

not be handed over to the buyer except against payment of the price.

(3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

PRIOR UNIFORM LAW

ULIS, articles 71 and 72.

Commentary

1. Article 54 governs the time for the buyer's payment in relation to performance by the seller.

*General rule, paragraph (1)*

2. Article 54 (1) recognizes that, in the absence of an agreement, the seller is not required to extend credit to the buyer. Therefore, the general rule stated in paragraph (1) is that the buyer is required to pay the price at the time the seller makes the goods available to the buyer, by placing either the goods or documents controlling their disposition at the buyer's disposal. If the buyer does not pay at that time, the seller may refuse to hand over the goods or documents.

3. The converse of this rule is that, unless otherwise agreed, the buyer is not bound to pay the price until the seller places either the goods or documents controlling their disposition at the buyer's disposal. Furthermore, under article 54 (3), which is discussed below, the buyer is not bound to pay the price until he has had an opportunity to examine the goods.

*Where the contract involves carriage of the goods, paragraph (2)*

4. Paragraph (2) states a specific rule in implementation of paragraph (1) where the contract of sale involves carriage of the goods. In such a case "the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price." The goods may be so dispatched unless there is a clause in the contract providing otherwise, in particular by providing for credit.

*Payment and examination of the goods, paragraph (3)*

5. Paragraph (3) states the general rule that the buyer is not required to pay the price unless he has had an opportunity to examine the goods. It is the seller's obligation to provide a means for the buyer's examination prior to payment and handing over.

6. Where the contract of sale involves carriage of the goods and the seller wishes to exercise his right under article 54 (2) to ship the goods on terms whereby neither the goods nor the documents will be handed over to the buyer prior to payment, the seller must preserve the buyer's right to examine the goods. Since the buyer normally examines the goods at the place of destination,<sup>1</sup> the seller may be required to make special arrangements with the carrier to allow the buyer access to the goods at the destination prior to the time the goods or documents are handed over in order to allow for the buyer's examination.

7. The buyer loses the right to examine the goods prior to payment where the procedures for delivery or payment agreed upon by the parties are inconsistent with the buyer having had such an opportunity. This Convention does not set forth which procedures for delivery or payment are inconsistent with the buyer's right to examine the goods prior to payment. However, the most common example is the agreement that payment of the price is due against the handing over of the documents controlling the disposition of the goods whether or not the goods have arrived. The quotation of the price on CIF terms contains such an agreement.<sup>2</sup>

<sup>1</sup> See article 36 (2).

<sup>2</sup> Incoterms, CIF condition B. 1, provides that the buyer must accept the documents when tendered by the seller, if they are in conformity with the contract of sale, and pay the price as provided in the contract".

*Article 54*

[Time of payment; payment as condition for handing over: examination before payment]

(1) The buyer must pay the price when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

(2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will

8. It should be noted that since the buyer loses the right to examine the goods prior to payment of the price only if the procedures for payment or delivery "agreed upon by the parties" are inconsistent with such right, he does not lose his right to examine the goods prior to payment where the contract provides that he must pay the price against the handing over of the documents after the arrival of the goods. Since payment is to take place after the arrival of the goods, the procedure for payment and delivery are consistent with the right of examination prior to payment. Similarly, the buyer does not lose his right to examine the goods prior to payment where the seller exercises his right under article 54 (2) to dispatch the goods on terms whereby the documents controlling the disposition of the goods will be handed over to the buyer only upon the payment of the price.

9. The buyer's right to examine the goods where the contract of sale involves the carriage of the goods is illustrated by the following examples:

*Example 54A:* The contract of sale quoted the price on CIF terms. Therefore, it was anticipated that payment would be made in the following manner. Seller would draw a bill of exchange on Buyer for the amount of the purchase price. Seller would forward the bill of exchange accompanied by the bill of lading (along with other documents enumerated in the contract) to a collecting bank in Buyer's city. The contract provided that the bill of lading (and other documents) would be handed over to Buyer by the bank only upon the payment of the bill of exchange. Since this agreed-upon procedure for payment requires payment to be made at the time the bill of exchange is presented, often at a time the goods are still in transit, the means of payment is inconsistent with Buyer's right to examine the goods prior to payment. Therefore, Buyer did not have such a right in this case.

*Example 54B:* The contract of sale was not on CIF terms and made no other provision for the time or place of payment. Therefore, pursuant to the authority in article 54 (2) Seller took the same actions as in example 54A. Seller drew a bill of exchange on Buyer for the purchase price and forwarded it accompanied by the bill of lading through his bank to a collecting bank in the Buyer's city. Seller gave the collecting bank instructions that it should not hand over the bill of lading to Buyer until Buyer had paid the bill of exchange.

In this example the means of payment, though authorized by article 54 (2), were not "agreed upon by the parties" as is required by article 54 (3). Therefore, Buyer does not lose his right to examine the goods prior to paying the price, i.e., prior to paying the bill of exchange. It is Seller's obligation to assure Buyer of the possibility of examination prior to payment.

*Example 54C:* The contract of sale provided for payment of the price on presentation of the documents at the point of arrival of the goods but only after the arrival of the goods. In this case the procedures for delivery and payment expressly stipulated by the parties are not inconsistent with the right of Buyer to examine the goods prior to payment even though the price was to be paid against the presentation of the documents.