



## **Exporter aux Etats-Unis**

Quelques conseils pour une organisation  
logistique efficace de vos transactions

Incoterms 2000 / RAFTD 1941 / UCC

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## Introduction

D'un point de vue juridique, les transactions commerciales, qu'elles soient locales ou internationales, peuvent être ramenées à une succession d'accords ou de contrats qui non seulement s'enchaînent mais qui se réfèrent aussi les uns aux autres.

Qu'il s'agisse de contrats conclus avec des importateurs ou d'accords passés avec des agents commerciaux, distributeurs, banques, compagnies d'assurance, transporteurs, expéditeurs, toute l'organisation juridique de la transaction (internationale), tous ces engagements devraient pouvoir s'imbriquer harmonieusement.

Force est toutefois de constater que certains aspects importants sont parfois négligés ou que les conditions de certains accords que les entreprises concluent dans le cadre de l'exécution du contrat de vente (comme par exemple le contrat de transport ou d'assurance) s'opposent aux clauses d'autres contrats (comme par exemple les Incoterms dans le contrat de vente) ou aux conditions de paiement (lettre de crédit, instructions d'encaissement). Une telle discordance peut avoir des effets imprévus, parfois même de grande portée.

Tout exportateur doit dès lors connaître les mécanismes permettant de rédiger un contrat de vente aussi précis et complet que possible. Le contrat de vente constitue en effet la base, le point de référence pour tous les autres accords que l'exportateur a à conclure: le contrat de transport (par exemple le connaissement, la lettre de voiture CMR), la police d'assurance, les documents de paiement (par exemple le crédit documentaire), les instructions de paiement, les instructions à l'agent en douane, etc.

Tout cela n'est pas simple.

Les exportateurs sont souvent passés maîtres ès arts dans le calcul des prix ou l'appréciation et l'évaluation des opportunités de marché mais n'évaluent pas toujours correctement les problèmes logistiques. Ils font à cet effet appel à des expéditeurs. Un banquier gère parfaitement les mécanismes du crédit documentaire mais ne maîtrise pas nécessairement toutes les implications juridiques du contrat de vente. D'autre part, le juriste n'est pas toujours au courant des tenants et aboutissants d'une déclaration en douane.

On ne peut être expert en tout, mais de bonnes notions des principes de l'organisation pratique des exportations et des importations rendront l'entrepreneur international plus attentif aux problèmes éventuels de sorte qu'il peut mieux piloter les spécialistes (banquiers, juristes, assureurs, expéditeurs, ...) auxquels il a recours pour certains aspects.

## 1. "Mission statement"

Dans cette optique, il est important que chaque partie garde à l'esprit le but visé par la transaction ou, pour utiliser une expression anglo-saxonne, que chaque partie ait pleinement conscience de son «mission statement».

Pour un vendeur, exporter avec succès n'équivaut pas à écouler autant de biens que possible sur des marchés étrangers mais à être payé par ces clients étrangers et si possible avec profit. Exporter signifie, en d'autres termes, être payé pour les produits qui partent à l'étranger et faire des bénéfices à cette occasion.

Inversement, l'objectif premier de l'importateur, c'est non que son fournisseur soit payé ; ce qu'il veut, c'est réceptionner effectivement les marchandises commandées et les vendre sur le marché local, les utiliser ou les consommer et ce au prix le plus bas possible.

Les conditions générales à l'achat servent donc un autre but que les conditions générales à la vente et tel est aussi le cas pour les conditions de paiement, les accords de livraison, etc. En fonction du point de vue adopté dans le cadre de la transaction - acheteur ou vendeur - d'autres conditions et accords seront formulés.

Dans un contrat d'achat/vente, le vendeur cherche avant tout à ce que le prix convenu lui permette de réaliser les marges bénéficiaires souhaitées une fois tous les frais (production, marketing, financement, transport, manutention, encaissement, ...) déduits.

Ce qui importe à l'acheteur, c'est que le prix payé, majoré des frais de livraison, manutention, dédouanement, certification, paiement, etc. pris à charge, reste le meilleur prix. Cela vaut d'ailleurs non seulement pour les contrats de vente mais aussi pour tout contrat assorti d'une livraison (envois en retour et pour remplacement, location, envois en consignation, pour réparations, travail à façon, sous-traitance,...).

## 2. Collecte d'informations

Au moment de la rédaction de l'offre et du bon de commande, l'acheteur et le vendeur doivent déjà avoir une idée des frais, risques et formalités auxquels il faut s'attendre du fait que les biens doivent être acheminés d'un endroit à un autre. Ce n'est que si ces paramètres sont connus et intégrés dans le calcul que la transaction peut générer les bénéfices souhaités.

Pour pouvoir collecter toutes ces informations à temps, l'utilisation de documents standard adaptés comme ceux basés sur l'UN Layout Key (UNLK), peut être d'une grande aide pratique.

Dans les *"Guidelines for Application of the United Nations Layout Key for Trade Documents"* (United Nations, New York and Geneva, 2002, 55p. + Annexes - [www.unece.org/etrades/unedocs/layout.htm](http://www.unece.org/etrades/unedocs/layout.htm)) et sur le site web [www.unece.org/etrades/unedocs/V04/index.htm](http://www.unece.org/etrades/unedocs/V04/index.htm), l'United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) propose en effet divers documents (offre, bon de commande, confirmation du bon de commande, bon de livraison, facture, ...) qui sont tous basés sur la même matrice standard ou "master".

Ce "master" permet de créer des séries « cadrées » de documents. Il devient ainsi possible de remplir d'une traite et sans risque d'erreur - via des techniques de reproduction et l'automatisation - tous les documents utilisés traditionnellement dans les transactions commerciales internationales.

En recourant à ces documents, les parties (l'agent, le responsable à l'exportation, ...) peuvent déjà dès la première phase des négociations collecter de manière standardisée toutes les informations (itinéraire de transport, origine, provenance et destination finale, tarif douanier, documents requis, frais d'exécution, mode de paiement et devise, ...) nécessaires aux différents départements « exécutifs » de l'entreprise (logistique, comptabilité, production,...) pour la préparation de la transaction internationale (sur le plan financier, administratif, logistique, ...) et pour la concrétiser au coût budgétisé.

MASTER									
Sender			Invoice date				Invoice No.		
Agent in place of shipping			Our order date				Our order No.		
Consignee			Your order date				Your order No.		
Notify address			Buyer (if other than consignee)						
Domestic carriage by			Country of origin				Country of destination		
Pre-carriage by			Terms of delivery				Quel Incoterm → organisation logistique		
Main-carriage by			Time of delivery						
On-carriage from			Terms of payment				Conditions de paiement >L/C,D/P,T/T...		
Shipping marks, container No.			Insurance value				Insurance covered by us / covered by you		
Number and kind of packages; goods description			Gross weight				Cube		
Quantity ordered			Quantity delivered				Unit price		
Items/Art. No.			Article				Total amount		
Freight payment			Docs. attached				Costs		
Doc. sent to			Export decl.				Included above / Not incl. above		
Invoice			Invoice copy				Freight		
Ins. policy			Invoice specific				Insurance		
Certificate of origin			Freight dec.				To invoice amount		
Name of bank			Freight to be paid at						
Other information			No. of original Bill						

Partie qui réceptionnera les marchandises

Agent en douane ou agent maritime qui doit être averti de l'arrivée des marchandises

Modes de transport utilisés → quel emballage, quelles assurances

Pays d'origine → préférences tarifaires, quotas, ...

Références de l'autre partie

Partie à laquelle la facture doit être adressée

Pays de destination → UE, ...

Quel Incoterm → organisation logistique

Conditions de paiement >L/C,D/P,T/T...

Valeur à assurer

Numéro du tarif douanier → recherche droits d'entrée

Comment le fret est-il payé (freight collect, freight prepaid, ...)

Coût de l'emballage, du transport et de l'assurance > valeur

Quels documents ajouter pour le dédouanement, etc ?

signatures, visa, déclaration facture, etc

Données bancaires

### 3. Conditions de livraison – Incoterms 2000, RAFTD 1941 et UCC

Ce qui distingue les transactions avec des clients (ou fournisseurs) aux Etats-Unis ou sur d'autres marchés étrangers des transactions conclues sur le marché local, c'est la distance qui sépare le fournisseur du client.

La livraison se transforme en effet en une chaîne logistique associant toute une série d'intermédiaires (expéditeurs, manutentionnaires, stockistes, transporteurs, agents, pouvoirs publics, assureurs...). A chaque fois, il y a lieu de préciser qui règle le transport et jusqu'à quel point, qui s'occupe du chargement, du déchargement et du stockage, qui prend à son compte les formalités à l'exportation et qui se charge de l'importation, qui contracte et paie l'assurance de transport, qui fournit les documents nécessaires, qui s'occupe du conditionnement, de la « fumigation », du scannage, etc ....

Pour éviter des discussions à l'infini, il est d'usage dans le commerce international - pour ne pas avoir à rédiger des clauses circonstanciées pour tous les aspects susmentionnés, inhérents au commerce extérieur -, de standardiser les conditions de livraison et de les désigner à l'aide d'abréviations et de termes succincts (EXW, FOB, CIF, ...). Cette façon de procéder permet de définir toute une série de droits et d'obligations - mais seulement ceux qui portent sur les livraisons - par un seul terme qui permet à toutes les parties concernées de connaître d'emblée les éléments essentiels de leurs obligations de livraison et de réception. Ainsi, il est possible de rédiger une offre rapidement et d'y répondre tout aussi vite, ce qui est indispensable pour le développement du commerce.

Les Incoterms 2000 sont de loin les conditions de livraison standardisées les plus utilisées. Codifiés par la Chambre de Commerce Internationale (International Chamber of Commerce - ICC), ils fixent de manière simple et harmonisée la répartition des frais et risques dans les transactions internationales; ils précisent quand la livraison est achevée, quelle assistance logistique les parties doivent se prêter, etc. ([www.incoterms.org](http://www.incoterms.org)).

Ces Incoterms sont entre-temps bien ancrés dans les milieux commerciaux ... **sauf aux Etats-Unis !**

Bien que les (départements d') entreprises américaines habituées à travailler à l'international appliquent entre-temps aussi les Incoterms 2000, bon nombre d'entreprises, de comptables, juristes et services publics américains continuent à utiliser les conditions de livraison « nationales » telles que fixées dans l'Uniform Commercial Code et dans les "(Revised) American Foreign Trade Definitions (RAFTD) 1941".

Sauf référence explicite dans le contrat à l'interprétation des termes commerciaux conformément aux Incoterms 2000, l'utilisation de conditions de livraison telles que FOB, CIF et FAS dans des contrats conclus avec des partenaires commerciaux américains n'est pas dénuée de risques. Les effets juridiques liés à l'utilisation des conditions de livraison figurant dans les RAFTD "(Revised) American Foreign Trade Definitions" 1941 et l'Uniform Commercial Code (UCC) divergent en effet de ceux associés à l'utilisation des Incoterms.

Les clients américains peu chevronnés en matière d'importation qui souhaitent déléguer l'organisation logistique de la transaction à leur fournisseur ne demanderont dès lors pas d'offre 'DDU' ou 'DDP' (termes qui n'existent pas dans les RAFTD 1941 ou dans l'UCC), mais s'attendent souvent à ce que vous livriez Franco ('Free delivered'), DIS (Delivered Into Store), Door-to-door, FIS (Free Into Store) ... ou 'FOB (destination)'.

### 4. Les Incoterms « américains »

## 1. "Revised American Foreign Trade Definitions 1941" (voir texte en annexe)

Bien que leur importance se soit fortement atténuée ces dernières années, un certain nombre d'entreprises américaines recourent toujours pour leurs offres internationales et leurs demandes de prix à l'étranger aux "Revised American Foreign Trade Definitions 1941" formulées en 1941 à la 27e *American Foreign Trade Conference*.

Ces conditions de livraison règlent, tout comme les Incoterms, la répartition des coûts et risques entre vendeur et acheteur dans les livraisons internationales de marchandises. Sur certains points, elles divergent toutefois sensiblement des Incoterms. Tel est le cas en particulier de la condition FOB dont l'utilisation n'est pas sans risques.

Les "Revised American Foreign Trade Definitions 1941" comptent 6 termes:

### 1.1. *Ex (Point of Origin)*

Cette condition est généralement suivie d'un complément: Ex Factory, Ex Mill, Ex Mine, Ex Plantation, Ex Warehouse, etc. Ce terme peut facilement être comparé à la condition EXW Incoterms 2000 (à l'usine) : le vendeur met les marchandises, non chargées et non dédouanées, à la disposition de l'acheteur à un endroit convenu. L'acheteur se charge des formalités douanières.

### 1.2. *FOB (Free on Board)*

Les RAFTD 1941 opèrent sous la condition FOB une distinction entre 6 FOB différents dont aucun – à une exception près, en l'occurrence « F-FOB (*named inland point in country of importation*) » – n'impose au vendeur l'obligation de dédouaner la marchandise :

- *A - FOB (named inland carrier at named inland point of departure) par exemple FOB car Chicago*<sup>1</sup>

Le vendeur livre la marchandise, chargée mais non dédouanée, à l'intérieur du pays à bord du véhicule pour le transport. L'acheteur doit se charger des formalités et frais à l'exportation. Ce terme peut être considéré comme un 'EXW chargé' et présente dès lors des risques non négligeables pour les acheteurs européens.

- *B - FOB (named inland carrier at named inland point of departure) Freight prepaid to (named point of exportation) – par exemple FOB Chicago freight prepaid to New York*

Le vendeur assume les frais de transport jusqu'au lieu où la marchandise sera exportée mais les risques liés au transport préalable sont à charge de l'acheteur. Ce dernier doit aussi s'occuper des formalités douanières. Pour ce qui est du risque, la condition est toujours EXW mais pour ce qui est des frais la condition se rapproche plus de FCA non dédouané.

- *C - FOB (named inland carrier at named inland point of departure) Freight allowed (named point) - par exemple FOB Chicago freight allowed to New York*

Sous cette condition FOB, le vendeur ne s'occupe pas non plus du dédouanement tout comme il n'assume plus de risques après le chargement du camion dans ses entrepôts. Il organise le transport des marchandises vers le lieu d'exportation mais les frais y afférents (frais de transport de ses entrepôts vers le lieu d'exportation) sont à charge de l'acheteur (Freight collect). En fait, on a affaire ici à un 'EXW charges additionnelles'.

- *D - FOB (named inland carrier at named point of exportation) - par exemple FOB Railway New York*

Conformément à cette condition, le vendeur assume les frais et les risques jusqu'au moment où la marchandise non chargée est transférée au transporteur au lieu où débute le transport principal. Les frais, les formalités et les risques de dédouanement sont toujours à charge de l'acheteur. Ce terme pourrait être comparé à l'Incoterm 2000 FCA Franco transporteur non dédouané (ou encore FOQ – Free on Quay - not cleared).

- *E - FOB Vessel (named port of shipment)- par exemple FOB New York outgoing*

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<sup>1</sup> Exemples formulés en partant du point de vue d'un Américain vendant à un acheteur européen.

*steamer*

Cette condition implique elle aussi que le vendeur supporte les frais et risques jusqu'au lieu d'exportation; il s'occupe toutefois aussi du chargement dans le port d'exportation à bord du navire. Les frais, les formalités et les risques de dédouanement sont toujours à charge de l'acheteur. Ce terme pourrait être comparé à l'Incoterm 2000 *FOB non dédouané*.

- ***F- FOB (named inland point in country of importation)*** – par exemple *FOB Brussels*

Aussi étrange que cela paraisse, ce terme sous-entend d'emblée des conditions maximales pour le vendeur: il supporte les frais et les risques jusqu'au lieu de destination dans le pays d'importation, l'exportation, l'assurance (transport et guerre), le déchargement et l'importation. L'acheteur n'a qu'à réceptionner la marchandise. Ce terme est en fait l'équivalent de DDP et comporte de nombreux risques pour les vendeurs européens.

Pour éviter le risque d'erreur ou de malentendu, il est vivement recommandé de préciser dès le début des négociations avec un client américain quelles conditions on utilise: les Incoterms 2000 ou les (Revised) American Foreign Trade Definitions 1941 et, si tel est le cas, quelle variante FOB (*FOB Warehouse / FOB Ex Seller's Works / FOB Mill / FOB Factory/ FOB Plant / FOB Vessel / FOB Car ...*).

Si des documents de transport doivent être soumis, ils doivent être 'clean' comme le précisent explicitement les RAFTD.

### ***1.3. FAS (Free Along Side)***

La condition FAS correspond en grandes lignes à la condition FAS telle que formulée dans la version 2000 des Incoterms. Le vendeur doit livrer la marchandise le long du navire. L'acheteur dédouane la marchandise qu'il charge à bord du navire (= *FAS non dédouané*).

### ***1.4. C&F (Cost and Freight)***

Cette condition de livraison est comparable à la condition CFR/CPT des Incoterms 2000: le vendeur dédouane la marchandise et paie le transport jusqu'au lieu de destination. Les biens voyagent néanmoins aux risques de l'acheteur.

### ***1.5. CIF (Cost, Insurance and Freight)***

Cette condition de livraison est comparable à l'Incoterm 2000 CIF/CIP: le vendeur se charge de faire dédouaner la marchandise et paie le transport et les assurances jusqu'au lieu de destination. La marchandise voyage néanmoins aux risques de l'acheteur. Les RAFTD omettent toutefois de dire quelle couverture d'assurance il y a lieu de prévoir alors que, contrairement à l'Incoterm CIF, une assurance contre les risques de guerre doit être contractée.

### ***1.6. Ex Dock (named port of importation)***

Cette condition de livraison soutient la comparaison avec la condition DEQ (duties paid) telle que formulée dans la version 2000 des Incoterms. Le vendeur doit livrer la marchandise dédouanée à quai dans le pays d'importation. Ce n'est qu'alors que les frais et risques passent à l'acheteur. De manière quelque peu laconique, le commentaire au terme Ex Dock dans les RAFTD 1941 précise que cette condition est utilisée surtout pour l'importation aux Etats-Unis mais déconseillée à l'exportation hors USA.

En règle générale, les RAFTD 1941 tiennent peu compte des usages qui se sont développés au fil du temps au niveau du commerce international. Qui plus est, elles comportent beaucoup de risques pour l'acheteur.

## 2. L'Uniform Commercial Code (UCC) (voir texte en annexe )

L' « Uniform Commercial Code » (UCC) américain fournit lui aussi des définitions d'un certain nombre de conditions de livraison, en l'occurrence les termes 'FOB', 'FAS', 'CIF', 'C&F' et 'Ex Ship' (UCC §§ 2-319 jusqu'à 2-324). Ces définitions sont plus proches des RAFTD 1941 que des Incoterms. Le texte officiel de l'UCC date du reste de 1952, soit un an avant que les Incoterms ne voient le jour (1953). L'UCC règle non seulement le transfert des coûts mais aussi le transfert des risques.

Tout comme c'est le cas pour les autres dispositions de l'UCC, les règles d'interprétation relatives aux conditions de livraison de l'UCC sont de nature complémentaire. Les parties restent en d'autres termes libres de déroger à ces conditions pour autant qu'elles en fassent explicitement mention.

Bien que les définitions utilisées par l'UCC ne soient pas, de principe, applicables aux contrats de vente internationale, elles peuvent bien s'y appliquer par l'effet d'une clause portant sur le choix du droit. L'art. 1-105(1) UCC prévoit explicitement l'application des règles dans les contrats internationaux.

Compte tenu des différences de « fond » entre l'interprétation que donne l'UCC aux mêmes abréviations que celles qu'utilisent les Incoterms, le risque de malentendu est grand lorsqu'une entreprise européenne conclut une transaction avec des partenaires américains qui ont l'habitude d'utiliser les conditions UCC pour leurs transactions aux Etats-Unis et qui appliquent ces même conditions contractuelles à leurs négociations en vue de la conclusion d'accords internationaux.

L'UCC compte 5 termes:

### 2.1. **FOB (Free on Board)**

L'art. 2-319(1) UCC opère sous la condition FOB une distinction entre 3 FOB différents, à savoir :

- (a) *FOB (place of shipment)* – par exemple *FOB (UCC) Seller's warehouse*:

Le vendeur doit mettre à la disposition du transporteur la marchandise à un lieu convenu. Il assume jusqu'alors les frais et risques. Ce terme correspond à EXW chargé (Incoterms 2000).

- (b) *FOB (place of destination)*:

Tout comme la condition FOB II-E sous les RAFTD 1941, cette condition comporte des obligations (DDP-) maximales pour le vendeur: ce dernier assume les frais et risques du transport jusqu'au lieu de destination où il doit livrer la marchandise à l'acheteur.

- (c) *FOB (vessel, car or other vehicle)*

- Cette condition sous-entend que le vendeur ne supporte pas seulement les frais et risques du transport vers le lieu où débute le transport (principal) mais aussi les frais de chargement du véhicule ou du bateau.

L'acheteur a une obligation d'information (bateau, quai de chargement,...)

Dans le cadre de l'UCC, le terme FOB peut donc être utilisé tant pour les ventes au départ que pour les ventes à l'arrivée. Il peut donc se situer entre EXW et DDP. L'interprétation UCC ne règle toutefois pas la répartition des obligations douanières. Ni à l'exportation, ni à l'importation. La répartition des obligations diffère par ailleurs en matière de chargement de la marchandise.

Pour éviter tout risque d'erreur, il est donc conseillé, tout comme pour les RAFTD 1941, de préciser dès le début des négociations avec un client américain si l'on utilise les Incoterms 2000 ou l'UCC et, dans ce dernier cas, la variante retenue.



## 2.2. **FAS (Free Along Side)**

La condition FAS telle que formulée dans l'art. 2-319(2) oblige le vendeur à livrer la marchandise le long du navire selon les usages portuaires en vigueur. L'UCC ne se prononce toutefois pas sur la personne chargée de remplir les formalités douanières. L'acheteur doit communiquer à temps au vendeur le nom du navire, du quai, etc.

## 2.3. **C&F (Cost and Freight)**

En vertu de cette condition de livraison (art. 2-320 UCC), le vendeur est tenu de payer le transport jusqu'au lieu de destination. La marchandise voyage néanmoins au risque de l'acheteur.

## 2.4. **CIF (Cost, Insurance and Freight)**

Le vendeur paie le transport et l'assurance jusqu'au lieu de destination (UCC § 2-320). La marchandise voyage néanmoins au risque de l'acheteur. La livraison au transporteur est donc supposée être la livraison au client. Contrairement aux Incoterms, l'UCC tout comme les RAFTD ne précisent pas quelle couverture d'assurance doit être prévue (une assurance souscrite dans le port d'embarquement en devises du contrat à concurrence du montant de ce contrat). En complément, il y a toutefois lieu de prévoir aussi, tout comme pour les RAFTD, une assurance contre les risques de guerre.

L'UCC compte par ailleurs (§ 2-321) un certain nombre de variantes sur CIF et C&F, en l'occurrence:

- 'Net Landed Weights'/'Delivered Weights'/'Out Turn': dans le cadre de ces variantes, les risques ordinaires de dessèchement, rétrécissement, etc. pendant le transport restent à charge du vendeur.
- 'Payment on Arrival' et 'Warranty of Condition on Arrival': l'acheteur a le droit d'inspecter la marchandise à l'arrivée avant de procéder au paiement.

Ces variantes se rapportent uniquement au prix et au paiement et ne modifient en rien le transfert du risque (UCC § 2-321(2)).

## 2.5. **Ex Ship**

Cette condition de livraison s'apparente plus à la condition DEQ telle que formulée dans les Incoterms qu'à DES: le vendeur est en effet tenu de livrer la marchandise déchargée au lieu de destination. Tout comme pour les autres conditions de livraisons, le § 2-322 UCC ne spécifie pas qui doit remplir les formalités douanières.

## **CONCLUSION**

Lorsque vous recevez un bon de commande (ou une offre) des Etats-Unis, vérifiez toujours la condition de livraison, certainement lorsqu'un terme FOB est utilisé.

Lorsque le lieu géographique de "livraison" qui suit l'abréviation FOB soulève des points d'interrogation (par exemple bon de commande FOB 'New York' (=lieu de destination) ou offre FOB 'Talahassee' (= lieu de départ), il est plus que probable que l'autre partie n'applique pas les Incoterms 2000. A vous de prendre contact pour obtenir plus de précisions sur les conditions de livraison.

Evitez des conditions telles que 'Free delivered', DIS (Delivered Into Store), Door-to-door et FIS (Free Into Store). De telles conditions de livraison ne font jamais l'unanimité au niveau de l'interprétation et donnent souvent lieu à des discussions (quand y a-t-il transfert du risque; qui se charge des formalités à l'importation, qui supporte les frais de scannage?).

## ANNEXE I - Revised American Foreign Trade Definitions 1941

Revised American Foreign Trade Definitions  
1941

Adopted July 30, 1941 by a joint Committee  
representing the

CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA

NATIONAL COUNCIL OF AMERICAN  
IMPORTERS, INC.

NATIONAL FOREIGN TRADE COUNCIL,  
INC.

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### DEFINITIONS OF QUOTATIONS

#### (I) EX (Point of Origin)

**"EX FACTORY", "EX MILL", "EX MINE", "EX PLANTATION", "EX WAREHOUSE", etc. (named point of origin)**

Under this term, the price quoted applies only at the point of origin, and the seller agrees to place the goods at the disposal of the buyer at the agreed place on the date or within the period fixed.

Under this quotation:

Seller must

- (1) bear all costs and risks of the goods until such time as the buyer is obliged to take delivery thereof;
- (2) render the buyer, at the buyer's request and expense, assistance in obtaining the documents issued in the country of origin, or of shipment, or of both, which the buyer may require either for purposes of exportation, or of importation at destination.

Buyer must

- (1) take delivery of the goods as soon as they have been placed at his disposal at the agreed place on the date or within the period fixed;
- (2) pay export taxes, or other fees or charges, if any, levied because of exportation;

(3) bear all costs and risks of the goods from the time when he is obligated to take delivery thereof;

(4) pay all costs and charges incurred in obtaining the documents issued in the country of origin, or of shipment, or of both, which may be required either for purposes of exportation, or of importation at destination.

#### (II) F.O.B. (Free on Board)

NOTE: *Seller and buyer should consider, not only the definitions but also the "Comments on All F.O.B. Terms" given at end of this section (page 9), in order to understand fully their respective responsibilities and rights under the several classes of "F.O.B." terms.*

#### **(II-A) "F.O.B. (named inland carrier at named inland point of departure)"**

Under this term, the price quoted applies only at inland shipping point, and the seller arranges for loading of the goods on, or in, railway cars, trucks, lighters, barges, aircraft, or other conveyance furnished for transportation.

Under this quotation:

Seller must

- (1) place goods on, or in, conveyance, or deliver to inland carrier for loading;
- (2) provide clean bill of lading or other transportation receipt, freight collect;
- (3) be responsible for any loss or damage, or both, until goods have been placed in, or on, conveyance at loading point, and clean bill of lading or other transportation receipt has been furnished by the carrier;
- (4) render the buyer, at the buyers request and expense, assistance in obtaining the documents issued in the country of origin, or of shipment, or of both, which the buyer may require either for purposes of exportation, or of importation at destination.

Buyer must

- (1) be responsible for all movement of the goods from inland point of loading, and pay all transportation costs;

(2) pay export taxes, or other fees or charges, if any, levied because of exportation;

(3) be responsible for any loss or damage, or both, incurred after loading at named inland point of departure;

(4) pay all costs and charges incurred in obtaining the documents issued in the country of origin, or of shipment, or of both, which may be required either for purposes of exportation, or of importation at destination.

**(II-B) "F.O.B. (named inland carrier at named inland point of departure) FREIGHT PREPAID TO (named point of exportation)"**

Under this term, the seller quotes a price including transportation charges to the named point of exportation and prepays freight to named point of exportation, without assuming responsibility for the goods after obtaining a clean bill of lading or other transportation receipt at named inland point of departure.

Under this quotation:

Seller must

(1) assume the seller's obligations as under II-A, except that under (2) he must provide clean bill of lading or other transportation receipt, freight prepaid to named point of exportation.

Buyer must

(1) assume the same buyer's obligations as under II-A, except that he does not pay freight from loading point to named point of exportation.

**(II-C) "F.O.B. (named inland carrier at named inland point of departure) FREIGHT ALLOWED TO (named point)"**

Under this term, the seller quotes a price including the transportation charges to the named point, shipping freight collect and deducting the cost of transportation, without assuming responsibility for the goods after obtaining a clean bill of lading or other transportation receipt at named inland point of departure.

Under this quotation:

Seller must

(1) assume the same seller's obligations as under II-A, but deducts from his invoice the transportation cost to named point.

Buyer must

(1) assume the same buyer's obligations as under II-A, including payment of freight from inland loading point to named point, for which seller has made deduction.

**(II-D) "F.O.B. (named inland carrier at named point of exportation)"**

Under this term, the seller quotes a price including the costs of transportation of the goods to named int of exportation, bearing any loss or damage, or both, incurred up to that point.

Under this quotation:

Seller must

(1) place goods on, or in, conveyance, or deliver to inland carrier for loading;

(2) provide clean bill of lading or other transportation receipt, paying all transportation costs from loading point to named point of exportation;

(3) be responsible for any loss or damage, or both, until goods have arrived in, or on, inland conveyance at the named point of exportation;

(4) render the buyer, at the buyer's request and expense, assistance in obtaining the documents issued in the country of origin, or of shipment, or of both, which the buyer may require either for purposes of exportation, or of importation at destination.

Buyer must

(1) be responsible for all movement of the goods from inland conveyance at named point of exportation;

(2) pay export taxes, or other fees or charges, if any, levied because of exportation;

(3) be responsible for any loss or damage, or both, incurred after goods have arrived in, or on, inland conveyance at the named point of exportation;

(4) pay all costs and charges incurred in obtaining the documents issued in the country

of origin, or of shipment, or of both, which may be required either for purposes of exportation, or of importation at destination.

**(II-E) 'F.O.B. VESSEL (named port of shipment)'**

Under this term, the seller quotes a price covering all expenses up to, and including, delivery of the goods upon the overseas vessel provided by, or for, the buyer at the named port of shipment.

Under this quotation:

Seller must

- (1) pay all charges incurred in placing goods actually on board the vessel designated and provided by, or for, the buyer on the date or within the period fixed;
- (2) provide clean ship's receipt or on-board bill of lading;
- (3) be responsible for any loss or damage, or both, until goods have been placed on board the vessel on the date or within the period fixed;
- (4) render the buyer, at the buyer's request and expense, assistance in obtaining the documents issued in the country of origin, or of shipment, or of both, which the buyer may require either for purposes of exportation, or of importation at destination.

Buyer must

- (1) give seller adequate notice of name, sailing date, loading berth of, and delivery time to, the vessel;
- (2) bear the additional costs incurred and all risks of the goods from the time when the seller has placed them at his disposal if the vessel named by him fails to arrive or to load within the designated time;
- (3) handle all subsequent movement of the goods to destination:
  - (a) provide and pay for insurance;
  - (b) provide and pay for ocean and other transportation;
- (4) pay export taxes, or other fees or charges, if any, levied because of exportation;

(5) be responsible for any loss or damage, or both, after goods have been loaded on board the vessel;

(6) pay all costs and charges incurred in obtaining the documents, other than clean ship's receipt or bill of lading, issued in the country of origin, or of shipment, or of both, which may be required either for purposes of exportation, or of importation at destination.

**(II-F) 'F.O.B. (named inland point in country of importation)'**

Under this term, the seller quotes a price including the cost of the merchandise and all costs of transportation to the named inland point in the country of importation.

Under this quotation:

Seller must

- (1) provide and pay for all transportation to the named inland point in the country of importation;
- (2) pay export taxes, or other fees or charges, if any, levied because of exportation;
- (3) provide and pay for marine insurance;
- (4) provide and pay for war risk insurance, unless otherwise agreed upon between the seller and buyer;
- (5) be responsible for any loss or damage, or both, until arrival of goods on conveyance at the named inland point in the country of importation;
- (6) pay the costs of certificates of origin, consular invoices, or any other documents issued in the country of origin, or of shipment, or of both, which the buyer may require for the importation of goods into the country of, destination and, where necessary, for their passage in transit through another country;
- (7) pay all costs of landing, including wharfage, landing charges, and taxes, if any;
- (8) pay all costs of customs entry in the country of importation;
- (9) pay customs duties and all taxes applicable to imports, if any, in the country of importation.

*NOTE: The seller under this quotation must realize that he is accepting important*

*responsibilities, costs, and risks, and should therefore be certain to obtain adequate insurance. On the other hand, the importer or buyer may desire such quotations to relieve him of the risks of the voyage and to assure him of his landed costs at inland point in country of importation. When competition is keen, or the buyer is accustomed to such quotations from other tellers, seller may quote such terms, being careful to protect himself in an appropriate manner.*

Buyer must

- (1) take prompt delivery of goods from conveyance upon arrival at destination;
- (2) bear any costs and be responsible for all loss or damage, or both, after arrival at destination.

#### **Comments On All F.O.B. Terms**

In connection with F.O.B. terms, the following points of caution are recommended:

1. The method of inland transportation, such as trucks, railroad cars, lighters, barges, or aircraft should be specified.
2. If any switching charges are involved during the inland transportation, it should be agreed, in advance, whether these charges are for account of the seller or the buyer.
3. The term 'F.O.B. (named port)', without designating the exact point at which the liability of the seller terminates and the liability of the buyer begins, should be avoided. The use of this term gives rise to disputes as to the liability of the seller or the buyer in the event of loss or damage arising while the goods are in port, and before delivery to or on board the ocean carrier. Misunderstandings may be avoided by naming the specific point of delivery.
4. If lighterage or trucking is required in the transfer of goods from the inland conveyance to ship's side, and there is a cost therefor, it should be understood, in advance, whether this cost is for account of the seller or the buyer.
5. The seller should be certain to notify the buyer of the minimum quantity required to

obtain a carload, a truckload, or a barge-load freight rate.

6. Under F.O.B. terms, excepting "F.O.B. (named inland point in country of importation)", the obligation to obtain ocean freight space, and marine and war risk insurance, rests with the buyer. Despite this obligation on the part of the buyer, in many trades the seller obtains the ocean freight space, and marine and war risk insurance, and provides for shipment on behalf of the buyer. Hence, seller and buyer must have an understanding as to whether the buyer will obtain the ocean freight space, and marine and war risk insurance, as is his obligation, or whether the seller agrees to do this for the buyer.

7. For the seller's protection, he should provide in his contract of sale that marine insurance obtained by the buyer include standard warehouse to warehouse coverage.

#### **(III) F.A.S. (Free Along Side)**

*NOTE: Seller and buyer should consider not only the definitions but also the "Comments" given at the end of this section, in order to understand fully their respective responsibilities and rights under "F.A.S." terms.*

#### **"F.A.S. VESSEL (named port of shipment)"**

Under this term, the seller quotes a price including delivery of the goods along side overseas vessel and within reach of its loading tackle.

Under this quotation:

Seller must

- (1) place goods along side vessel or on dock designated and provided by, or for, buyer on the date or within the period fixed, pay any heavy lift charges, where necessary, up to this point;
- (2) provide clean dock or ship's receipt;
- (3) be responsible for any loss or damage, or both, until goods have been delivered along side the vessel or on the dock;
- (4) render the buyer, at the buyer's request and expense, assistance in obtaining the documents

issued in the country of origin, or of shipment, or of both, which the buyer may require either for purposes of exportation, or of importation at destination.

Buyer must

- (1) give seller adequate notice of name, sailing date, loading berth of, and delivery time to, the vessel;
- (2) handle all subsequent movement of the goods from along side the vessel:
  - (a) arrange and pay for demurrage or storage charges, or both, in warehouse or on wharf, where necessary;
  - (b) provide and pay for insurance;
  - (c) provide and pay for ocean and other transportation;
- (3) pay export taxes, or other fees or charges, if any, levied because of exportation;
- (4) be responsible for any loss or damage, or both, while the goods are on a lighter or other conveyance along side vessel within reach of its loading tackle, or on the dock awaiting loading, or until actually loaded on board the vessel, and subsequent thereto;
- (5) pay all costs and charges incurred in obtaining the documents, other than clean dock or ship's receipt, issued in the country of origin, or of shipment, or of both, which may be required either for purposes of exportation, or of importation at destination.

#### **F.A.S. Comments**

1. Under F.A.S. terms, the obligation to obtain ocean freight space, and marine and war risk insurance, rests with the buyer. Despite this obligation on the part of the buyer, in many trades the seller obtains ocean freight space, and marine and war risk insurance, and provides for shipment on behalf of the buyer. In others, the buyer notifies the seller to make delivery along side a vessel designated by the buyer and the buyer provides his own marine and war risk insurance. Hence, seller and buyer must have an understanding as to whether the buyer will obtain the ocean freight space, and marine and war risk insurance, as is his

obligation, or whether the seller agrees to do this for the buyer.

2. For the seller's protection, he should provide in his contract of sale that marine insurance obtained by the buyer include standard warehouse to warehouse coverage.

#### **(IV) C. & F. (Cost and Freight)**

*Note: Seller and buyer should consider not only the definitions but also the "C. & F. Comments" and the "C. & F. and C.I.F. Comments", in order to understand fully their respective responsibilities and rights under "C. & F." terms.*

#### **"C. & F. (named point of destination)"**

Under this term, the seller quotes a price including the cost of transportation to the named point of destination.

Under this quotation:

Seller must

- (1) provide and pay for transportation to named point of destination;
- (2) pay export taxes, or other fees or charges, if any, levied because of exportation;
- (3) obtain and dispatch promptly to buyer, or his agent, clean bill of lading to named point of destination;
- (4) where received-for-shipment ocean bill of lading may be tendered, be responsible for any loss or damage, or both, until the goods have been delivered into the custody of the ocean carrier;
- (5) where on-board ocean bill of lading is required, be responsible for any loss or damage, or both, until the goods have been delivered on board the vessel;
- (6) provide, at the buyer's request and expense, certificates of origin, consular invoices, or any other documents issued in the country of origin, or of shipment, or of both, which the buyer may require for importation of goods into country of destination and, where necessary, for their passage in transit through another country.

Buyer must

- (1) accept the documents when presented;
- (2) receive goods upon arrival, handle and pay for all subsequent movement of the goods, including taking delivery from vessel in accordance with bill of lading clauses and terms; pay all costs of landing, including any duties, taxes, and other expenses at named point of destination;
- (3) provide and pay for insurance;
- (4) be responsible for loss of or damage to goods, or both, from time and place at which seller's obligations under (4) or (5) above have ceased;
- (5) pay the costs of certificates of origin, consular invoices, or any other documents issued in the country of origin, or of shipment, or of both, which may be required for the importation of goods into the country of destination and, where necessary, for their passage in transit through another country.

### **C. & F. Comments**

1. For the seller's protection, he should provide in his contract of sale that marine insurance obtained by the buyer include standard warehouse to warehouse coverage.
2. The comments listed under the following C.I.F. terms in many cases apply to C. & F. terms as well, and should be read and understood by the C. & F. seller and buyer.

### **(V) C.I.F. (Cost, Insurance, Freight)**

*NOTE: Seller and buyer should consider not only the definitions but also the "Comments", at the end of this section, in order to understand fully their respective responsibilities and rights under "C.I.F." terms.*

### **"C.I.F. (named point of destination)"**

Under this term, the seller quotes a price including the cost of the goods, the marine insurance, and all transportation charges to the named point of destination.

Under this quotation:

Seller must

- (1) provide and pay for transportation to named point of destination;
- (2) pay export taxes, or other fees or charges, if any, levied because of exportation;
- (3) provide and pay for marine insurance;
- (4) provide war risk insurance as obtainable in seller's market at time of shipment sit buyer's expense, unless seller has agreed that buyer provide for war risk coverage (See Comment 10 (c));
- (5) obtain and dispatch promptly to buyer, or his agent, clean bill of lading to named point of destination, and also insurance policy or negotiable insurance certificate;
- (6) where received-for-shipment ocean bill of lading may be tendered, be responsible for any loss or damage, or both, until the goods have been delivered into the custody of the ocean carrier;
- (7) where on-board ocean bill of lading is required, be responsible for any loss or damage, or both, until the goods have been delivered on board the vessel;
- (8) provide, at the buyer's request and expense, certificates of origin, consular invoices, or any other documents issued in the country of origin, or of shipment, or both, which the buyer may require for importation of goods into country of destination and, where necessary, for their passage in transit through another country.

Buyer must

- (1) accept the documents when presented;
- (2) receive the goods upon arrival, handle and pay for all subsequent movement of the goods, including taking delivery from vessel in accordance with bill of lading clauses and terms, pay all costs of landing, including any duties, taxes, and other expenses at named point of destination;
- (3) pay for war risk insurance provided by seller;
- (4) be responsible for loss of or damage to goods, or both, from time and place at which seller's obligations under (6) or (7) above have ceased;

(5) pay the cost of certificates of origin, consular invoices, or any other documents issued in the country of origin, or of shipment, or both, which may be required for importation of the goods into the country of destination and, where necessary, for their passage in transit through another country.

### **C. & F. and C.I.F. Comments**

Under C. & F. and C.I.F. contracts there are the following points on which the seller and the buyer should be in complete agreement at the time that the contract is concluded:

1. It should be agreed upon, in advance, who is to pay for miscellaneous expenses, such as weighing or inspection charges.
2. The quantity to be shipped on any one vessel should be agreed upon, in advance, with a view to the buyer's capacity to take delivery upon arrival and discharge of the vessel, within the free time allowed at the port of importation.
3. Although the terms C.& F. and C.I.F. are generally interpreted to provide that charges for consular invoices and certificates of origin are for the account of the buyer, and are charged separately, in many trades these charges are included by the seller in his price. Hence, seller and buyer should agree, in advance, whether these charges are part of the selling price, or will be invoiced separately.
4. The point of final destination should be definitely known in the event the vessel discharges at a port other than the actual destination of the goods.
5. When ocean freight space is difficult to obtain, or forward freight contracts cannot be made at firm rates, it is advisable that sales contracts, as an exception to regular C. & F. or C.I.P. terms, should provide that shipment within the contract period be subject to ocean freight space being available to the seller, and should also provide that changes in the cost of ocean transportation between the time of sale and the time of shipment be for account of the buyer.
6. Normally, the seller is obligated to prepay the ocean freight. In some instances, shipments are made freight collect and the amount of the freight is deducted from the invoice rendered by the seller. It is necessary to be in agreement

on this, in advance, in order to avoid misunderstanding which arises from foreign exchange fluctuations which might affect the actual cost of transportation, and from interest charges which might accrue under letter of credit financing. Hence, the seller should always prepay the ocean freight unless he has a specific agreement with the buyer, in advance, that goods can be shipped freight collect.

7. The buyer should recognize that he does not have the right to insist on inspection of goods prior to accepting the documents. The buyer should not refuse to take delivery of goods on account of delay in the receipt of documents, provided the seller has used due diligence in their dispatch through the regular channels.

8. Sellers and buyers are advised against including in a C.I.F. contract any indefinite clause at variance with the obligations of a C.I.F. contract as specified in these Definitions. There have been numerous court decisions in the United States and other countries invalidating C.I.F. contracts because of the inclusion of indefinite clauses.

9. Interest charges should be included in cost computations and should not be charged as a separate item in C.I.F. contracts, unless otherwise agreed upon, in advance, between the seller and buyer; in which case, however, the term C.I.F. and I (Cost, Insurance, Freight, and Interest) should be used.

10. In connection with insurance under C.I.F. sales, it is necessary that seller and buyer be definitely in accord upon the following points:

(a) The character of the marine insurance should be agreed upon in so far as being W.A. (With Average) or F.P.A. (Free of Particular Average), as well as any other special risks that are covered in specific trades, or against which the buyer may wish individual protection. Among the special risks that should be considered and agreed upon between seller and buyer are theft, pilferage, leakage, breakage, sweat, contact with other cargoes, and others peculiar to any particular trade. It is important that contingent or collect freight and customs duty should be insured to cover Particular Average losses, as well as total loss after arrival and entry but before delivery.

(b) The seller is obligated to exercise ordinary care and diligence in selecting an underwriter that is in good financial standing. However, the



risk of obtaining settlement of insurance claims rests with the buyer.

(c) War risk insurance under this term is to be obtained by the seller at the expense and risk of the buyer. It is important that the seller be in definite accord with the buyer on this point, particularly as to the cost. It is desirable that the goods be insured against both marine and war risk with the same underwriter, so that there can be no difficulty arising from the determination of the cause of the loss.

(d) Seller should make certain that in his marine or war risk insurance, there be included the standard protection against strikes, riots and civil commotions.

(e) Seller and buyer should be in accord as to the insured valuation, bearing in mind that merchandise contributes in General Average on certain bases of valuation which differ in various trades. It is desirable that a competent insurance broker be consulted, in order that full value be covered and trouble avoided.

## **(VI) Ex Dock**

### **(VI) "EX DOCK (named port of importation)"**

*NOTE: Seller and buyer should consider not only the definitions but also the "Ex Dock Comments" at the end of this section, in order to understand fully their respective responsibilities and rights under "Ex Dock" terms.*

Under this term, seller quotes a price including the cost of the goods and all additional costs necessary to place the goods on the dock at the named port of importation, duty paid, if any.

Under this quotation:

Seller must

- (1) provide and pay for transportation to named port of importation;
- (2) pay export taxes, or other fees or charges, if any, levied because of exportation;
- (3) provide and pay for marine insurance;
- (4) provide and pay for war risk insurance, unless otherwise agreed upon between the buyer and seller;

(5) be responsible for any loss or damage, or both, until the expiration of the free time allowed on the dock at the named port of importation;

(6) pay the costs of certificates of origin, consular invoices, legalization of bill of lading, or any other documents issued in the country of origin, or of shipment, or of both, which the buyer may require for the importation of goods into the country of destination and, where necessary, for their passage in transit through another country;

(7) pay all costs of landing, including wharfage, landing charges, and taxes, if any;

(8) pay all costs of customs entry in the country of importation;

(9) pay customs duties and all taxes applicable to imports, if any, in the country of importation, unless otherwise agreed upon.

Buyer must

(1) take delivery of the goods on the dock at the named port of importation within the free time allowed;

(2) bear the cost and risk of the goods if delivery is not taken within the free time allowed.

### **Ex Dock Comments**

This term is used principally in United States import trade. It has various modifications, such as "Ex Quay", "Ex Pier", etc., but it is seldom, if ever, used in American export practice. Its use in quotations for export is not recommended.

**§ 2-319. F.O.B. and F.A.S. Terms.**

(1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (Section 2-504 ) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (Section 2-503 );

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (Section 2-323 ).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer ; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S.

or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (Section 2-311 ). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

**§ 2-320. C.I.F. and C. & F. Terms.**

(1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract , shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price

the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

**§ 2-321. C.I.F. or C. & F.: "Net Landed Weights"; "Payment on Arrival"; Warranty of Condition on Arrival.**

Under a contract containing a term C.I.F. or C. & F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection

as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

**§ 2-322. Delivery "Ex-Ship".**

(1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

