

Guide to Trading Internationally

Shipping and transport

What's in this section?

This topic concerns the cross-border delivery of goods in international trade.

In international trade, the seller sells goods under a contract of sale agreed with the buyer and the goods must be sent by the seller physically from one country to another so that the buyer can obtain the goods, sell them and pay the seller.

This movement of goods, which is by sea, air, rail or truck involves the following stages:

- The seller must arrange for the goods to be handed over to a carrier directly or through an agent or a freight forwarder.
- The carrier or their agent acknowledges that goods have been received for transport, in terms of the seller's instructions, to the buyer in the destination country.
- The carrier or their agent issues a transport document which acknowledges the receipt of goods from the seller and states the terms and conditions upon which the carrier undertakes the transport of goods.

Shipping operators

A **multimodal transport operator** is one who arranges for the despatch of goods from the seller's warehouse to the buyer's warehouse and this journey may involve two modes of transport: by truck from the warehouse of the seller to the shipping port then by ship to the destination port and by truck to the buyer's warehouse. There is, here, more than one mode of transport and therefore the term multimodal transport is used to describe it. A multimodal transport operator is responsible for the entire carriage and takes on contractual responsibility for the whole journey from the seller's warehouse to the buyer's warehouse. A multimodal transport operator is called a "**contractual carrier**", which distinguishes them from an actual carrier such as the shipping company and the master(captain) of the ship which carries the cargo from the port of loading to the port of discharge.

Freight forwarders collect and consolidate goods of different sellers and deliver all such consolidated goods to the actual carrier for shipment. The freight forwarder handles the shipping arrangements for a number of sellers and obtains the most competitive freight rates from the carrier, not only because of the volume of business they direct to the carrier but also because of their personal contacts in the transport trade. The freight forwarder does not, however, undertake responsibility for the goods and their delivery, which lies with the carrier.

Transport documents

Transport document issued by freight forwarders

Article 30 of ICC Uniform Customs and Practice for Documentary Credits ICC publication 500 accepts transport documents issued by freight forwarders only in the following circumstances:

- A transport document issued by a freight forwarder where the freight forwarder's name is shown as the carrier or multimodal operator and the freight forwarder has signed or authenticated the transport document as carrier or multimodal operator in their own name. (The freight forwarder has responsibility for carriage.)
- A transport document issued by a freight forwarder that shows the name of the carrier or multimodal transport operator and has been signed or authenticated by the freight forwarder as agent for and on behalf of the carrier or multimodal transport operator. (The carrier or multimodal operator has responsibility for carriage.)
- Payment will be compromised if transport documents:
 - do not clearly show who the carrier is, with the carrier's name shown on the same side of the document as all the other details;
 - have not been clearly signed by the named carrier or by the named carrier's named agent.

Marine bills of lading bring additional requirements:

- The ports of loading and discharge as indicated on the Credit must be shown.
- Goods must be shown to be on board a named ocean vessel.
- If the bills of lading indicate an intended ocean vessel, there must be an additional, separate endorsement showing the actual ocean vessel used (even if it is the intended ocean vessel).
- If the bills of lading indicate a similar qualification about the port of loading, there must be an additional, separate endorsement showing the port of loading (even if the port has already been shown elsewhere).

The exporter should also do an overall check to ensure that:

- all required documents have been assembled;
- the required number of copies of each document are also assembled;
- any document requiring any consular or other certification has been certified exactly as required by the Credit;
- all documents are consistent with each other – i.e. nothing in any document should contradict or cast doubt upon the information in the same or any other document.

Control of goods

The exporter must always protect their position by retaining “constructive” (if not physical) control of the goods until the buyer pays. In some methods of trading – open account trading, clean collections, and documentary collections, documents against acceptance (D/A) – the exporter consciously decides to let the buyer have possession of the goods pending payment. By contrast, however, in documentary collections, documents against payment (D/P), the buyer gets the necessary export documents only after payment. This enables the exporter to keep control of the goods until the last moment.

In Letters of Credit, the exporter relies less on the goods and more on the Issuing Bank’s (and where applicable the Confirming Bank’s) irrevocable undertaking to pay against:

- the presentation of stipulated documents, and
- compliance with the terms and conditions of the Credit.

However, the security of the exporter’s position is somewhat constrained by the nature and character of different transport documents:

■ **Marine/ocean bill of lading:**

1. Negotiable
2. Title to goods
3. Carrier will deliver against an original negotiable bill of lading.

■ **Non-negotiable sea waybill:**

1. Non-negotiable
2. No title to goods
3. Carrier will deliver to a named consignee.

■ **Charter party bill of lading:**

1. Negotiable document subject to charter party
2. Title subject to charter party
3. Carrier will deliver according to charter party.

■ **Multimodal transport document (document covering two or more transport modes):**

1. If last mode by sea: negotiable, with title to goods, carrier will deliver against original B/L
2. Otherwise: non-negotiable, with no title to goods, carrier will deliver to consignee.

■ **Air transport document:**

1. No title to goods
2. Carrier will deliver to named consignee.

■ **Road, rail or inland waterway transport documents:**

1. No title to goods
2. Carrier will deliver to named consignee.

■ **Courier and post receipts:**

1. No title to goods
2. Carrier will deliver to named addressee.

These characteristics affect constructive control of the goods in the following ways:

- Multimodal transport documents, in which the last mode of transport is by sea, and ocean marine bills of lading both allow the exporter to have “constructive” control of the goods, provided that all originals of such documents are held by the bank authorised to obtain payment in respect of a collection on D/P terms, or to settle a Letter of Credit transaction.
- Non-negotiable sea waybills, by contrast, allow goods to be delivered to the consignee without the need for surrendering

the original waybill. The exporter can exercise constructive control only if (with the authorised bank’s agreement) the waybill shows that bank as consignee. Similarly (and with the bank’s agreement), an air waybill that shows the authorised bank as consignee makes it possible to exercise some control.

- In all other cases, such as the transport of goods by truck, inland waterway, courier and post, delivery is made to the named consignee of the goods without reference to any other party.
- The exporter’s prospects for retaining constructive control of the goods before payment are limited, so they should not voluntarily give away any control that they are able to exercise. Above all, the exporter must resist any attempt by the buyer to have the goods delivered directly to them. Buyers may try to achieve this in the sales contract or the Credit (or both) either by:
 - requiring one of the original bills of lading to be sent to them directly, or
 - allowing the buyer’s name to appear as consignee on bills of lading or air waybills.

If the exporter allows such tactics, the buyer can take physical possession of the goods, and they will have no inducement to pay up.

The following extract is quoted from page 53 of ICC Publication No 561 ICC Guide to Collection Operations, published in July 1996:

“Transport Documents: This guide will not describe and analyse every type of transport document used in international trade. Instead, a brief study of the main documents is included based on the following considerations:

- What is the mode of transport?
- Is the document a receipt for goods?
- Does the document:
 - evidence a contract of carriage?
 - give title to the goods?
 - provide for negotiability?
- How are the goods to be delivered?
- Can control over goods be exercised?
- Are there other considerations?

Terms and conditions of transport documents are generally shown on the face or the reverse side of the documents themselves and/or on a source document usually located at the transport company’s office.

The following ICC publications provide more background on transport documents: Uniform Customs and Practice for Documentary Credits (ICC publication no. 500) and Documentary Credits UCP 500 & 400 compared (ICC publication no. 511).

The diagrammatic presentations in this guide are used merely as illustrations and shows the various types of transport, the different types of transport documents issued, and what is required at the point of delivery.

Questions of title and negotiability depend upon the document issued. Accordingly, where necessary, legal advice should be sought on these questions.

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