CHAPTER FIVE

THE COST INSURED FREIGHT (CIF) CONTRACT

With the development of modern communications such as the telex and marine insurance it became common for the seller to arrange everything and to retain the bill of lading till payment from the 1860'ies onwards. The seller sends the three copies of the bill of lading issued to him overland or by airmail to the buyer who customarily received them before the goods arrived. Today Banker's Irrevocable Documentary Credits and Banker's Irrevocable Confirmed Documentary Credits are facilitated by airmail. The c.i.f. sales contract depends on rapid communications and is considered to be a more convenient method of contracting than f.o.b.

C.i.f. is the most commonly used contract. The contract price is inclusive of the cost of the goods, insurance from port of loading to destination and freight costs. A c.i.f. contract describes the destination of the goods. "c.i.f." London means the goods are to be unloaded in London. "f.o.b" by contrast describes the port of shipment e.g. "f.o.b. New York" means the goods are to be shipped out of New York.

Leading definitions of c.i.f. are contained in **Biddell Bros V E.Clemens Horst Co.**[1] **Manbre Saccharine v Corn Products,**[2] and **Groom V Barber**.[3]. From these cases, it is apparent that the seller transfers the goods to the buyer, by way of a paper transfer of title. Providing the documents are in order the buyer's recourse is then against the carrier and not against the seller for post shipment damage to the cargo. Scrutton claimed that the cif contract is not a contract for the sale of goods, but a contract for the sale of documents relating to those goods.

The c.i.f. contract is a contract for *(the performance of)* a sale of goods by delivering documents according to Bankson J in **Arnold (Karberge) v Blythe,**[4] namely invoice, bill of lading and insurance policy for a valid legal sale. In the instant case, the contract was held to be illegal for trading with the enemy, so despite the delivery up of otherwise conforming documents, the buyer did not have to pay on attempted endorsement of the documents.

McNair J stated in **Gardano v Mamidakis,**[5] that under a cif contract "the seller discharges his obligations as regards delivery by tendering a bill of lading covering the goods."

Contrast this with Scrutton J who stated that "It is not a contract that goods shall arrive, but a contract to ship goods complying with the contract of sale, to obtain, unless the contract otherwise provides, the ordinary contract of carriage to the place of destination and the ordinary contract of insurance of the goods on that voyage, and to tender these documents against payment of the contract price."

However, the reason that goods do not arrive cannot be because they were not actually shipped. The goods must have been shipped, according to **Hindley v East Indian Produce.**[6] Provided they are shipped there is no requirement that they actually arrive.

A definitive list of the respective duties of the buyer and the seller is not possible since the parties may introduce specific terms into the contract. In **The Julia,**[7] Porter L listed the essential features of a c.i.f contract as shipment of goods and arranging the contract of carriage documents, insurance documents and tender of documents (omitting to comment on who has responsibility to pay).

1 **Biddell Bros v E.Clemens Horst Co** [1921] A.C 18 House of Lords.
2 **Manbre Saccharine v Corn Products** [1919] 1 K.B 198
3 **Groom v Barber** [1915] 1 K.B 316.
4 **Arnold (Karberge) v Blythe** [1916] 1 K.B 459 -
5 **Gardano v Mamidakis** [1962] 1 WLR 40.
6 **Hindley v East Indian Produce** [1973] 2 Lloyd's Rep 515
7 **The Julia** : **Comptoir d'Achat v Louis de Ridder** [1949] A.C. 293.

THE SELLER'S DUTIES UNDER CIF CONTRACTS

To ship the goods in accordance with the contract terms : The seller must deliver goods to the port of shipment in the manner specified in the sales contract, or purchase goods that comply which are already afloat **Fairclough v Vantol,**[8] and **Lewis V Sammutt.**[9]. If the goods are already afloat then the duty is to procure and tender goods afloat to the buyer.

The Zaks Diklo : Marimex v Louis Dreyfus,[10] concerned a sale of gasoil c.i.f Hamburg out of Ventspils Russia regarding a cargo already afloat. The cargo was contaminated and worth less than uncontaminated gasoil. The buyers accepted the cargo but deducted a sum of money from the price on endorsement of documents to make up for the difference between the value of pure and adulterated gas oil. The court held that they were entitled to do so. There had been a breach of s14 S.O.G.A. merchantable quality and goods, which did not correspond with description. Why the court bothered to decide it was not merchantable is not clear since it was not necessary for the decision - especially since the cargo was saleable though at a lower price and even saleable as uncontaminated gas oil once treated and decontaminated.

The c.i.f. Seller is always the link with the shipper. It was made clear that a failure to ship the goods will render the seller liable for damages for breach of contract and an action for return of the price in **Hindley V East Indian Produce**,[11] and that a mere tender of conforming documents without shipment is insufficient.

Time of Shipment : A failure to ship outside the shipping time specified in the contract is a breach of condition. The buyer can reject the documents if they record the late or early shipment date according to **Aron v Comptoir,**[12] and by **Ashmore v Cox.**[13] Early shipment is equally a breach of contract according to **Bowes v Shand**,[14] because it could force the buyer to have to pay sooner than expected and to pay unwanted storage costs for the goods on arrival whilst late delivery can defeat his contractual purposes. **The Hansa Nord : Cehave v Bremer,**[15] classifies the various c.i.f. contract terms as warranties, conditions and or innominate terms.

In **Cobec V Toepfer,**[16] Bill of lading covered two cargoes. The first cargo was shipped on time but the second was shipped late. The court held that the bill of lading could not be severed. The buyer could reject the whole bill of lading for late shipment or waive the breach but he could not reject the late portion alone. This makes sense since subsequent buyers and banks need to be clear about the validity of documents. Ideally, the buyer needed to specify separate bills of lading for each cargo then he would not have had a problem.

The Santa Clara : Vitol v Norelf,[17] is a strange case in that it hinges on a finding of fact by an arbitrators which was not appealed. It appears that there was a contract to load and ship a specific cargo of propane gas between 1-7th March. On the 8th March the buyers notified the sellers that since loading would not be completed until the 9th the sellers had committed a breach of condition and the buyers elected to repudiate the contract on this basis. The sellers never acknowledge the repudiation and completed loading. The vessel said and on the 15th March they sold the cargo at a loss of $lm to a third party then claimed the $1 as damages from the buyer. The arbitrator found that the buyer was guilty of an anticipatory breach of contract which was not accepted by the seller and awarded the seller $lm compensation. The buyer appealed but lost.

Because the pleading accepted the finding of fact by the arbitrator that there was an anticipatory repudiatory breach of contract by the buyer it is not possible to find out why this was so. One can only speculate on this. Possibly the buyer's claim that there was a condition in the contract that goods had to be loaded between the 1-7th March was incorrect and March shipment was permitted. Or, perhaps loading commenced before the

8 **Fairclough v Vantol** [1957] 1 WLR 136
9 **Lewis v Sammutt** [1959] 2 Lloyd's Rep 629.
10 **The Zaks Diklo : Marimex v Louis Dreyfus** [1995] 1 Lloyds Rep 167.
11 **Hindley v East Indian Produce** [1973] 2 Lloyd's Rep 515.
12 **Aron v Comptoir** [1921] 3 K.B 435
13 **Ashmore v Cox** [1889] QB 436.
14 **Bowes v Shand** [1877] 2 App Cas 455
15 **The Hansa Nord : Cehave v Bremer** [1976] Q.B. 44.
16 **Cobec v Toepfer** [1983] 2 Lloyd's Rep 386
17 **The Santa Clara : Vitol v Norelf** [1993] 2 Lloyds Rep 301

7th and the buyer was deemed to have waived breach by not objecting sooner. The case does not seem to accord with the decision in **The Mihalis Angelos**,[18] on damages for repudiatory breach where it is clear that the other party cannot fulfil his obligations in any case and is only entitled to nominal damages. Late delivery is a breach of contract and a bill of lading issued on the 9th could have been rejected on tender by the buyer, so the seller suffered no real loss ! Perhaps in future parties should wait until the breach by the other party has occurred before doing anything because otherwise pre-emptive action appears to be very expensive. The decision does little to encourage good commercial sense and mitigation of loss if this is so.

If the contractual date of shipment is expressed by the contract of sale to be within a time band, which is usually the case, the buyer has a duty to nominate a date of shipment within that time band. The buyer has a duty to specify the exact date according to **Stack v Bosley**.[19] The seller does not have to get goods to the dock until nomination and is at risk regarding damage to the goods pre-shipment, if he tries to anticipate the nomination date according to **Cunningham v Munro**.[20]

Specified port of loading and discharge : All terms and conditions of sales contracts , such as load the specified vessel at specified port using specified methods of stowage, must be followed. The vessel must sail to specified port of destination and must not deviate without lawful excuse.

Direct shipment and deviation : If the buyer wants direct shipment he must say so in the c.i.f. contract. It then becomes a term **Bergerco v Vergoil**,[21] which forbids calling in at intermediate ports since this would cause delay and affect the time of delivery. In **Sutro v Heilbut Symons,**[22] it was confrimed that a contractually agreed route is a condition. The usual route, where the route is not specified, is judged at time of performance Thus in **Tsakiroglou v Noble Thorl,**[23] The Suez Canal closed after c.i.f contract concluded. The usual route at performance time was therefore round the Cape so no breach of contract.

If the shipment date is not specified goods must be shipped within a reasonable time according to **Landauer v Craven.**[24] There is a duty to procure a contract of carriage whereby the goods will be delivered at the contractual destination, according to **Sutro v Heilbut Symons.**.

Insurance : There is a duty to insure the goods for the voyage, in a manner usual in the trade according to **Law & Bonar v British American Tobacco.**[25]

Payment of Freight : There is a duty to make himself responsible to pay the freight. Compare this with the version provided by Lord Sumner in **Biddell v Clemens Horst,**[26] where he states that the duty is "to make out an invoice which normally will debit the buyer with the agreed price, or the actual cost, commission charges, freight, and insurance premium, and credit him for the amount of the freight which he will have to pay to the shipowner on delivery of the goods at the port of destination. This version is founded on the assumption that the parties have arranged 'freight collect' and that freight has not been prepaid by the seller, which is the norm today.

Duty to send buyer conforming documentation : There is a duty to tender conforming shipping documents to the buyer, at the buyer's usual place of business or residence, according to **The Albazero**.[27] Shipping documents must be tendered within a reasonable time and paid for on endorsement by the buyer according to **Sanders V Maclean**,[28] and they must arrive at least in time to discharge the goods on arrival according to **Horst V Biddell.**[29] Tender will usually be against payment of the price. Conforming documents include at least a bill of lading, or equivalent specified in the contract such as a seaway bill or ship's delivery order,

18 **The Mihalis Angelos : Maredelanto v Bergbau** [1971] 1 Q.B. 163
19 **Stack v Bosley** [1958] 2 QB 130.
20 **Cunningham v Munro** (1922) 28 Com Cas 42.
21 **Bergerco v Vergoil** [1984] 1 Lloyd's .Rep 440
22 **Sutro v Heilbut Symons** [1917] 2 K.B. 348.
23 **Tsakiroglou v Noble Thorl** [1962] A.C. 93.
24 **Landauer v Craven** [1912] 2.K.B. 94.
25 **Law & Bonar v British American Tobacco** [1916] 2 K.B 605
26 **Biddell v Clemens Horst** [1911] 1 K.B 214
27 **The Albazero** [1977] A.C. 774.
28 **Sanders v Maclean** [1883] 11 Q.B.D. 327.
29 **Horst v Biddell** [1912] A.C. 18.

insurance certificate and invoice for goods. Documents should arrive before the goods. If the goods arrive and are delivered to the buyer without presentation of documents the legal attributes of the bill of lading are prejudiced.

SlAT V Tradax,[30] makes it clear that a provision preventing a buyer from rejecting for errors in documents where the seller guarantees to correct errors is invalid.

The fact that goods have been lost at sea does not prevent the seller tendering valid documents and the risk passes to the buyer, according to both **Manbre Saccharine V Corn Products**[31] and **Groom V Barber**.[32]

There is a general duty to provide any other necessary shipping documents that are required under the sales contract, such as certificates as to quality, export / import licences and government health certificates according to **The Julia.**[33] On the other-hand, the term "Subject to licence" in a sale's contract is a condition precedent to the obligation to perform the contract, but the seller must use his best endeavours to procure one according to both **Re Anglo~Russian M.T. & J.B**.[34] and **Provimi Hellas v Warinco**.[35] Whilst the contract is binding it is clear from **Charles H.W. v Alexander**,[36] that a failure to procure after best endeavours is not breach of contract. The contract is merely unenforceable following **Pund v Hardy,**[37] since it is frustrated.

Duty to Notify Appropriation of Goods to the Contract : Where goods are not appropriated at the time of shipment the sales contract may specify that the seller has to give actual notification of appropriation when it occurs as in **Compagnie Continentale d'Importation U.S.S.R v Handelsvertretung in Deutschland.**[38] Notification of appropriation can be essential if a buyer wants to sell cargo on and is important regarding insurance. A failure to notify appropriation is a breach of contract according to **The Post Chaser**.[39] Appropriation post notice may be irrevocable so that alternative goods could not then be tendered and would be a repudiatory breach according to **Kleinjan Holst Rotterdam v Bremer**.[40]

However, a buyer is unlikely to complain if conforming goods are substituted for those originally appropriated to the contract and delivered to the buyer. If however the substitute goods are subsequently lost, damaged or defective or the market price of goods has dropped significantly the buyer may seek to reject the goods. This matter does not appear to have been fully considered in **The Ballenita & BP Energy**.[41]

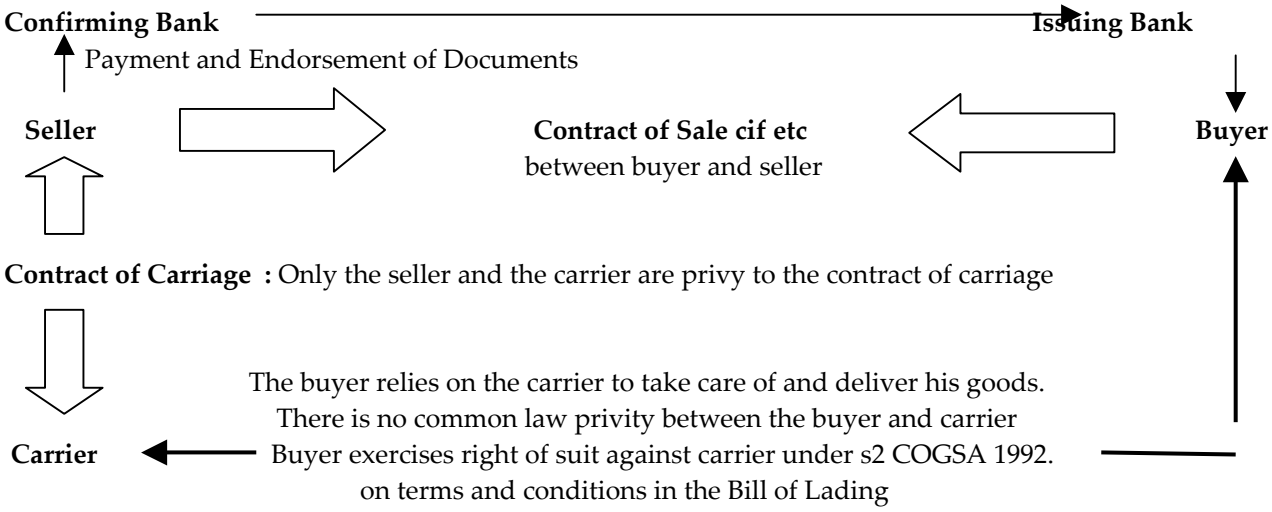
The buyer bought a cargo of oil c.i.f Genoa. The seller was required to nominate a vessel complete with cargo within 3 London working days of its arrival. On the 15 October the seller nominated the **BP Energy** with a cargo of Russian oil. The buyer suspected (correctly) that the oil might be substandard but accepted the nomination. On 18 October notice of readiness was given. The seller tested oil on 18th and realised it was substandard and on the 19th October nominated **The Ballenita**, a substitute vessel with conforming cargo in place of the BP Energy to avoid the buyer rejecting the BP Energy's cargo. The price of oil had fallen so the buyer was likely to be looking for an excuse to reject the cargo. Notice of readiness of **The Ballenita** was given on 22nd October. The buyer claimed a wrongful nomination by the seller amounting to repudiation of the contract by the seller and claimed a return of the difference between purchase and current market price of oil as damages. The court held that the notice of readiness did not prevent the seller substituting a fresh vessel and a later readiness notice in respect of the substitute vessel since there was no requirement that the seller give notice of readiness in any case. In **The Ballenita Energy** argument centred on the so called duty to nominate a vessel c.i.f. by the seller. But this is a non-issue since the seller is responsible for shipment and he can choose any vessel he wishes. More to the point is the fact that since the nomination included within it

30 **SlAT v Tradax** [1980] 1 Lloyd's .Rep 53
31 **Manbre Saccharine v Corn Products** [1919] 1 K.B. 198
32 **Groom v Barber** [1915] 1 K.B. 316..
33 **The Julia - Comptoir d'Achat v Louis deRidder** [1949] AC 293.
34 **Re Anglo~Russian M.T. & J.B** [1917] 2 K.B 679
35 **Provimi Hellas v Warinco** [1978] 1 Lloyd's Rep 373
36 **Charles H.W. v Alexander P** [1950] 84 Lloyd's Rep 89
37 **Pund v Hardy** [1956] AC 588
38 **Compagnie Continentale d'Importation U.S.S.R v Handelsvertretung in Deutschland** [1928] Lloyd's Rep 140.
39 **The Post Chaser** [1981] 2 Lloyd's .Rep. 695.
40 **Kleinjan Holst Rotterdam v Bremer** [1972] 2 Lloyd's Rep. 11.
41 **The Ballenita & BP Energy** [1992] 2 Lloyd's Rep 455 :

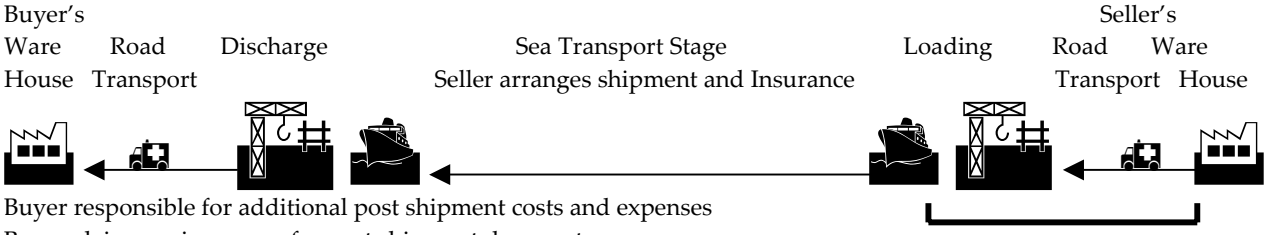
an appropriation of goods to the contract then the question returns to that of whether or not appropriation to a contract is final and irrevocable. The key to this may be that this is only the case where notice of appropriation is required and then only after endorsement of the contract.

Acceptance of appropriation is not acceptance of the goods. Time is of the essence regarding the giving of notice. Rejection of a notice of appropriation by the buyer must be prompt. If he does nothing for several days there is likely to be an implied waiver of the right to reject the notice for non-conformity with the sales contract as in **Bremer v Deutsche Conti-Handelsgesellschaft,**[42] since the court treats silence as acceptance.

The C Group of sales contracts where the seller provides transport.



Transport Stages



Buyer responsible for additional post shipment costs and expenses
Buyer claims on insurance for post shipment damage to cargo

Seller's Responsibilities
To deliver contract goods to the ship

Ownership passes on payment and endorsement of documents
Passage of risk is backdated to the ship's rail
on payment and endorsement of documents,

[42] **Bremer v Deutsche Conti-Handelsgesellschaft** [1983] 2 Lloyds Rep. 45

THE BUYER'S DUTIES UNDER CIF CONTRACTS

The Duty to accept endorsement of documents and pay : On production of all the relevant documents, providing they are all in order, that is to say they are conforming documents, the buyer must accept the documents and pay the seller according to **Gill & Dufus v Berger,**[43] and **Biddell v Horst.**[44] The contract in **Toepfer v Verheiiodns,**[45] stated that the buyer was to make cash payment against documents or on arrival at port of discharge but not later than 20 days from receipt of bill of lading. The court held that the buyer had an obligation to pay on receipt / endorsement of the bill of lading. The bill of lading arrived out of time, so the buyer was entitled to reject it. Despite the fact of actual delivery of the goods the buyer was not obliged to pay. Presumably the buyer refused to accept the goods as well, since this is not intended to provide a licence to acquire free goods.

Price variation formulas : Aploil V Kuwait Petroleum,[46] provides an example of a c.i.f. contract with a price variation clause to deal with cargo of variable quality. The contract provided that if the viscosity level of the oil was sub-standard the buyer could pay less and deduct according to a table a percentage of the sale price. The deduction was upheld by the court and payment of a lesser sum was not breach of contract.

Express and implied waiver of breach of condition : In **The Eurometal**,[47] cargo arrived before the bill of lading. The cargo was infested with weevils. The buyer insisted that the seller fumigate the cargo. Subsequently, the buyer rejected the bill of lading. The court held that the buyer was estopped from rejecting the bill of lading for late delivery. The seller had acted on the buyer's waiver and fumigated the cargo. The seller sold to a 3rd party at a loss and was entitled to recover the shortfall from the buyer as damages.

Duty to take delivery of cargo : The buyer must take delivery of the goods, though if the goods do not actually conform with the requirements of the sales contract there are rights available under S.O.G.A. to reject the goods and reclaim the money paid. If specified in the sales contract the buyer may be responsible for post shipment costs and even increases or variations in freight, according to **Henry v Classen**.[48] Under Incoterms the buyer bear all risks of the goods from the ship's rail onwards. Where the buyer has a choice of shipment dates or port of destination he must make a nomination or bear additional costs for failure to do so. The buyer pays costs of certificates of origin and consular documents etc if any. The buyer pays customs dues. The buyer procures and provides, at his own expense, import licences, if any.

Assessment of Damages for Breach : The time for assessing damages is discussed in **Kaines v Osterreichische.**[49] On the 18th June the seller told the buyer in anticipatory breach of contract that he would not be supplying a cargo of oil in September as per contract of sale. The buyer purchased a replacement cargo on 29th June. The court held that the buyer should have repurchased on 18th or 19th June at the available market price & could not claim damages therefore for the difference in price between the contract price and the market price on the 29th June.

Liability for loading - Free in and out clauses : In **The Coral,**[50] a bill of lading required 'charterers to load and discharge cargo at the shipper's expense under supervision of captain' : The court observed that Art III r2 Hague-Visby Rules places the duty to load and stow on the shipowner not the carrier. The court accepted that the shipowner had an arguable case that the duty to load under the Hague-Visby Rules can be allocated to the carrier, if the allocation clause is incorporated into a bill of lading. The shipowner claimed it was incorporated. The shipowner issued three clean bills of lading for a cargo of steel. The carrier delivered damaged goods. The court held that the issue was too complex to be decided by summary judgement.

43 **Gill & Dufus v Berger** [1984] A.C 382
44 **Biddell v Horst** [1912] A.C 18.
45 **Toepfer v Verheiiodns** [1980] 1 Lloyd's.Rep 143.
46 **Aploil v Kuwait Petroleum** [1995] Lloyds Rep 124.
47 **The Eurometal** [1981] 1 Lloyd's Rep 337.
48 **Henry v Classen** [1973] 1 Lloyd's Rep 159.
49 **Kaines v Osterreichische** [1993] 2 Lloyd's Rep 1 :
50 **The Coral** [1993] 1 Lloyd's Rep 1

Liability for demurrage c.i.f : **The Handy Mariner**,[51] concerned a c.i.f. contract which stated demurrage to be payable at $3,500 per day . Demurrage occurring during loading to seller's account, based on specified daily loading and unloading rates and on unloading to buyer's account, a failure to specify as such in documents tendered, to be at seller's account. The Handy Mariner was held up in the port before a berth became free. Since no unloading took place during the hold up time, did the buyer or the seller have to pay the demurrage ? The court held that the cases on arrived ships in charterparties do not apply to sales contracts. Without clear words to that effect, the obligation to pay for demurrage on a vessel before berthing could not be placed on the buyer, so the seller had to pay.

The endorsee of a bill of lading in **The Olib,**[52] was forced to pay demurrage and storage costs before the shipowner would release goods, subject to a contractual lien for non payment of freight & disbursements. The court held that as a bailee of the goods, the shipowner had incurred additional expenses, which he was entitled to recover. His actions did not amount to coercion or duress.

The Opal Islands : Gill & Duffus v Rionda Futures,[53] is an interesting case since it shows the interaction of relationships in chain sales. Cubazucar chartered the Opal Island from Mambisa, the shipowner. The charterparty established a demurrage rate of $5,000 per day. During the voyage the ship had problems with pumps in the engine room and called in at Las Palmas for repairs, in respect of which General Average was declared on the 17th May. Gill & Duffus, the plaintiff bought c.i.f. 11,4000 tons of bagged sugar afloat from Cubazucar. The sales contract contained a $2,000 demurrage clause. Gill & Duffus sold c.i.f. the cargo afloat to Paramount, the buyers subject to all terms and conditions of the charterparty including the $5,000 demurrage clause, subject to a performance guarantee by the defendants Rionda Futures. Paramount sold the cargo c.i.f. to M & 0 Commodities c.i.f. confirmed documentary credit. M & 0 Failed to furnish the documentary credit on time. The vessel arrived on the 2nd July and gave notice of readiness but failed to discharge until 27 July resulting in 38~ days demurrage. This was because the buyers had initially refused, wrongfully, presumably because they were stalling for time until M & 0 furnished valid letters of credit since once they accepted endorsement they had to pay as well, to accept tender of documents and because M & O had failed to provide general average security. The major issue was whether a) demurrage was payable at all and if so b) whether it would be at $2,000 per day or $5,000 - a difference of $112,500.

The court held that there was a valid tender of documents. The guarantors had to pay at the contract I charterparty rate. The plaintiff's had a right to this since they had already paid the money to Cubazucar (who presumably had then paid it to Mambisa) under a set off. Even if they had paid less it made no difference because demurrage is not a contract of indemnity and the terms of the contract must be complied with.

It is not clear why the plaintiff's paid at $5,000 instead of $2,000 as in their contract and the potential argument that the demurrage clause was in effect a penalty clause does not seem to have been addressed. Clearly someone made a mistake in putting the lower rate in the initial contract of sale. Without rectification or fresh consideration the plaintiff's honoured the full amount. The answer may be that the demurrage was payable directly to the shipowner Mambisa because of a charterparty bill of lading, which would explain the full payment and in which case the original contract of sale demurrage clause would be irrelevant except that the bill of lading would not have complied with the original sale's contract and could have been rejected by Gill & Duffus but if accepted would have resulted in a waiver. However, this is not clear from the report. It appears that Cubazucar are lucky to have got away with it. If it was a charterparty bill of lading the decision appears to be flawed.

The next stage will be for Rionda Futures to reclaim the damages from Paramount, who in turn will have to try and reclaim the money from M & 0 who may possibly be able to sue their banker for a failure to open a letter of credit if the bank had agreed to do so but had initially defaulted on its loan agreement.

51 **Etablisement Soules et Cie v Intertradex : The Handy Mariner** [1991] 1 Lloyd's Rep 378. compare f.o.b. where all post shipment costs fall on the buyer.

52 **The Olib** [1991] 2 Lloyd's Rep 108. This would be reinforced today by s3 COGSA 1992 which afford the carrier a right of action against the buyer even for non-payment of freight by the seller.)

53 **The Opal Islands : Gill & Duffus v Rionda Futures** [1995] 2 Lloyds Rep 67.

Time Bars limiting action : In **Indian Oil v Vanol**,[54] a c.i.f. contract governed by English Courts and Law, imposed a 150 day time bar for filing complaints for short or defective delivery. The buyer filed outside the time bar for The court held that the buyer's claim was time barred. stated that the contract was. **The Leni**,[55] provides another example of the importance of suing in the correct name and within time under H.V.R. Action for short delivery of cargo time barred.

Duty to nominate a substitute vessel : In **The Ballenita & BP Energy,**[56] a cargo of oil was sold c.i.f Genoa. Nomination of vessel by seller to be within 3 London working days of arrival. On 15 October the seller nominated the **BP Energy** with a cargo of Russian oil. The buyer accepted the nomination. On 18 October notice of readiness was given. The seller tested oil on 18th and realised it was substandard and on the 19th October nominated **The Ballenita**, a substitute vessel with conforming cargo in place of the **BP Energy** to avoid the buyer rejecting the BP Energy cargo. The price of oil had fallen so the buyer was likely to be looking for an excuse to reject the cargo. Notice of readiness of **The Ballenita** was given on 22nd October. The buyer claimed a wrongful nomination by the seller amounting to repudiation of the contract by the seller and claimed a return of the difference between purchase and current market price of oil as damages. The court held that the notice of readiness did not prevent the seller substituting a fresh vessel and a later readiness notice in respect of the substitute vessel since there was no requirement that the seller give notice of readiness in any case. Compare this with the situation where the buyer gives notice, usually under an f.o.b. contract. The difference is that under an f.o.b. contract there is reliance on that notice by the seller and so subsequent acts in reliance on that notice create an estoppel.

Buyer's option to nominate time of shipment /port / vessel. The Mathraki,[57] involved a c.i.f. sale of oil from seller's terminal. The contract required the buyer to give three working days notice of nomination of vessel. Vessel required to meet the draft requirements of the port. The buyer gave notice after 5 p.m. of the final day permitted for nomination. The seller rejected nomination claiming there were not three full working days given and that the buyer had not named the port of loading and that he had not provided details of the draft of the vessel. The court held that nomination can take place at any time up to midnight. Everyone knew the port of loading so it didn't have to be named. The only requirement was that the vessel met draft requirements. No advance specification had to be supplied. The seller was in breach of contract in rejecting the nomination.

Force Majeure Clauses : In **The Marine Star,**[58] the contract required the seller required to nominate the vessel. The seller nominated The Marine Star. Later that day he cancelled nomination but failed to renominate a substitute vessel. There was a force majeure clause in the c.i.f contract which provided that there would be no liability for any breach of contract due to an event beyond the seller's control. The seller could not find a substitute vessel or cargo. The court held that the force majeure applied regarding the duty to nominate a vessel. However, substitution was a right not a duty and so was not covered by the clause. The problem resulted from the seller making a commercial choice to use the original nominated vessel and cargo to satisfy another contract. It would not have been impossible to fulfil the contract if the seller has so wished. The seller's appeal,[59] was refused. The plaintiff was able to receive damages for loss of profit, compensation paid to the next buyer and costs.. The plaintiff had sold the cargo on to Coastal Aruba. Coastal Aruba had arranged a substitute cargo and claimed compensation for breach of contract from the plaintiff. The plaintiff was able to recover the compensation paid to Coastal Aruba. Similarly, a Force majeure clause provided in **Fairclough Dodd v Vantol,**[60] that there would be no liability if a breach of contract was due to causes beyond the seller's control. The seller could have bought a cargo afloat and so avoided an export ban. Force majeure only applied if goods could not be shipped or purchased afloat within the contract period and not to a situation where a particular profitable source of cargo is not obtainable.

54 **Indian Oil v Vanol** [1991] 2 Lloyd's .Rep. 634.
55 **The Leni** [1992] 2 Lloyd's Rep 48 :
56 **The Ballenita & BP Energy** [1992] 2 Lloyd's Rep 455
57 **The Mathraki** : **Vitol v Phibro Energy :** [1990] 2 Lloyd's Rep 84.
58 **The Marine Star** [1993] 1 Lloyds Rep 329 :
59 **The Marine Star** [1994] 2 Lloyds Rep 629
60 **Fairclough Dodd & Jones v Vantol** J.H. [1956] 3 All.E.R. 921.

Lewis Emanuel V Sammutt,[61]. concerned an allegation of frustration by a seller. There was only one vessel calling at the port and it was fully booked. The court held that it was not a frustrating event. The seller should have arranged shipment himself or bought another cargo afloat during the contract period.

Liability for dangerous cargo : **The George Lemos,**[62] discusses the bill of lading contract and with whom it is made. The case involved f.o.b. sellers as shippers and c.i.f. buyers as consignees due to an intermediate sale of cargo on different terms. The CEGB reserved shipping space aboard a number of vessels under c.i.f. contracts. They then arranged to buy coal f.o.b. from Devco who had the duty to ship the coal and to obtain bills of lading and send them to the C.E.G.B. During three separate voyages methane gases from the various cargoes ignited causing damage to the carrying vessels. Who was a party to the contract of carriage and therefore liable for damage to the vessels caused by the dangerous cargoes ?

A) Devco the consignor & shipper or
B) CEGB the endorsee of the bills of lading.

Under a traditional f.o.b. contract the seller is the agent of the buyer so does this make the buyer a party to the contract of carriage and to the bill of lading and therefore responsible for dangerous cargo ? The court held that it did not.. The seller was the shipper and solely responsible for the dangerous cargo. The Brandt v Liverpool contract gives the endorsee rights but does not impose on him obligations regarding the pre-shipment arrangements in respect of dangerous cargoes. Equally the s1 BLA contract gives rights to the endorsee but not pre shipment liabilities.

This was decided before C.O.G.S.A. 1992. It is possible that liability for dangerous cargo can be imposed on a buyer. The legal pitfalls involved in mixing f.o.b. and c.i.f. shipments through sub-sales raises the issue whether it should be a an implied term of a c.i.f. or f.o.b. contract that, where a seller fulfils contractual obligations by buying a cargo afloat that it must be on the same terms as his sales contract, that is to say a c.i.f. seller should only buy c.i.f. cargo and vice versa. It would not presumably be a conforming document c.i.f. and could be rejected but if waived who is then liable ?

Liability for Salvage. **The Antigoni**,[63] discussed a buyer's liability for salvage. A vessel's engine required regular maintenance. The ship's engineer did not adjust engine bolts resulting in a breakdown during a voyage. The cargo owners paid salvage and General Average The court held that the shipowner had failed to exercise due diligence to make the vessel seaworthy contrary to the requirement under Article IV rule 1 Hague Visby Rules and was liable to the cargo owners for the salvage and General Average expenses.

Liability for non-delivery of cargo. In **The Texaco Melborne,**[64] the shipowner argued with the shipper/charterer and delivered cargo to a different port. The charterer claimed damages for non-delivery under the bill of lading at port of destination. The shipowner offered to pay damages on the sale price at that date in a Ghanian port in Ghanian currency. The charterer claimed damages at repurchase price in Italy in U.S. dollars. The court held that there was no available market in Ghana on which to assess damages. The mere fact that if delivered to Ghana it would have been sold at a price did not represent a market price since there must be an available market not just a one off sale. Since the exchange rate had changed considerably the shipowner would get a windfall by only paying out in Ghanian currency so damages were payable in U.S. dollars.

Shipping documents usually required cif.

a) Certificate of insurance (usual in the trade at the relevant time).
b). Invoice for payment of price.

61 **Lewis Emanuel v Sammutt** [1959] 2 Lloyd's Rep 629. Note however, that if the specification of goods in a sales contract required a particular source for the cargo then the contract would be frustrated.
62 **The George Lemos** [1990] 1 Lloyd's R 277
63 **The Antigoni** [1990] 1 Lloyds Rep 45:
64 **The Texaco Melborne** [1992] 1 Lloyds Rep 303.

c). A clean shipped Bill of Lading records that goods are shipped in apparent good order and condition. Clean means no clauses referring to defective goods at time of loading. It does not related to subsequent damage. Prior to COGSA 1992 a pre-shippment bill of lading was treated as a mere receipt of loading the goods. It can now transfer rights of suit under s2 COGSA 1992. The buyer does not have to accept a received for shipment bill of lading, but will acquire rights if he does.

d). Any documents necessary regarding the customs of the port and country involved regarding export licences, certificates of quality etc.

In **The Mega Hill : Cefetra v Toepfer**,[65] a c.i.f. contract provided for certificates of sampling by buyer and seller at port of discharge to satisfy E.C. regulations on quality of corn glutton feed pellets and further provided that if the seller failed to discharge his duty the buyer could appoint a surveyor on his behalf and charge it to the seller's account. The seller / shipper provided a U.S. export certificate but refused to appoint a surveyor at port of discharge. The buyer appointed and paid a surveyor and billed the seller who refused to pay claiming the export certificate was sufficient. The court held that the terms of the contract required a surveyor's report at port of discharge. The seller was in default and had to reimburse the buyer the cost of appointing a surveyor.

Delivery Orders : Any bill of lading issued by a shipowner must only mention the cargo to which it relates and no other goods. Delivery orders are common in the dry bulk trade. Consider 20 tons of cargo, split into 20 1,000 ton lots and evidenced by 20 bills of lading. A buyer receives one of the 1,000 ton bills of lading, but wishes to sub-sell by splitting the cargo further into two 500 ton lots. This cannot now be done under the bill of lading after the ship has sailed, since a bill of lading represents lots of cargo at the time of shipment. The exchange of the bill of lading into two new documents becomes effective as Bills of Carriage, which give the holder some rights against the shipowner. They can be stipulated for tender in c.i.f. contracts if confirmed by ship's deliverals, that is to say, land based shipowner's agent. There are two sorts of delivery order. a). Ship's delivery order, issued by the ship owner or ship owner's agent on behalf of the ship owner, as per **Khron v Thegra,**[66] and b) Seller's delivery order, issued by the seller himself not the ship owner, requesting the ship owner to deliver the goods to who ever has the delivery order at discharge. If no shipowner's agent is available then the shipper may have no option but to issue his own delivery order instead. If the terms are agreed to and acknowledged by the shipowner, they become a ship's deliveral. If not agreed to and acknowledge by the shipowner, they are not valid tender and no rights of suit are transferred against the carrier. **The Wear Breeze,**[67] made it clear that a shipper's bill of lading cannot transfer rights of suit against the carrier to the buyer at common law (or under statute at present).

The Hydebirth,[68] established that a contract may allow the substitution of a ship's delivery order c.i.f for a shipped bill of lading. A ship's delivery order can be tendered instead of a bill of lading to the buyer since it will give the endorsee rights against the carrier, according to **The Dona Mari**.[69] It cannot be a c.i.f. contract if any other delivery order, is stipulated in the contract, since they do not give rights against the carrier. In **The Julia**,[70] a seller's delivery order was stipulated and tendered. This provided yet one more reason why it was not a c.i.f. contract. **Ginzburg v Barrow Haematite,**[71] held that unless otherwise stated a ship's delivery order is issued on the same terms and conditions as the bill of lading under the c.i.f contract.

65 **The Mega Hill : Cefetra v Toepfer** [1994] 1 Lloyds Rep 93. Note how the terms of a contract can in special circumstances place duties on a c.i.f. seller for post shipment duties.

66 **Khron v Thegra** [1975] 1 Lloyd's Rep 146. If specified in the contract of sale a seller can have the option of delivering up a bill of lading or a ship's delivery order.

67 **The Wear Breeze Margarine Union v Cambav Prince** [1967] 1 Q.B. 219.

68 **The Hydebirth Colin & Shields v Weddel** [1952] 2 Lloyd's.Rep. 9 :

69 **The Dona Mari : Cremer v General Carriers** [1974] 1 W.L.R. 341 : A ship's bill of lading issued on terms of the bill of lading can transfer rights to the buyer at common law.**s2(3) C.O.G.S.A. 1992** vests similar rights of suit to holders of ship's delivery orders as holders of bills of lading.

70 **The Julia** [1949] AC 293

71 **Ginzburg v Barrow Haematite** [1966] 1 Lloyds Rep 343.

CHAPTER FIVE

CENTRAL DUTIES UNDER INCOTERMS "C" CONTRACTS.[72]

"The "C" terms require the seller to contract for carriage on usual terms at his own expense. Therefore, a point up to which he would have to pay transport costs must necessarily be indicated after the respective "C" term. Under the CIF and CIP terms the seller also has to take out insurance and bear the insurance cost. Since the point for the division of costs is fixed at a point in the country of destination, the "C"-terms are frequently mistakenly believed to be arrival contracts, in which the seller would bear all risks and costs until the goods have actually arrived at the agreed point. However, it must be stressed that the "C"-terms are of the same nature as the "F"-terms in that the seller fulfils the contract in the country of shipment or dispatch. Thus, the contracts of sale under the "C"-terms, like the contracts under the "F"-terms, fall within the category of shipment contracts. It is in the nature of shipment contracts that, while the seller is bound to pay the normal transport cost for the carriage of the goods by a usual route and in a customary manner to the agreed place, the risk of loss of or damage to the goods, as well as additional costs resulting from events occurring after the goods having been appropriately delivered for carriage, fall upon the buyer. Hence, the "C"-terms are distinguishable from all other terms in that they contain two "critical" points, one indicating the point to which the seller is bound to arrange and bear the costs of a contract of carriage and another one for the allocation of risk. For this reason, the greatest caution must be observed when adding obligations of the seller to the "C"-terms which seek to extend the seller's responsibility beyond the aforementioned "critical" point for the allocation of risk. It is of the very essence of the "C" -terms that the seller is relieved of any further risk and cost after he has duly fulfilled his contract by contracting for carriage and handing over the goods to the carrier and by providing for insurance under the CIF- and CIP-terms.

The essential nature of the "C"-terms as shipment contracts is also illustrated by the common use of documentary credits as the preferred mode of payment used in such terms. Where it is agreed by the parties to the sale contract that the seller will be paid by presenting the agreed shipping documents to a bank under a documentary credit, it would be quite contrary to the central purpose of the documentary credit for the seller to bear further risks and costs after the moment when payment had been made under documentary credits or otherwise upon shipment and dispatch of the goods. Of course, the seller would have to bear the cost of the contract of carriage irrespective of whether freight is pre-paid upon shipment or is payable at destination (freight collect); however, additional costs which may result from events occurring subsequent to shipment and dispatch are necessarily for the account of the buyer.

If the seller has to provide a contract of carriage which involves payment of duties, taxes and other charges, such costs will, of course, fall upon the seller to the extent that they are for his account under that contract. This is now explicitly set forth in the A6 clause of all "C"-terms. If it is customary to procure several contracts of carriage involving transhipment of the goods at intermediate places in order to reach the agreed destination, the seller would have to pay all these costs, including any costs incurred when the goods are transhipped from one means of conveyance to the other. If, however, the carrier exercised his rights under a transhipment - or similar clause - in order to avoid unexpected hindrances (such as ice, congestion, labour disturbances, government orders, war or warlike operations) then any additional cost resulting therefrom would be for the account of the buyer, since the seller's obligation is limited to procuring the usual contract of carriage. It happens quite often that the parties to the contract of sale wish to clarify the extent to which the seller should procure a contract of carriage including the costs of discharge. Since such costs are normally covered by the freight when the goods are carried by regular shipping lines, the contract of sale will frequently stipulate that the goods are to be so carried or at least that they are to be carried under "liner terms". In other cases, the word "landed" is added after CFR or CIF However, it is advisable not to use abbreviations added to the "C"-terms unless, in the relevant trade, the meaning of the abbreviations is clearly understood and accepted by the contracting parties or under any applicable law or custom of the trade. In particular, the seller should not and indeed could not, without changing the very nature of the "C"-terms, undertake any obligation with respect to the arrival of the goods at destination, since the risk of any delay during the carriage is borne by the buyer. Thus, any obligation with respect to time must necessarily refer to the place of shipment or dispatch, for example, "shipment (dispatch) not later than.... An agreement for example, "CFR Hamburg not later than .... is really a misnomer and thus open to different possible

[72] Incoterms 200 Section 9

interpretations. The parties could be taken to have meant either that the goods must actually arrive at Hamburg at the specified date, in which case the contract is not a shipment contract but an arrival contract or, alternatively, that the seller must ship the goods at such a time that they would normally arrive at Hamburg before the specified date unless the carriage would have been delayed because of unforeseen events.

It happens in commodity trades that goods are bought while they are at sea and that, in such cases, the word "afloat" is added after the trade term. Since the risk of loss of or damage to the goods would then, under the CFR- and CIF-terms, have passed from the seller to the buyer, difficulties of interpretation might arise. One possibility would be to maintain the ordinary meaning of the CFR- and CIF-terms with respect to the allocation of risk between seller and buyer, namely that risk passes on shipment: this would mean that the buyer might have to assume the consequences of events having already occurred at the time when the contract of sale enters into force. The other possibility would be to let the passing of the risk coincide with the time when the contract of sale is concluded. The former possibility might well be practical, since it is usually impossible to ascertain the condition of the goods while they are being carried. For this reason the 1980 United Nations Convention on Contracts for the International Sale of Goods article 68 stipulates that "if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage". There is, however, an exception to this rule when "the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer". Thus, the interpretation of a CFRor CIF-term with the addition of the word "afloat" will depend up6n the law applicable to the contract of sale. The parties are advised to ascertain the applicable law and any solution which might follow therefrom. In case of doubt, the parties are advised to clarify the matter in their contract. In practice, the parties frequently continue to use the traditional expression C&F (or C and F C+F). Nevertheless, in most cases it would appear that they regard these expressions as equivalent to CFR. In order to avoid difficulties of interpreting their contract the parties should use the correct Incoterm which is CFR, the only world-wide-accepted standard abbreviation for the term "Cost and Freight (... named port of destination)".

CFR and CIF in A8 of Incoterms 1990 obliged the seller to provide a copy of the charterparty whenever his transport document (usually the bill of lading) contained a reference to the charterparty, for example, by the frequent notation "all other terms and conditions as per charterparty". Although, of course, a contracting party should always be able to ascertain all terms of his contract - preferably at the time of the conclusion of the contract - it appears that the practice to provide the charterparty as aforesaid has created problems particularly in connection with documentary credit transactions. The obligation of the seller under CFR and CIF to provide a copy of the charterparty together with other transport documents has been deleted in Incoterms 2000. Although the A8 clauses of Incoterms seek to ensure that the seller provides the buyer with "proof of delivery", it should be stressed that the seller fulfils that requirement when he provides the "usual" proof. Under CPT and CIP it would be the "usual transport document" and under CFR and CIF a bill of lading or a sea waybill. The transport documents must be "clean", meaning that they must not contain clauses or notations expressly declaring a defective condition of the goods and/or the packaging. If such clauses or notations appear in the document, it is regarded as "unclean" and would then not be accepted by banks in documentary credit transactions. However, it should be noted that a transport document even without such clauses or notations would usually not provide the buyer with incontrovertible proof as against the carrier that the goods were shipped in conformity with the stipulations of the contract of sale. Usually, the carrier would, in standardized text on the front page of the transport document, refuse to accept responsibility for information with respect to the goods by indicating that the particulars inserted in the transport document constitute the shipper's declarations and therefore that the information is only "said to be" as inserted in the document. Under most applicable laws and principles, the carrier must at least use reasonable means of checking the correctness of the information and his failure to do so may make him liable to the consignee. However, in container trade, the carrier's means of checking the contents in the container would not exist unless he himself was responsible for stowing the container.

There are only two terms which deal with insurance, namely CIF and CIP Under these terms the seller is

obliged to procure insurance for the benefit of the buyer. In other cases it is for the parties themselves to decide whether and to what extent they want to cover themselves by insurance. Since the seller takes out insurance for the benefit of the buyer, he would not know the buyer's precise requirements. Under the Institute Cargo Clauses drafted by the Institute of London Underwriters, insurance is available in "minimum cover" under Clause C, "medium cover under Clause B and "most extended cover" under Clause A. Since in the sale of commodities under the CIF term the buyer may wish to sell the goods in transit to a subsequent buyer who in turn may wish to resell the goods again, it is impossible to know the insurance cover suitable to such subsequent buyers and, therefore, the minimum cover under CIF has traditionally been chosen with the possibility for the buyer to require the seller to take out additional insurance. Minimum cover is however unsuitable for sale of manufactured goods where the risk of theft, pilferage or improper handling or custody of the goods would require more than the cover available under Clause C. Since CIP, as distinguished from CIF would normally not be used for the sale of commodities, it would have been feasible to adopt the most extended cover under CIP rather than the minimum cover under CIF But to vary the seller's insurance obligation under CIF and CIP would lead to confusion and both terms therefore limit the seller's insurance obligation to the minimum cover. It is particularly important for the CIP-buyer to observe this: should additional cover be required, he should agree with the seller that the latter could take out additional insurance or, alternatively, arrange for extended insurance cover himself. There are also particular instances where the buyer may wish to obtain even more protection than is available under Institute Clause A, for example insurance against war, riots, civil commotion, strikes or Internahonal Chamber of Commerce other labour disturbances. If he wishes the seller to arrange such insurance he must instruct him accordingly in which case the seller would have to provide such insurance it procurable.

CFR COST AND FREIGHT named port of destination) : "Cost and Freight" means that the seller delivers when the goods pass the ship's rail in the port of shipment. The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer. The CFR term requires the seller to clear the goods for export. This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the CPT term should be used.

CPT CARRIAGE PAID TO (... named place of destination) : "Carriage paid to means that the seller delivers the goods to the carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any other costs occurring after the goods have been so delivered. "Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport, by rail, road, air, sea, inland waterway or by a combination of such modes. If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier. The CPT term requires the seller to clear the goods for export. This term may be used irrespective of the mode of transport including multimodal transport.

CIP CARRIAGE AND INSURANCE PAID TO (... named place of destination) "Carriage and Insurance paid to means that the seller delivers the goods to the carrier nominated by him, but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any additional costs occurring after the goods have been so delivered. However, in CIP the seller also has to procure insurance against the buyer's risk of loss of or damage to the goods during the carriage. Consequently, the seller contracts for insurance and pays the insurance premium. The buyer should note that under the CIP term the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements. "Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport, by rail, road, air, sea, inland waterway or by a combination of such modes. If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier. The CIP term requires the seller to clear the goods for export. This term may be used irrespective of the mode of transport, including multimodal transport.

INCOTERMS 2000 CIF COST INSURANCE AND FREIGHT (... named port of destination)

A THE SELLER'S OBLIGATIONS

A1 Provision of goods in conformity with the contract

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

A2 Licences, authorisations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorisation and carry out, where applicable, all customs formalities necessary for the export of the goods.

A3 Contract of carriage and insurance

(a) Contract of Carriage

The seller must contract on usual terms at his own expense for the carriage of the goods to the named port of destination by the usual route in a seagoing vessel (or inland waterway vessel as the case may be) of the type normally used for the transport of goods of the contract description.

(b) Contract of insurance:

The seller must obtain at his own expense cargo insurance as agreed in the contract, such that the buyer, or any other person having an insurable interest in the goods, shall be entitled to claim directly from the insurer and provide the buyer with the insurance policy or other evidence of insurance cover.

The insurance shall be contracted with underwriters or an insurance company of good repute and, failing express agreement to the contrary, be in accordance with minimum cover of the Institute Cargo Clauses (Institute of London Underwriters), or any similar set of clauses. The duration of insurance cover shall be in accordance with B5 and B4. When required by the buyer, the seller shall provide at the buyer's expense war, strikes, riots and civil commotion risk insurances if procurable. The minimum insurance shall cover the price provided in the contract plus ten per cent (i.e. 110%) and shall be provided in the currency of the contract.

A4 Delivery

The seller must deliver the goods on board the vessel at the port of shipment on the date or within the period stipulated.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have passed the ship's rail at the port of shipment.

B THE BUYER'S OBLIGATIONS

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

B2 Licences, authorisations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorisation and carry out, where applicable, all customs formalities for the import of the goods and, where necessary, for their transit through any country.

B3 Contract of carriage and insurance

a) Contract of carriage :No obligation.

b) Contract of insurance : No obligation.

B4 Taking delivery

The buyer must accept delivery of the goods when they have been delivered in accordance with A4 and receive them from the carrier at the named port of destination.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods from the time they have passed the ship's rail at the port of shipment.

The buyer must, should he fail to give notice in accordance with B7 bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the period fixed for shipment provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must subject to the provisions of B6, pay

- all costs relating to the goods until they have been delivered in accordance with A4; and
- the freight and all other costs resulting from A3 a), including costs of loading the goods on board; and
- the costs of insurance resulting from A3 b); and
- any charges for unloading at the agreed port of discharge which were for the seller's account under the contract of carriage; and
- where applicable, the costs of customs formalities necessary for export as well as all duties, taxes and other charges payable upon export, and for their transit through any country if they were for the seller's account under the contract of carriage.

B6 Division of costs

The buyer must, subject to the provisions of A3, pay

- all costs relating to the goods from the time they have been delivered in accordance with A4 and
- all costs and charges relating to the goods whilst in transit until their arrival at port of destination, unless such costs and charges were for the seller's account under the contract of carriage and
- unloading costs including lighterage and wharfage charges, unless such costs and charges were for the seller's account under the contract of carriage and
- all additional costs incurred if he fails to give notice in accordance with B7, for the goods from the agreed date or the expiry date of the period fixed for shipment provided, however, that the goods have been duly appropriated to the contract, that is to say, set aside or otherwise identified as the contract goods; and

where applicable, all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon import of the goods and, where necessary, for their transit through any country unless included within the cost of the contract of carriage.

A7 Notice to the buyer

The seller must give the buyer sufficient notice that the goods have been delivered in accordance with A4 as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take the goods.

B7 Notice to the seller

The buyer must, whenever he is entitled to determine the time for shipping the goods and/or the port of destination, give the seller sufficient notice thereof.

A8 Proof of delivery; transport document or equivalent electronic message

The seller must, at his own expense provide the buyer without delay with the usual transport document for the agreed port of destination.

This document (for example, a negotiable bill of lading, a non-negotiable sea waybill or an inland waterway document) must cover the contract goods, be dated within the period agreed for shipment, enable the buyer to claim the goods from the carrier at destination and, unless otherwise agreed, enable the buyer to sell the goods in transit by the transfer of the document to a subsequent buyer (the negotiable bill of lading) or by notification to the carrier.

When such a transport document is issued in several originals, a full set of originals must be presented to the buyer

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraphs may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the transport document in accordance with A8 if it is in conformity with the contract.

A9 Checking - packaging - marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must Provide at his own expense packaging (unless it is usual for the particular trade to ship the goods of the contract description unpacked) which is required for the transport of the goods arranged by him. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

A1O Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in A8) issued or transmitted in the country of shipment and/or of origin which the buyer may require for the importation of the goods and, where necessary, for their transit through another country.

The seller must provide the buyer, upon request, with the necessary information for procuring any additional insurance.

B1O Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A1O and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

The buyer must provide the seller, upon request, with the necessary information for procuring insurance.

COST AND FREIGHT CONTRACT

Cost of goods and freight covered by the sale's contract. Freight arranged and paid by the shipper. Buyer left to arrange his own insurance. Named port of discharge. The insurance obligation is placed upon the buyer. It is a useful form of contract where war risk insurance is involved or where the buyer requires special insurance. The buyer may have an obligation to insure under c & f to protect the seller until the exchange of documents if the requirement is inserted in the sales contract as a condition. The seller should observe s32(3) SOGA provisions on notification to the buyer to enable him to insure as with f.o.b. contracts. the seller may also chose to insure himself.

Bangladesh Export Import v Sucden Kerry SA.[73]. C & F sale of sugar free out Chittagong, Bangladesh. The government revoked BEI's import licence for sugar after the contract had been made. The inability to secure an import licence was stated categorically not to be grounds for force majeure. BEI claimed the contract was frustrated by the loss of the licence. The court held that the contract was not frustrated simply because BEI did not have a licence. The contract was to deliver and accept the cargo at the port. There was nothing stopping BEI putting the cargo in a bonded warehouse and then re-selling it outside Bangladesh. The ability to move the cargo into the interior was not part of the contract as made clear by the express exclusion in the force majeure clause.

INCOTERMS 2000 : CFR : COST AND FREIGHT (named port of destination)

A THE SELLER'S OBLIGATIONS

A1 Provision of goods in conformity with the contract

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

B THE BUYER'S OBLIGATIONS

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

[73] **Bangladesh Export Import v Sucden Kerry SA**. [1995] 2 Lloyds Rep 1.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorization and carry out, where applicable, all customs formalities necessary for the export of the goods.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization and carry out, where applicable, all customs formalities for the import of the goods and for their transit through any country.

A3 Contracts of carriage and insurance

a) Contract of carriage

The seller must contract on usual terms at his own expense for the carriage of the goods to the named port of destination by the usual route in a seagoing vessel (or in-land waterway vessel as the case may be) of the type normally used for the transport of goods of the contract description.

b) Contract of insurance No obligation

B3 Contracts of carriage and insurance

a) Contract of carriage : No obligation.

b) Contract of insurance : No obligation.

A4 Delivery

The seller must deliver the goods on board the vessel at the port of shipment on the date or within the agreed period.

B4 Taking delivery

The buyer must accept delivery of the goods when they have been delivered in accordance with A4 and receive them from the carrier at the named port of destination.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have passed the ship's rail at the port of shipment.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods from the time they have passed the ship's rail at the port of shipment.

The buyer must, should he fail to give notice in accordance with B7, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the period fixed for shipment provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must, subject to the provisions of B6, pay

- all costs relating to the goods until such time as they have been delivered in accordance with A4; and
- the freight and all other costs resulting from A3 a), including the costs of loading the goods on board and any charges for unloading at the agreed port of discharge which were for the seller's account under the contract of carriage; and
- where applicable, the costs of customs formalities necessary for export as well as all duties, taxes and other charges payable upon export, and for their transit through any country if they were for the seller's account under the contract of carriage.

B6 Division of costs

The buyer must, subject to the provisions of A3 a), pay

- all costs relating to the goods from the time they have been delivered in accordance with A4; and
- all costs and charges relating to the goods whilst in transit until their arrival at the port of destination, unless such costs and charges were for the seller's account under the contract of carriage; and
- unloading costs including lighterage and wharfage charges, unless such costs and charges were for the seller's account under the contract of carriage; and

all additional costs incurred if he fails to give notice in accordance with B7, for the goods from the agreed date or the expiry date of the period fixed for shipment, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and

- where applicable, all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon import of the goods and, where necessary, for their transit through any country unless included within the cost of the contract of carriage.

A7 Notice to the buyer

The seller must give the buyer sufficient notice that the goods have been delivered in accordance with A4 as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take the goods.

B7 Notice to the seller

The buyer must, whenever he is entitled to determine the time for shipping the goods and/or the port of destination, give the seller sufficient notice thereof.

A8 Proof of delivery, transport document or equivalent electronic message

The seller must at his own expense provide the buyer without delay with the usual transport document for the agreed port of destination.

This document (for example a negotiable bill of lading, a non-negotiable sea waybill or an inland waterway document) must cover the contract goods, be dated within the period agreed for shipment, enable the buyer to claim the goods from the carrier at the port of destination and, unless otherwise agreed, enable the buyer to sell the goods in transit by the transfer of the document to a subsequent buyer (the negotiable bill of lading) or by notification to the carrier.

When such a transport document is issued in several originals, a full set of originals must be presented to the buyer.

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraphs may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the transport document in accordance with A8 if it is in conformity with the contract.

A9 Checking - packaging - marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to ship the goods of the contract description unpacked) which is required for the transport of the goods arranged by him. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in AB) issued or transmitted in the country of shipment and/or of origin which the buyer may require for the import of the goods and, where necessary, for their transit through any country.

The seller must provide the buyer, upon request, with the necessary information for procuring insurance.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

CHAPTER FIVE

INCOTERMS 2000 : CPT : CARRIAGE PAID TO (named place of destination)

A THE SELLER'S OBLIGATIONS

A1 Provision of goods in conformity with the contract

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorization and carry out, where applicable', all customs formalities necessary for the export of the goods.

A3 Contracts of carriage and insurance

a) Contract of carriage

The seller must contract on usual terms at his own expense for the carriage of the goods to the agreed point at the named place of destination by a usual route and in a customary manner. If a point is not agreed or is not determined by practice, the seller may select the point at the named place of destination which best suits his purpose.

b) Contract of insurance : No obligation.

A4 Delivery

The seller must deliver the goods to the carrier contracted in accordance with A3 or, if there are subsequent carriers to the first carrier, for transport to the agreed point at the named place on the date or within the agreed period.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have been delivered in accordance with A4.

A6 Division of costs

The seller must, subject to the provisions of B6, pay

all costs relating to the goods until such time as they have been delivered in accordance with A4 as well as the freight and all other costs resulting from A3 a), including the costs of loading the goods and any charges for unloading at the place of destination which were for the seller's account under the contract of carriage; and

where applicable, the costs of customs formalities necessary for export as well as all duties, taxes or other charges payable upon export, and for their transit through any country it they were for the seller's account under the contract of carriage.

B THE BUYER'S OBLIGATIONS

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization and carry out, where applicable, all customs formalities for the import of the goods and for their transit through any country.

B3 Contracts of carriage and insurance

a) Contract of carriage : No obligation

b) Contract of insurance : No obligation.

B4 Taking delivery

The buyer must accept delivery of the goods when they have been delivered in accordance with A4 and receive them from the carrier at the named place.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered in accordance with A4.

The buyer must, should he fail to give notice in accordance with B7, bear all risks of the goods from the agreed date or the expiry date of the period fixed for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

B6 Division of costs

The buyer must, subject to the provisions of A3 a), pay

all costs relating to the goods from the time they have been delivered in accordance with A4; and

- all costs and charges relating to the goods whilst in transit until their arrival at the agreed place of destination, unless such costs and charges were for the seller's account under the contract of carriage; and
- unloading costs unless such costs and charges were for the seller's account under the contract of carriage; and

continued overleaf

B6 Division of costs (continued)

- all additional costs incurred if he fails to give notice in accordance with B7, for the goods from the agreed date or the expiry date of the period fixed for dispatch, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and
- where applicable, all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon import of the goods and for their transit through any country unless included within the cost of the contract of carriage.

A7 Notice to the buyer

The seller must give the buyer sufficient notice that the goods have been delivered in accordance with A4 as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take the goods.

B7 Notice to the seller

The buyer must, whenever he is entitled to determine the time for dispatching the goods and/or the destination, give the seller sufficient notice thereof.

A8 Proof of delivery, transport document or equivalent electronic message

The seller must provide the buyer at the seller's expense, if customary with the usual transport document or documents (for example a negotiable bill of lading, a non-negotiable sea waybill, an inland waterway document, an air waybill, a railway consignment note, a road consignment note, or a multimodal transport document) for the transport contracted in accordance with A3.

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraph may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the transport document in accordance
with A8 if it is in conformity with the contract.

A9 Checking - packaging - marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to send the goods of the contract description unpacked) which is required for the transport of the goods arranged by him. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in A8) issued or transmitted in the country of dispatch and/or of origin which the buyer may require for the import of the goods and for their transit through any country.

The seller must provide the buyer, upon request, with the necessary information for procuring insurance.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

CHAPTER FIVE

INCOTERMS 2000 : CIP : CARRIAGE AND INSURANCE PAID TO (named place of destination)

A THE SELLER'S OBLIGATIONS

A1 Provision of goods in conformity with the contract

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorization and carry out, where applicable, all customs formalities necessary for the export of the goods.

A3 Contracts of carriage and insurance

a) Contract of carriage

The seller must contract on usual terms at his own expense for the carriage of the goods to the agreed point at the named place of destination by a usual route and in a customary manner. it a point is not agreed or is not determined by practice, the seller may select the point at the named place of destination which best suits his purpose.

b) Contract of insurance

The seller must obtain at his own expense cargo insurance as agreed in the contract, such that the buyer, or any other person having an insurable interest in the goods, shall be entitled to claim directly from the insurer and provide the buyer with the insurance policy or other evidence of insurance cover.

The insurance shall be contracted with underwriters or an insurance company of good repute and, failing express agreement to the contrary, be in accordance with minimum cover of the Institute Cargo Clauses (Institute of London Underwriters) or any similar set of clauses. The duration of insurance cover shall be in accordance with B5 and B4. When required by the buyer, the seller shall provide at the buyer's expense war, strikes, riots and civil commotion risk insurances if procurable. The minimum insurance shall cover the price provided in the contract plus ten per cent (i.e. 110%) and shall be provided in the currency of the contract.

A4 Delivery

The seller must deliver the goods to the carrier contracted in accordance with A3 or, if there are subsequent carriers to the first carrier, for transport to the agreed point at the named place on the date or within the agreed period.

B THE BUYER'S OBLIGATIONS

BI Payment of the price

The buyer must pay the price as provided in the contract of sale.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization and carry out, where applicable , all customs formalities for the import of the goods and for their transit through any country.

B3 Contracts of carriage and insurance

a) Contract of carriage : No obligation.

b) Contract of insurance : No obligation.

B4 Taking delivery

The buyer must accept delivery of the goods when they have been delivered in accordance with A4 and receive them from the carrier at the named place.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have been delivered in accordance with A4.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered in accordance with A4.

The buyer must, should he fail to give notice in accordance with B7, bear all risks of the goods from the agreed date or the expiry date of the period fixed for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must, subject to the provisions of B6, pay

- all costs relating to the goods until such time as they have been delivered in accordance with A4 as well as the freight and all other costs resulting from A3 a), including the costs of loading the goods and any charges for unloading at the place of destination which were for the seller's account under the contract of carriage; and
- the costs of insurance resulting from A3 b): and
- where applicable[6], the costs of customs formalities necessary for export as well as all duties, taxes or other charges payable upon export, and for their transit through any country if they were for the seller's account under the contract of carriage.

B6 Division of costs

The buyer must, subject to the provisions of A3 a), pay

- all costs relating to the goods from the time they have been delivered in accordance with A4; and
- all costs and charges relating to the goods whilst in transit until their arrival at the agreed place of destination, unless such costs and charges were for the seller's account under the contract of carriage; and
- unloading costs unless such costs and charges were for the seller's account under the contract of carriage; and
- all additional costs incurred if he fails to give notice in accordance with B7, for the goods from the agreed date or the expiry date of the period fixed for dispatch, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and
- where applicable, all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon import of the goods and for their transit through any country unless included within the cost of the contract of carriage.

A7 Notice to the buyer

The seller must give the buyer sufficient notice that the goods have been delivered in accordance with A4, as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take the goods.

B7 Notice to the seller

The buyer must, whenever he is entitled to determine the time for dispatching the goods and/or the destination, give the seller sufficient notice thereof.

A8 Proof of delivery, transport document or equivalent electronic message

The seller must provide the buyer at the seller's expense, if customary, with the usual transport document or documents (for example a negotiable bill of lading, a non-negotiable sea waybill, an inland waterway document, an air waybill, a railway consignment note, a road consignment note, or a multimodal transport document) for the transport contracted in accordance with A3.

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraph may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the transport document in accordance with A8 if it is in conformity with the contract.

A9 Checking - packaging - marking

The seller must pay the costs of those checking operations (such as checking quality measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to send the goods of the contract description unpacked) which is required for the transport of the goods arranged by him. Packaging is to be marked appropriately.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in A8) issued or transmitted in the country of dispatch and/or of origin which the buyer may require for the import of the goods and for their transit through any country.

The seller must provide the buyer, upon request, with the necessary information for procuring any additional insurance.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

The buyer must provide the seller, upon request, with the necessary information for procuring any additional insurance.