The Law of Commercial Procedure

4.2-45

PART 2-COMMERCIAL OBLIGATIONS AND CONTRACTS

5. Types of International Sale

F.O.B. (free on board) sale

Article 133. - (1) Free on board (FOB) sale is a sale in which the goods sold are delivered at the port of loading on to a ship which is specified by the purchaser for their transportation.

(2) The purchaser in this kind of sale shall be obliged to conclude a contract for sea transportation and to pay for this and shall notify the seller in appropriate time of the name of the ship which he has selected for transportation, the place and date of loading and the time limit specified for completion of this.

(3) The purchaser may authorise the seller to conclude two contracts, for transportation and insurance of the goods, at the expense of the purchaser. The relationship between the seller and purchaser with regard to this shall be subject to the provisions regarding agency contracts.

Article 134. - (1) The filling and wrapping of the goods sold, their transportation to the port of loading and loading on to the ship specified by the purchaser shall be incumbent upon the seller. This shall be on the date fixed and within the time limit specified for loading.
(2) The seller shall bear the expenses of filling and wrapping and the cost of examination measurement, counting or weighing of the goods sold before loading takes place.

(3) The seller shall be obliged to notify the purchaser without delay of the loading of the goods sold and to send him the papers proving this. This shall be at the expense of the purchaser.

Article 135. - (1) If the goods are a kind for which permission to export or any other government licence is required in order to export them outside the State, the seller shall be obliged to obtain this and shall bear the costs involved.

(2) The purchaser shall be obliged to obtain a permit to import and any other documents necessary for this and shall bear the costs involved.

(3) The seller shall be obliged to obtain a certificate of origin of the goods sold in conformity with the regulations and to hand this over to the purchaser. The purchaser shall bear the costs of this provided there is no agreement to the contrary.

Article 136. - The seller shall offer to the purchaser any assistance which enables him to obtain a bill of lading and any other documents necessary to extract in the state in which the loading of the goods sold takes place, to facilitate their importation to or transit through another state. The purchaser shall bear the expenses necessary to obtain these documents.

Article 137. - The seller shall be obliged to pay all sums due with regard to the goods sold including export duties and handling charges until the goods sold cross the ship's railings during loading. Likewise the seller shall bear responsibility for any harm which may befall the goods sold up to this point. Any sums due or any harm which may occur thereafter shall be at the expense of the purchaser.

Article 138. - If the arrival of the ship chosen by the purchaser for transportation is delayed until after the end of the time limit specified for loading or if the ship leaves the said port before the end of this period, or if loading is impossible due to some reason which is not attributable to the seller, the additional costs arising from this shall be incumbent upon the purchaser who shall bear the responsibility for any harm which may befall the goods sold from the date the period specified for loading expires, on condition that the goods sold should actually have been allocated.

Article 139. - If the purchaser does not inform the seller of the name of the ship within an appropriate period, or if he retains the right to specify the delivery date within a specified time limit but fails to do so, or to specify the port of loading but no definite information is forthcoming from him within this period, the additional costs arising from this shall be incumbent upon the purchaser who shall bear the responsibility for any harm which may befall the goods sold from the date that the period of notification or the agreed period for specification of a delivery date, on condition that the goods sold should actually have been allocated.

Article 140. - If it is agreed that delivery should be completed on the quayside of the port of loading at which the ship specified by the purchaser docks, the sale shall be termed F.A.S. (free alongside ship). The provisions for F.O.B. sale shall apply to this sale with the exception of the loading of goods on to the ship.

C.I.F. (cost, insurance and freight) sale

Article 141. - (1) C.I.F. sale is a sale which is concluded at a fixed price to include in addition to the price of the goods sold, the costs of marine insurance upon them and the charge for transport by ship to the port of arrival.

(2) The goods shall be deemed to have been delivered to the purchaser upon completion of their loading on to the ship and from this time the responsibility for deterioration shall be transferred to the purchaser.

(3) If the insurance is not incumbent upon the seller the sale shall be deemed to be C and F (cost and freight).
Article 142. - The seller shall be required to conclude a contract for carriage of goods with a reputable carrier on standard terms and to choose a ship fit to transport the kind of goods sold. He shall also be required to pay the cost of transportation and other sums which the carrier stipulates shall be paid at the loading port.

Article 143. - (1) The seller shall be required to arrange with a reputable insurer insurance on the goods sold against transportation risks and to pay the costs and charges necessary for this.

(2) The insurance must be arranged in a negotiable document on conventional terms and the sum insured must be not less than the price stated in the contract.

(3) The seller shall only be obliged to insure against transportation ordinary risks. The seller shall not be obliged to insure against supplementary risks or war risks unless the purchaser requests him to do so.

(4) The seller shall not be liable towards the purchaser for the inability of the insurer to pay an insurance claim if he insures the goods sold with a reputable insurer.

Article 144. - (1) Filling, wrapping and loading of the goods sold on to the ship within the time limit specified for loading or that required by convention shall be the obligation of the seller. The seller shall bear the costs of filling and wrapping and the expenses of examination, measurement, weighing or counting necessary for the loading of the goods.

(2) The seller shall notify the purchaser without delay the ship's name and completion of loading.

Article 145. - (1) The loading by the seller of the goods sold shall be proved by a bill of lading in which the word 'loading' is stated. If 'with loading charges' is stated therein it shall be for the purchaser to prove that the loading did not actually take place on the date stated in the document.

(2) If the bill of lading comprises a statement in the handwriting of the ship's captain and signed by him to the effect that the goods have actually been loaded on the date specified the purchaser may not establish the contrary in contradiction of the seller.

Article 146. - (1) The seller shall be obliged to obtain a certificate of origin of the goods sold in conformity with the regulations and to surrender this to the purchaser. The purchaser shall bear the costs of this provided there is no agreement to the contrary.

(2) The seller shall offer to the purchaser any assistance which enables him to obtain a bill of lading and any other documents which it is necessary to take out in the state in which the loading of the goods sold takes place, in order to facilitate their importation to or transit through another state.

Article 147. - (1) The seller shall be obliged to pay all sums due in relation to the goods sold, including export duties, until their loading on to the ship is completed.

(2) Import duties and duties and costs involved in releasing the goods sold from customs at the port of discharge shall be the responsibility of the purchaser.

Article 148. - The seller shall be responsible for any harm which may befall the goods sold until the goods cross the railings of the ship during loading. This responsibility shall be transferred thereafter to the purchaser.

Article 149. - (1) The seller shall be required after the loading of the goods to forward to the purchaser without delay the clean bill of lading which is negotiable and addressed to the specified port of discharge. Attached to the bill of lading shall be an inventory of the goods sold and their values, the insurance policy or certificate which stands in its place and any other documents requested by the purchaser. If the shipping document refers in some matters to the agreement on the hire of the ship, a copy of this contract must also be attached.

(2) The bill of lading shall be deemed 'clean' if it does not contain any clear additional conditions confirming the existence
of defects in the goods sold or the manner of their filing or wrapping. These conditions shall not include reference in the
bill of lading to previous use of the containers or wrappings nor the lack of responsibility for any harm which occurs due to
the nature of the goods sold, or the carriers ignorance of the contents of packages or their weight.

4.2-62

(3) A certificate of insurance which stands in place of an original insurance policy must be issued by the insurer and
comprise the fundamental conditions stipulated in the original policy, such that it confers on the holder all the rights
granted by this policy.

Article 150. - (1) The purchaser shall not be obliged to accept the documents forwarded to him by the seller if they do not
conform with the conditions stipulated in the contract of sale. The purchaser shall be deemed to have accepted these
documents if he does not object to them within seven days through the purchaser's bank from the date of receipt. The
objection shall take place by the notification or the seller in writing to send documents in conformity with the agreed
conditions within an appropriate period. After the expiry of this period the purchaser shall be entitled to request the
cancellation of the sale with compensation if this is called for.

(2) If the purchaser rejects the documents on specific grounds or accepts them with reservations he may not raise any
objection thereafter on grounds or with reservations other than those which he previously presented.

(3) If the purchaser rejects the documents without justification he shall be obliged to compensate the seller for any
damage resulting from this.

Article 151. - If the ship on which the goods sold are loaded arrives before the arrival of the documents or if the
documents are incomplete upon arrival the seller shall be obliged immediately upon being notified of this do anything
required to enable the purchaser to obtain a copy of the documents which have not arrived or to complete the deficient
documents. The seller shall bear the costs necessary for this along with compensation if this is called for.

Article 152. - Taking into account the provisions of Article 111, the purchaser shall be obliged to take delivery of the goods
sold upon their arrival at the port agreed upon. The purchaser shall be responsible for sums due with regard to the goods
sold during their transportation, and for the cost of unloading them upon arrival, provided the carrier has not received
such sums and coasts at the loading port and there is no agreement in the contract of sale that the seller should be
responsible for them (C.I.F. sale including unloading).

Article 153. - If the purchaser retains the right to specify the time of shipping or the discharge port within a specified period
and his instructions in this respect are not issued within the said period, any additional costs arising from this shall be
incumbent upon him and he shall be responsible for any damage which befalls

4.2-63

the goods sold up to the date the time limit or shipping expires, on condition that the goods sold should have been
allocated specifically at that date.

Article 154. - If it becomes apparent that there is disparity between the goods and that which appears in the documents
but the disparity does not exceed that which is conventionally tolerated, the purchaser shall be obliged to accept them
with a reduction in price which shall be assessed by experts in accordance with the convention applied at the discharge
port.

Landing sale

Article 155. - A contract which comprises conditions to the effect that the seller is responsible for deterioration after the
goods are loaded, or which makes the execution of the contract dependent on the safe arrival of the ship, or which gives
the purchaser the option to accept the goods in accordance with the agreement or in accordance with the sample
submitted to him at the time of the contract, shall not be C.I.F. sale or F.O.B. sale but shall be deemed sale on condition
of delivery at the point of arrival.

Sale at departure airport
Article 156. - Sale at the departure airport is defined as a sale in which delivery of goods is concluded in the departure airport by their being placed under the administration of the air carrier specified by the purchaser or chosen by the seller.

Article 157. - (1) The seller shall be obliged to deliver the goods at the departure airport to the air carrier or his representative at the place and date agreed upon or at the place specified by the purchaser after the conclusion of the contract. Delivery shall take place in accordance with the principles and conventions followed in the departure airport.

(2) The seller shall be obliged to inform the purchaser of the completion of delivery of the goods without delay by any means of cable or radio communication.

Article 158. - (1) The seller shall conclude a contract for transportation of the goods at the expense and responsibility of the purchaser if the latter asks him to do so. The seller shall also do this if the purchaser does not give instructions with regard to the transportation of the goods within an appropriate time and where it would be commercial convention for him to do so. The seller shall be permitted not to conclude a transportation contract and in this case he shall notify the purchaser of this immediately.

(2) If the seller concludes a transportation contract he shall be obliged to observe the instructions issued to him by the purchaser and to select an aircraft fit for the transportation of such goods by the normal route from the departure airport to the arrival airport specified by the purchaser, or the airport nearest to the establishment of the purchaser.

Article 159. - (1) The seller shall be obliged to pay all duties and taxes incurred in respect of the goods due to their being exported.

(2) The seller shall also be obliged to furnish the purchaser with all documents necessary to take delivery of the goods and which are at the disposal of the seller.

Article 160. - If the air carrier or other person nominated by the purchaser refuses to accept the goods at the departure airport, or if the purchaser fails to supply the seller in appropriate time with the information necessary for the transportation of the goods, the seller must inform the purchaser of this as soon as possible.

Article 161. - (1) In cases where the seller is not obliged to conclude the contract for transport of the goods the purchaser shall be obliged, at his expense, to arrange transportation of the goods from the departure airport to the arrival airport and to nominate the air carrier or his representative or any other person to whom the goods should be delivered. The purchaser shall be required to inform the seller of this in appropriate time.

(2) If the purchaser does not provide the seller with the details necessary for transportation of the goods in appropriate time, the purchaser shall bear all extra costs which this entails, as he shall bear the consequences of any damage to the goods from the date specified for delivery of the goods, on condition that the goods should actually have been set aside or allocated.

Article 162. - If the air carrier or other person nominated by the purchaser refuses to take delivery of the goods, the purchaser shall bear all additional expenses resulting from this. He shall also bear the consequences of any damage to the goods from the date when they were ready for delivery, on condition that the goods should actually have been set aside or allocated.

Article 163. - A contract of sale in the aforementioned international sales shall be independent and shall not affect the relationships established between both the seller and the buyer, and the carrier in the transportation contract, or between the purchaser and the bank in a contract of documentary credit.

Section 3: Commercial Pledges
Article 279. - The explosion or burning of the means of transport, derailment, collision or other accidents attributable to the tools and machinery used by the carrier in the performance of the carriage shall not be deemed *force majeure*, even if it is proved that he took precautions to ensure their fitness for the work and the prevention of any damage which might occur.

Article 300. - The carrier shall not be entitled to a carriage fee for items which he undertakes to transport which are destroyed by *force majeure*.

Article 301. - (1) If *force majeure* prevents implementation of carriage the carrier shall not be entitled to a fee. If such force prevents the continuity of carriage the carrier shall be entitled to the fee for that part of the carriage which has been completed.

(2) In all cases the carrier may claim the costs of loading and unloading and any other necessary expenses.

**Referring Principles:**
- IV.5.6 - Rights and duties of the parties under "FOB" and "CIF"
- VI.3 - Force majeure