is obliged to take care of the sale's acquisition and organize distribution in the Czech Republic.*
- b) *The buyer is obliged to regularly order bottled wines, with a frequency of four times a year. The buyer can order any bottled wine according to the current offer of the seller, while the parties have a minimum consumption of 6,000 € per quarter. The buyer shall specify the bottled wines in terms of type and quantity by e-mail, always by the 20th day of the month preceding the month they are to be delivered. The seller must confirm the order by e-mail. The price for individual bottles of wine is determined by the catalogue valid for the relevant calendar year available on the company's website (www.levigneron.fr/tarif), and the prices are valid at the time of ordering.*
- c) *50% of the total purchase price must be paid within ten days of confirmation of the offer; for this purpose, the seller is obliged to send an invoice immediately after acceptance of the offer. The buyer must then pay the additional payment of the purchase price by the 5th day after delivery of the goods.*
- d) *The goods will be delivered in accordance with the EXW clause (Beaune, France) Incoterms® 2020 by the 15th day FIX in the month following the month in which the order was placed.*
- e) *In case of delay in payment of the invoice, the buyer is obliged to pay the seller a contractual penalty of 0.1% of the total price of the goods of the purchase contract for each day of delay.*
- f) *The contract is made in writing and can also be changed only in writing. This contract contains all the terms and conditions agreed upon by the parties and the commitments agreed upon. This contract fully supersedes the exchanged documents and any other negotiations between the parties before signing this contract.*
- g) *All disputes arising from this contract shall be settled amicably with the participation of a mediator appointed by the parties to Ms XY. If the parties cannot settle the dispute amicably, Ms XY will decide the dispute in arbitration as an arbitrator. Mediation and arbitration proceedings will be conducted in English. If, for any reason, Ms XY is unable to act as an arbitrator, the dispute will be decided in an arbitration conducted in Prague in English.*

1. Identify and qualify the contract agreed upon by the parties and determine its legal regime.
2. Determine the law governing the ownership of the goods.
3. Problems occurred when the buyer (via an independent carrier) took over the first delivery in December 2018. The buyer arrived for the goods on Monday, December 17 2020, at the seller's warehouse. The seller told him that the delivery was no longer available because, according to the contract, the delivery was ready for acceptance at the seller's place on Saturday, December 15, 2020. The buyer did not accept the delivery, so he used the prepared goods for other purposes. The buyer argued that all the exchanged documents stated before the conclusion of the contract that the delivery could be picked up until the 20th day of the month. The seller rejected this argument concerning the contract. Name the clause in section f) that deals with this situation, explain its significance for interpretation in general and indicate whether such an arrangement is possible.
4. Would your answer to question no.3) change if it were not the first delivery but the fourth delivery, with the seller always accepting the collection from the buyer two or three days later in the previous three cases?
5. Interpret the delivery condition in clause d). What does it mean? Where does the risk pass? Could the parties also choose the EXW INCOTERMS 2010 or EXW INCOTERMS 2000 clause in the contract?
6. Interpret the temporal aspects of delivery in clause d) and explain the consequences of violating the delivery deadline.

7. The parties later modified the contract and agreed on the delivery terms of the FCA Dijon INCOTERMS 2020. During the transport of goods from Dijon to Mikulov, some bottles broke because the driver drove quickly into a corner, because of which the bottles broke. Assess whether the buyer must pay the purchase price for broken bottles. Would your answer change if the expert opinion proved that the seller did not pack the bottles as he should have?
8. In general, state the requirements for the arbitrators under Czech law. Can a foreigner be an arbitrator in the Czech Republic?
9. In case of a dispute over the purchase price payment, determine the jurisdiction of the court or arbitral tribunal. For this purpose, from the point of view of Czech law, analyse the relevant contractual agreement in all its parts, both regarding its content and form and from the point of view of the enforceability of the output (arbitral award).
10. The parties must agree on whether the arbitration proceedings conducted in Prague should be conducted by one or three arbitrators. If the losing party thinks that the arbitrator (or arbitral tribunal) was not impartial, which procedure can use to defend its rights (during and after the conclusion of the arbitration proceedings)?