



**East West University**

**Bachelor of Business Administration  
Legal Environment of Business  
BUS 361  
Spring 2007**

**Question for term paper  
Submission deadline: Wednesday, April 18, 2007**

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The students shall submit the term paper through their respective groups. Students are requested to read the following instructions carefully before start working on the term paper.

**Instructions:**

1. The length of the term paper shall not be more than six pages including footnotes. But these pages shall not include the title page stated below.
  2. The term paper shall be computerized. The Text shall be Times New Roman and font size and style shall be twelve and regular respectively. The left margin shall be of two inches, whereas upper, bottom and right margins shall be of one inch each. Line spacing may be single.
  3. Students may be interviewed and be asked to give explanation, if necessary, as to any matter pertaining to the term paper or any part thereof.
  4. The soft copy of the term paper shall be submitted by the deadline mentioned above to the following e-mail account:  
[ar@ewubd.edu](mailto:ar@ewubd.edu)
- The printed copy of the term paper having signatures of all members of the group shall be submitted to the course instructor by the deadline.
5. Any group member failing to sign the term paper shall not be entitled to get any mark for the term paper.
  6. For delay of each day in submitting the term paper as per clause 4 above, one mark shall be deducted.

Please turn over

7. There should be a title page attached to the term paper which shall contain, amongst other,
- (A) The title of the term paper (chosen by students),
  - (B) Name and code of course,
  - (C) Name of the group,
  - (C) Name and ID No. of the members,
8. The following statements shall be copied at the bottom of the title page adding signature of the students preparing the term paper:

“We hereby declare that this term paper is our own work and is free from plagiarism. We further declare that all the rules prescribed in the question paper for preparing the term paper have strictly been complied with. We will be subjected to penal action to be taken by the University in case these declarations are proved to be false.”

### **QUESTION**

The general phenomenon of international sale contracts, in particular, sale of goods, is that these are associated with a number of supplementary contracts. These supplementary contracts cover various aspects incidental to the performance of international contract of sale of goods, such as, insurance coverage of contractual goods, carriage of goods over international route, financing of sale contracts etc. One of the main objects of these supplementary contracts is to protect and preserve the interests of the seller (exporter) and buyer (importer) of the relevant sale contract.

While working on the term paper you are requested to examine/review the rules relating to three kinds of supplementary contracts to international contract of sale, namely, (a) contract of insurance, (b) contract of afreightment (excluding charter party) and (c) letter of credit and to state how these contracts individually and collectively protect and preserve rights and duties of the seller/exporter and buyer/importer and thereby ensure smooth operation of international sale contracts.

Note that you are supposed to consider the international contracts made only on CIF and FOB terms.

Note further that you are not expected to talk about the rights and duties of the parties, viz, insurance company, sea carrier, banks, freight forwarding agent, loading broker etc. who are also necessary parties in said contracts. However, it is advisable to consider the roles of such actors as far as they relate to the protection and preservation of the rights of the seller and buyer of international contract of sale.

--- End of the question ---

# TERM PAPER ON

Principles regarding International Contract of Sale

Legal Environment of Business

Course Code: **BUS 361**

Section # 02

**Spring2007**

## **Submitted To**

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“We hereby declare that this term paper is our own work and is free from plagiarism. We further declare that all the rules prescribed in the question paper for preparing the term paper have strictly been complied with. We will be subjected to penal action to be taken by the University in case these declarations are provided to be false.”

## Contract of insurance

The contract of insurance is a contract whereby the insurer will pay a certain sum of money to the insured, if certain defined events occur. Many features are similar across a wide variety of different types of insurance policies. These principles are

- Good faith
- Insurable interest
- Indemnity
- Mitigation of loss
- Attachment of risk
- Causa proxima.

**A Contract of Insurance protects both buyer and seller's right. It is described briefly below:**

- Insurable interest is an essential pre-requisite in effecting a contract of insurance. The insured must possess an insurable interest in the subject-matter of the insurance at the time of contract. The object of insurable is to protect the pecuniary interest of the insured in the subject-matter of the insurance & not the material property as such.
- Insurable interest is thus a financial interest in the preservation of the subject-matter of insurance. A creditor has an insurable interest in the life of the debtor but a son has no insurable interest in the life of his mother who is supported by him.
- To take the care of fire or marine insurance it's not the owner alone, but all those persons have insurable interest who run a risk, have something at stake or something to lose by the loss or damage to the property or good insured.
- In case of life insurance, insurable interest must be present only at the time of contract. It does not need to be there at the time of death or when the claim is made.
- In the case of fire insurance, insurable interest must be personal both at the time when the insurance is effected & at the time of loss.
- The general rule of 'caveat emptor' (let the buyer be aware), which applies to ordinary trade contracts, does not apply to insurance contracts. Insurance contracts are contracts of utmost good faith or contracts uberrimae fidei. Accordingly, it's the inherent duty of both parties to a contract of insurance to make full and fair disclosure of all material facts relating to the subject-matter of the proposed insurance. It's so because insurance shifts risk from one party to another. Although the duty of utmost good faith applies also to the insurer, for example, he must not urge the proposer to affect the insurance which he knows is not legal or has run off safely, but this duty rests highly on the insured because he knows or is expected to know more about the subject-matter. The proposer must disclose all material facts truly and fully.
- Fundamental principle is that all contracts of insurance are contracts of indemnity, except those of life and personal accident insurances where no money payment can indemnify for loss of life or bodily injury.

## **Contract of Affreightment**

The 'contract of affreightment' refers to a contract for the carriage of goods by sea. It is a contract between the shipowner and some other party called shipper whereby the shipowner agrees to carry the goods of the shipper in his ship, or to furnish a ship for the purpose of so carrying the goods to the destination in return for a price called "freight". A contract of affreightment may be embodied either in a Charter Party or a Bill of Lading. A **Bill of lading** has been judicially described as a document by the shipowner or by the master or other agent on his behalf which states that certain goods have been delivered to, and received by, the ship. A bill of lading is an acknowledgement of the receipt of the goods and a statement of relevant information as to the goods so shipped. It would contain statements as to the type and quantity of goods shipped and the condition in which they were received.

### **How protect and preserve rights and duties of the seller/exporter under contract of affreightment:**

1. A seller or exporter can change the bill of lading.
2. A Bill of lading discharges the carrier from further obligations under the contract of carriage.
3. The bill of lading is negotiable by indorsement in order to meet the needs of those merchants who wished to dispose of their goods before the vessel reached its destination.
4. As the bill of lading remains with the seller, the terms of contract of carriage provide evidence of it. The contract is normally made orally before the bill is issued, and the terms are inferred from the carrier's sailing announcements and from any negotiations with loading brokers before the goods are shipped. Consequently, if the goods is lost or damaged before a bill of lading is issued, the seller will not be deprived of a remedy for breach of contract.
5. A bill of lading acts as a document of title to facilitate the seller to raise credit for an international sale or to take advantage of an opportunity to sell the goods in transit in the context that the voyages were normally lengthy, and invariably slow.

### **How protect and preserve rights and duties of the buyer/importer under contract of affreightment:**

1. A buyer can sell the Bill of Lading as it carries the specifications and it is final.
2. The bill of lading protects the buyer as the holder of the bill in that it is a basic term of carriage- the carrier must only deliver the goods against the specification of Bill of Lading.
3. It is a receipt for the goods shipped which includes the statements as to the type, quantity and description of the goods shipped together with the condition in which they were received by the carrier. As a result buyer can know about the information of products and goods that are being shipped.

4. The carrier will be responsible if he delivers the goods to a person without any bill of lading. He will also be liable if makes delivery of the goods against a bill of lading which is forged. As a result it protects the buyer from fake goods.
5. The bill of lading is an evidence of contract of carriage. A detailed set of contractual terms is to be found on every standard liner bill of lading. So buyer gets benefit from the bill of lading.

## Letter Of Credit

The **Letter of Credit** is a bank documentary assurance to the seller that payment for the goods will be made when certain delivery documents are presented. The LC can also be the source of payment for a transaction, meaning that an exporter will get paid by redeeming the letter of credit. Letters of credit are used nowadays primarily in international trade transactions of significant value, for deals between a supplier in one country and a wholesale customer in another. L/C is a perfect procedure to equally protect seller's interest and buyer's interests. Using L/C as term of payment, risk all most nothing and at the same time it ensures the buyers that goods are shipped before the payment has occurred. However, seller only will be paid if all terms stipulated in the L/C are met and all documents specified in the L/C strictly comply with agreed conditions and are presented in time. The parties to a letter of credit are usually a **beneficiary** who is to receive the money, the **issuing bank** of whom the applicant is a client, and the **advising bank** of whom the beneficiary is a client. Since nowadays almost all letters of credit are irrevocable. However, the applicant is not a party to the letter of credit.

L/C is mainly two types:

(1)Revocable and (2)Irrevocable.

L/C uses for industrial importer, commercial importer and importers under wage earner's scheme.

### **Elements of a Letter of Credit:**

- A payment undertaking given by a bank (issuing bank)
- On behalf of a buyer (applicant)
- To pay a seller (beneficiary) for a given amount of money
- On presentation of specified documents representing the supply of goods
- Within specified time limits
- Documents must conform to terms and conditions set out in the letter of credit
- Documents to be presented at a specified place.

### **DUTIES AND RIGHTS OF SELLER UNDER LETTER OF CREDIT**

1. The seller should carefully examine all the conditions in the L/C before identifying the goods to the contract or assembling the shipment.
2. The seller also known as the shipper may not be obligated to ship unless the L/C exactly conforms to the conditions stated in the goods sale contract.
3. The seller should submit the document to the negotiating bank within 14 working days after shipment.
4. If buyer refuses to pay the price of the goods, the unpaid seller has the following options for remedy as Right of Stoppage of goods (S 50-53), Right of resell, Right of Suit for price (S55) and Right of lien (S 47-49).
5. Communicate with your customers in detail before they apply for letters of credit.

6. Consider whether a confirmed letter of credit is needed.
7. If the letter of credit calls for documents supplied by third parties, make reasonable allowance for the time this may take to complete.

#### **DUTIES AND RIGHTS OF BUYER UNDER LETTER OF CREDIT**

1. The buyer applies for issuance of a L/C from the buyer's bank to the exporter's bank.
2. The buyer can make good beneficial monetary advantage from authorized bank which is clearly expressed on letter of credit.
3. Buyer is an autonomous body of L/C (Article 3).
4. Buyer applies to his bank for a letter of credit in favor of the seller.