

SECTION I. DELIVERY OF THE GOODS AND HANDING  
OVER OF DOCUMENTS

*Article 29*

[Absence of specified place for delivery]

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

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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.

PRIOR UNIFORM LAW

ULIS, articles 19 (2) and 23.

Commentary

1. The seller's primary obligation is to "deliver the goods" as required by the contract and this Convention.

2. Article 29 states how and where the seller's obligation to deliver is fulfilled. Article 31 states when the seller is obligated to deliver. Articles 78 to 82 deal with the related problems of the passage of the risk of loss.

*"The goods" which must be delivered*

3. In order for the seller to deliver "the goods", in the case of specific goods, he must deliver the exact goods called for in the contract. In the case of unidentified goods, he must deliver goods which generally conform to the description of the type of goods called for by the contract. Therefore, if the contract calls for the delivery of corn, the seller has not delivered if he provides potatoes. However, the seller has delivered "the goods" if he does the appropriate act called for by subparagraphs (a) to (c) in respect of the specific goods described in the contract or, in the case of unidentified goods, of goods which conform to the generic description in the contract even though they are non-conforming or are not delivered at the time required or by the means of transportation specified. Therefore, the handing over to the carrier of No. 3 grade corn when No. 2 grade was called for or the handing over to the carrier of five tons when 10 tons were called for would constitute delivery of "the goods". Even though "the goods" had been "delivered", the buyer would be able to exercise any rights which he might have because of the seller's failure to "deliver the goods . . . as required by the contract and this Convention".<sup>1</sup> Among the buyer's rights would be the right to avoid the contract where the failure of the seller amounted to a fundamental breach.<sup>2</sup> Nevertheless, the seller would have "delivered the goods".

*Where the contract of sale involves the carriage of goods, subparagraph (a)*

4. Where the contract of sale involves the carriage of goods, the general rule is that the seller's obligation to deliver the goods consists of handing them over to the first carrier for transmission to the buyer.

5. The contract of sale involves the carriage of goods if the seller is required or authorized to send the goods to the buyer. Both shipment contracts (e.g. CIF, FOB, FOR) and destination contracts (e.g. Ex Ship, Delivered at . . .) are contracts of sale which involve carriage of the goods.

6. In many cases where the contract of sale involves the carriage of goods, the contract either explicitly or by the use of a trade term specifies the place at which the goods are to be delivered. Where this is the case, the seller's obligation to deliver does not consist of handing the goods over to the first carrier but in doing the act specified in the contract.

7. Therefore, if the contract is a destination contract, the seller's obligation to deliver consists of placing the goods at the disposal of the buyer at the place of destination. Similarly, if the contract is FOB or CIF named port of shipment, the seller's obligation to deliver as determined by the contract consists of placing the goods on board a vessel at the named port of shipment.<sup>3</sup> This is the case even though the seller may need to provide for transport from an inland point to the port of shipment.

<sup>1</sup> Article 28. Buyer's remedies for seller's breach are set forth in article 41.

<sup>2</sup> Article 45 (1) (a). For the effect of a fundamental breach by seller on the passing of the risk of loss, see article 82.

<sup>3</sup> E.g. see Incoterms, FOB condition A.2; CIF condition A.4. ("Incoterms", ICC publication No. 274).

8. However, if the contract does not require the seller to deliver the goods at any other particular place and the goods are to be transported by two or more carriers, delivery of the goods is made by handing them over "to the first carrier for transmission to the buyer". Therefore, in such a case if the goods are shipped from an inland point by rail or truck to a port where they are to be loaded aboard a ship, delivery is effected when the goods are handed over to the railroad or trucking firm.

9. The delivery of the goods is effected by handing over the goods to the carrier, not by handing over the documents to the buyer. Even if the seller never handed over the documents to the buyer as required by the contract, he would have delivered the goods when they were handed over to the carrier. Of course the seller would be subject to any remedies provided by the contract and this Convention for his failure to hand over the documents.

*Goods at or to be manufactured or produced at a particular place, subparagraph (b)*

10. If, 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 and the contract does not require or authorize the shipment of the goods, the seller's obligation to deliver the goods consists of placing the goods at the buyer's disposal at the place at which the goods were located or at the place at which they were to be manufactured or produced.

11. There are a number of different situations envisaged by this subparagraph. The first is that the goods are specific goods. For example, if the contract was for the sale by one dealer to another dealer of a specific painting which the parties knew was at a particular location, delivery would be effected by the seller placing the painting at the buyer's disposal at that location. The same solution is given if 10 tons of scrap steel are to be drawn from a specific pile of scrap steel or if 100 chairs are to be manufactured in a particular factory.

12. If the goods are already in transit at the time of the conclusion of the contract, the contract of sale is not one which "involves" the carriage of goods under subparagraph (a) of this article but is one which involves goods which are at a particular place and which are therefore subject to this subparagraph. This is true whether the sale is of an entire shipment under a given bill of lading, in which case the goods are specified goods, or whether the sale is of only a part of the goods covered by a given bill of lading. Otherwise, if the contract of sale of goods already in transit were held to "involve the carriage of goods", thereby making it subject to article 29 (a), the seller would never "deliver the goods" because the goods would not be handed over to the carrier "for transmission to the buyer". However, by virtue of article 80 the risk of loss would pass to the buyer at the time the goods were handed over to the carrier who issued the documents controlling the disposition of the goods even though the handing over took place prior to the conclusion of the contract of sale.

13. Both parties must know of the location of the specific goods, of the location of the specific stock from which the goods to be delivered are to be drawn, or of the place at which the goods are to be manufactured or to be produced. They must have actual knowledge; it does not suffice if one or the other party ought to have such knowledge but did not. Moreover, they must have this knowledge at the time of the conclusion of the contract.

*In other cases, subparagraph (c)*

14. In other cases, not covered by subparagraphs (a) and (b), the seller's obligation to deliver consists of placing the goods at the buyer's disposal where the seller had his place of business at the time of the conclusion of the contract. If the seller had more than one place of business, the place at which delivery is to be made is governed by article 9 (a).

15. Although subparagraph (c) is a residuary rule to cover those situations not discussed in subparagraphs (a) and (b), it does not state a rule for "all other cases." In particular, the contract may provide for delivery to be made at the buyer's place of business or at some other particular place not mentioned in this article. The opening phrase of article 29 recognizes that in all such cases delivery would be made by

handing over the goods or by placing them at the buyer's disposal, whichever is appropriate, at the particular place provided in the contract.

*Placed at the disposal of the buyer*

16. Goods are placed at the disposal of the buyer when the seller has done that which is necessary for the buyer to be able to take possession. Normally, this would include the identification of the goods to be delivered, the completion of any pre-delivery preparation, such as packing, to be done by the seller, and the giving of such notification to the buyer as would be necessary to enable him to take possession.

17. If the goods are in the possession of a bailee, such as a warehouseman or a carrier, they might be placed at the disposal of the buyer by such means as the seller's instructions to the bailee to hold the goods for the buyer or by the seller handing over the buyer in appropriate form the documents which control the goods.

*Effect of reservation of title*

18. Delivery is effected under this article and risk of loss passes under article 79, 80 or 81 even though the seller reserves title to the goods or otherwise reserves an interest in the goods if such reservation of title or other interest is for the purpose, *inter alia*, of securing the payment of the price.<sup>4</sup>

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<sup>4</sup> Article 79 (1) provides, *inter alia*, "The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of risk."