

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 Srummy, 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 the delivery of several thousand bottles of quality rum. DelRon is interested in having the goods delivered to Algeciras in Spain, as it normally 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 on the Czech market before Christmas.

1. Propose the wording of the delivery conditions in the sales contract using the terms INCOTERMS so that the requirements of both parties are met, including the time conditions.
2. If the terms of delivery were formulated as stated below, interpret the terms of delivery to solve any interpretation problems:
 - a. EXW INCOTERMS 2020
 - b. DAP Veveří 70, Brno (CZ) INCOTERMS 2019
 - c. FOB Mariel (Cuba)
3. Find in the CISG the rule for the delivery of goods in case the parties do not choose the INCOTERMS clause in the contract. Determine at the same time the moment of passing of risk according to the CISG.
4. Design a payment mechanism for cases where the companies, on the other hand, trade regularly (i.e. it is unnecessary to complicate the situation and increase the parties' costs). If, on the other hand, the parties were trading for the first time and the Cuban company was concerned that the Czech company would not pay the purchase price, propose a suitable payment mechanism. Explain the given method of payment and try to propose its formulation.
5. The buyer took delivery of a unique, strong rum from the seller (a competitor of Grenada's River Antoine Rum). After several complaints from clients in the Czech Republic about the extreme "strength" of the rum, the delivery was tested, and it turned out that the alcohol content in the rum reached 84.5%. The maximum allowed alcohol content for a drink labelled as rum is set at 81% in the EU. The buyer complained about non-compliance with this value to the seller, but the seller refused, saying that in Cuba, the maximum alcohol content allowed for rum is 85%. Evaluate the defectiveness/defectiveness of the goods and the seller's liability for defects from a CISG point of view.
6. The buyer in the Czech Republic was invited by the Cuban company DelaRon to stop selling the bottles supplied by DelRon because DelRon is a parasite on DelRon's reputation and marks the bottles with a logo that is strikingly reminiscent of the DelRon logo protected by an EU trademark. Evaluate this situation.

Case 2

Vinařik, s. r. o. (registered office and place of business in Mikulov) is 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 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 3 years with the possibility of extension. Based on the contract, the Czech company obtained the authorization for the exclusive distribution of first-class wine bottles in the Czech Republic. At the same time, Vinařik 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 acquisition of the sale and to 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 in which 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 10 days of confirmation of the offer; for this purpose, the seller must send an invoice immediately after acceptance of the offer. The buyer must then pay the additional purchase price no later than the 5th day after delivery of the goods.*

d) *The goods will be delivered following the EXW clause (Beaune, France) Incoterms® 2020, by the 15th day FIX in the month following the month the order was placed.*

e) *In case of delay in payment of the invoice, the buyer must 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 between the parties. This contract fully supersedes the exchanged documents and any other negotiations between the parties before the signing of 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 cannot act as an arbitrator, the dispute will be decided in 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 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 deadline.
7. The parties later modified the contract and agreed on the FCA Dijon INCOTERMS 2020 delivery terms. 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 the event 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, analyze 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).
9. In general, state the requirements for the arbitrators under Czech law. Can a foreigner be an arbitrator in the Czech Republic?
10. Assess the advantages/disadvantages of these arbitration clauses:
 - a. All disputes arising from this contract and in connection with it will be resolved in arbitration by the arbitrator JUDr. Peter Malý.
 - b. All disputes arising from this contract and in connection with it will be resolved in arbitration before the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic by one arbitrator, JUDr. Peter Malý.
 - c. All disputes arising from this contract and in connection with it will be resolved in arbitration before the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic by one arbitrator.
11. The parties cannot agree on whether one or three arbitrators should conduct the arbitration proceedings conducted in Prague. If the losing party thinks that the arbitrator (or arbitral tribunal) was not impartial, which procedure can be used to defend its rights (during and after the conclusion of the arbitration proceedings)?

Case 3

The company KACHLÍK, s.r.o., headquarters and place of business in Brno, specializes in the sale of household equipment (tiles, wall coverings, sanitary ware, faucets, etc.). It has three brick-and-mortar stores in the Czech Republic (Brno, Prague and Ostrava) and one store in Bratislava. It supplies its goods both to construction companies for the implementation of large construction contracts, and to Czech and Slovak customers via its e-shop. KACHLÍK has previously done business with BUDYNEK, spol. z.o.o. registered office and place of business in Bielsko-Biala, Poland, which focuses on the production and sale of ceramic tiles, floor tiles and construction trowels.

On January 14, 2022, KACHLÍK contacted BUDYNEK via e-mail, in which it sent a request for the purchase of tiles and trowels. The BUDYNEK company immediately responded with an e-mail, in which it sent a catalogue for the year 2022 containing the complete range of goods together with prices and proposed a meeting date to specify the goods. On January 28, 2022, the representatives of both companies got together via the ZOOM application, taking into account KACHLÍK's obligations to its customers, they discussed the time and production options of the supplier and the expected scope of the ordered goods. On January 31, 2022, the KACHLÍK company sent the final order for the concrete trowel and base penetrations, all specifying the quantity, colours, technical parameters and prices according to the BUDYNEK catalogue for 2022. The total price of the order was CZK 1,650,000. All negotiations incl. including the content of the exchanged documents took place in English. The order further contained, among others, the following provisions:

- *The goods shall be delivered under the terms of DAP INCOTERMS 2020, Lidická 58, Brno, Czech Republic, by 30.6.2022 at the latest.*
- *Half of the purchase price will be paid within 60 (sixty) days from the signing of this contract by both contracting parties to the bank account of BUDYNEK No. 150-8920202083, Bank Pekao S.A., the other half of the purchase price will be paid based on an invoice issued by the supplier after delivery of the goods with a maturity of at least 30 days.*
- *The contracting parties agree that in the event of a delay in the delivery of the goods, the seller is obliged to pay a contractual penalty in the amount of 0.1 % of the total purchase price of the goods for each day of delay. The contractual penalty does not exclude the buyer's claim to compensation for damages arising from the breach of obligations to which the contractual penalty applies.*
- *The contractual parties agree on the reservation of ownership rights until full payment of the purchase price is negotiated.*

– *This contract shall be governed by Czech law. An integral part of this contract is the terms and conditions of KACHLÍK, s.r.o., which are available at www.kachlik.cz/VOP (the text of the terms and conditions is published in Czech and English).*

– *All disputes arising from and in connection with this contract will be decided with finality in an arbitration held in Brno by a single arbitrator.*

The BUDYNEK company replied by e-mail on February 5, 2022, that it agrees with the order, but demands a balancing of contractual obligations by adding a provision on late interest in the event of the buyer's delay in paying some part of the purchase price in the amount of 13% p.a. On February 6, 2022, KACHLÍK replied by e-mail that it agreed.

1) Qualify the relationship between KACHLÍK and BUDYNEK and determine its legal regime, taking into account all aspects. Evaluate the possible subsequent objection of the BUDYNEK company to the invalidity of the reservation of ownership due to non-fulfilment of the requirements of Polish law. State the legal nature of the DAP INCOTERMS 2020 agreement.

2) Analyze the contracting process. Qualify the individual actions of the parties and state when and how the contract was concluded. In particular, analyze the terms and conditions as part of the contract in the given context. Comment also on the form of the contract according to the CISG.

3) Assuming that the goods were delivered, KACHLÍK took over the goods and inspected the number of boxes and their markings. KACHLÍK took control samples of the trowel from several containers, for which they performed indicative quality tests on the spot. Since the test results were in order, KACHLÍK started shipping the delivered goods to its customers the next day. After about a month, the KACHLÍK company received complaints from its customers, according to which the trowel was of poor quality, and did not have the required waterproofing properties (it is not resistant to water and mould). The application did not dry even after a few hours, so it was not possible to apply additional layers. Based on customer complaints, the company KACHLÍK had tests carried out in a specialized laboratory, which confirmed the qualitative deficiencies of the trowel. The company KACHLÍK informed the company BUDYNEK about this situation by e-mail dated September 15, 2022. Analyze whether the goods have defects and whether the seller is responsible for these defects. Comment on the moment of transition of risk and its concept.

4) Assume that in the situation described above, the BUDYNEK company did not meet the demands of the KACHLÍK company. State whether the parties have agreed to an arbitration clause. State according to which law its validity will be assessed in form and content. Furthermore, state whether this is an arbitrable dispute and what the procedure would be in the case