

Rights and obligations of the parties to a sale of goods contract with and international element – an overview. Obligation to deliver the goods. Passing of risk. CISG. INCOTERMS. The arbitrator.

Case 1

Company DelRon (headquarters and place of business in Havana, Cuba) is a producer and seller of quality Cuban rum. Company Srumy, s.r.o. (registered office and place of business in the Czech Republic) was interested in the offer on their website. The companies are currently negotiating the conclusion of their first sales contract, the subject of which is the delivery of several thousand bottles of quality rum. DelRon is interested in having the goods delivered to Algeciras in Spain, as it normally delivers to that port through a transport company with which the Cuban company regularly cooperates. The Czech company agreed but demanded that the goods be delivered by the end of October 2021 at the latest. It is not interested in a later delivery because it intends to sell Cuban rums as a novelty on the Czech market before Christmas.

1. Propose the wording of the delivery conditions in the sales contract using the terms INCOTERMS so that the requirements of both of parties are met, including the time conditions.
2. If the terms of delivery were formulated as stated below, interpret the terms of delivery solve any interpretation problems:
 - a. EXW INCOTERMS 2020
 - b. DAP Veveří 70, Brno (CZ) INCOTERMS 2019
 - c. FOB Mariel (Cuba)
3. Find in the CISG the rule for the delivery of goods in case the parties do not choose the INCOTERMS clause in the contract. Determine at the same time the moment of passing of risk according to the CISG.
4. Design a payment mechanism for cases where the companies, on the other hand, trade regularly (i.e. it is unnecessary to complicate the situation and increase the parties' costs). If, on the other hand, the parties were trading for the first time and the Cuban company was concerned that the Czech company would not pay the purchase price, propose a suitable payment mechanism. Explain the given method of payment and try to propose its formulation.
5. The buyer took delivery of a unique, strong rum from the seller (a competitor of Grenada's River Antoine Rum). After several complaints from clients in the Czech Republic about the extreme "strength" of the rum, the delivery was tested, and it turned out that the alcohol content in the rum reached 84.5%. The maximum allowed alcohol content for the drink labelled as rum is set at 81% in the EU. The buyer complained about non-compliance with this value to the seller, but the seller refused, saying that in Cuba, the maximum alcohol content allowed for rum is 85%. Evaluate the defectiveness/defectiveness of the goods and the seller's liability for defects from a CISG point of view.
6. The buyer in the Czech Republic was invited by the Cuban company DelaRon to stop selling the bottles supplied by DelRon, because DelRon is a parasite on DelRon's reputation and marks the bottles with a logo that is strikingly reminiscent of the DelRon logo protected by an EU trademark. Evaluate this situation.

Case 2

Vinařík, s. r. o. (registered office and place of business in Mikulov) is both a producer and direct seller of wines from South Moravia and a distributor of quality bottled wines of the French company Le Vigneron, s. A. R. L. (registered office and place of business in Beaune, France). Cooperation between the companies began in August 2020. Negotiations on the contract were long, with the companies exchanging several documents because they could not agree on the delivery and payment terms, the method and place of dispute resolution and the required exclusivity. Pre-contractual communication was

both in writing and by telephone via Skype. The framework agreement was finally concluded between the companies via e-mail communication in November 2020 for a period of 3 years with the possibility of extension. Based on the contract, the Czech company obtained the authorization for the exclusive distribution of first-class wine bottles in the Czech Republic. At the same time, Vinařik undertook the obligation to order bottled wines regularly. The contract contained, *inter alia*, the following clauses:

- a) *The buyer is obliged to take care of the acquisition of the sale and to organize distribution in the Czech Republic.*
- b) *The buyer is obliged to regularly order bottled wines, with a frequency of four times a year. The buyer can order any bottled wine according to the current offer of the seller, while the parties have a minimum consumption of 6,000 € per quarter. The buyer shall specify the bottled wines in terms of type and quantity by e-mail, always by the 20th day of the month preceding the month in which they are to be delivered. The seller must confirm the order by e-mail. The price for individual bottles of wine is determined by the catalogue valid for the relevant calendar year available on the company's website (www.levigneron.fr/tarif), and the prices are valid at the time of ordering.*
- c) *50% of the total purchase price must be paid within 10 days of confirmation of the offer; for this purpose, the seller must send an invoice immediately after acceptance of the offer. The buyer must then pay the additional purchase price no later than the 5th day after delivery of the goods.*
- d) *The goods will be delivered following the EXW clause (Beaune, France) Incoterms® 2020, by the 15th day FIX in the month following the month the order was placed.*
- e) *In case of delay in payment of the invoice, the buyer must pay the seller a contractual penalty of 0.1% of the total price of the goods of the purchase contract for each day of delay.*
- f) *The contract is made in writing and can also be changed only in writing. This contract contains all the terms and conditions agreed upon by the parties and the commitments agreed between the parties. This contract fully supersedes the exchanged documents and any other negotiations between the parties prior to the signing of this contract.*
- g) *All disputes arising from this contract shall be settled amicably with the participation of a mediator appointed by the parties to Ms. XY. If the parties cannot settle the dispute amicably, Ms. XY will decide the dispute in arbitration as an arbitrator. Mediation and arbitration proceedings will be conducted in English. If, for any reason, Ms XY cannot act as an arbitrator, the dispute will be decided in arbitration conducted in Prague in English.*

1. Identify and qualify the contract agreed upon by the parties and determine its legal regime.
2. Determine the law governing the ownership of the goods.
3. Problems occurred when the buyer (via an independent carrier) took over the first delivery in December 2018. The buyer arrived for the goods on Monday, December 17 2020, to the seller's warehouse. The seller told him that the delivery was no longer available because, according to the contract, the delivery was ready for acceptance at the seller's place on Saturday, December 15, 2020. The buyer did not accept the delivery, so he used the prepared goods for other purposes. The buyer argued that all the exchanged documents stated before the conclusion of the contract that the delivery could be picked up until the 20th day of the month. The seller rejected this argument concerning the contract. Name the clause in section f) that deals with this situation, explain its significance for interpretation in general and indicate whether such an arrangement is possible.
4. Would your answer to question no.3) change if it were not the first but the fourth delivery, with the seller always accepting the collection from the buyer two or three days later in the previous three cases?
5. Interpret the delivery condition in clause d). What does it mean? Where does the risk pass? Could the parties also choose the EXW INCOTERMS 2010 or EXW INCOTERMS 2000 clause in the contract?
6. Interpret the temporal aspects of delivery in clause d) and explain the consequences of violating the deadline.
7. The parties later modified the contract and agreed on the FCA Dijon INCOTERMS 2020 delivery terms. During the transport of goods from Dijon to Mikulov, some bottles broke because the driver drove quickly into a corner, because of which the bottles broke. Assess whether the buyer must pay the purchase price for broken bottles. Would your answer change if the expert opinion proved that the seller did not pack the bottles as he should have?
8. In the event of a dispute over the purchase price payment, determine the jurisdiction of the court or arbitral tribunal. For this purpose, from the point of view of Czech law, analyze the relevant contractual agreement in all its parts, both regarding its content, form and from the point of view of the enforceability of the output (arbitral award).

9. In general, state the requirements for the arbitrators under Czech law. Can a foreigner be an arbitrator in the Czech Republic?
10. Assess the advantages/disadvantages of these arbitration clauses:
 - a. All disputes arising from this contract and in connection with it will be resolved in arbitration by the arbitrator JUDr. Peter Malý.
 - b. All disputes arising from this contract and in connection with it will be resolved in arbitration before the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic by one arbitrator, JUDr. Peter Malý.
 - c. All disputes arising from this contract and in connection with it will be resolved in arbitration before the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic by one arbitrator.
11. The parties cannot agree on whether one or three arbitrators should conduct the arbitration proceedings conducted in Prague. If the losing party thinks that the arbitrator (or arbitral tribunal) was not impartial, which procedure can be used to defend its rights (during and after the conclusion of the arbitration proceedings)?