Bespoke.

FOB AND CONTAINERISED GOODS: AN AWKWARD RELATIONSHIP.

INTRODUCTION.

The International Chamber of Commerce's international commercial terms, known as the Incoterms® rules, are well known to those involved in trade, particularly international trade. However, it is apparent that the industry-favoured FOB (Incoterms® 2010) (Free on Board) is frequently misused in relation to contracts for the sale of containerised goods.

WHEN IS FOB APPROPRIATE?

FOB is appropriate for trading goods that are **non-containerised** and transported by sea or inland waterway transport (eg bulk cargo). FOB should not be used for carriage by any other form of transport (eg rail).

WHAT ARE THE RISKS?

Under FOB, risk passes from the seller to the buyer when the goods are on board the ship. If FOB is used for containerised goods, the seller loses control of the goods after handing the goods to the carrier at the cargo terminal or at its own premises but risk does not pass to the buyer until the goods are on board the ship.

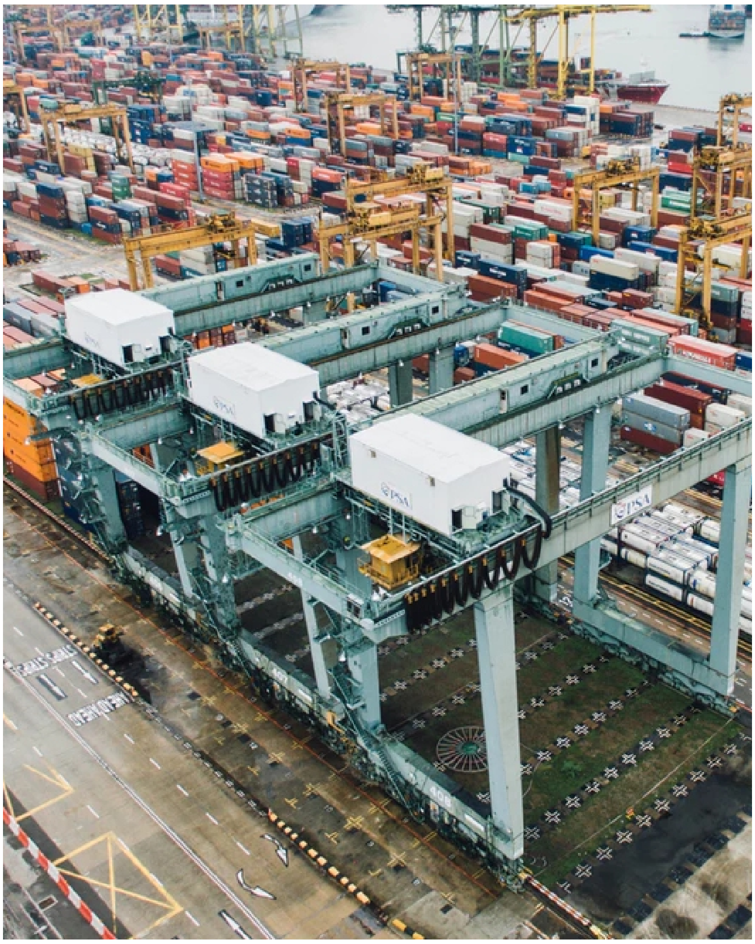
The consequence of this is that a window of risk is created that disadvantages both parties. If the goods are lost or damaged at the terminal the following issues may arise:

- The buyer may be unsuccessful in claiming under its insurance policy. The insurer may state that the buyer did not have an 'insurable interest' in the goods when they were lost or damaged because risk had not passed to the buyer at that time.
- If the buyer is unable to claim under its insurance policy, it may be left with pursuing the seller in expensive international litigation or arbitration.
- The seller remains liable to the buyer to deliver conforming goods despite the goods being lost or damaged when they were out of the seller's control and in the control of the buyer's carrier at the terminal.

THE CORRECT APPROACH.

When negotiating the sale of containerised goods, consider using FCA Seller's Premises or Carrier's Terminal (Incoterms® 2010) (**Free Carrier**). This Incoterms® rule is appropriate for containerised goods because delivery occurs and risk passes when the goods are handed over to the carrier nominated by the buyer (often at the cargo terminal).

FCA is similar to FOB to the extent that the seller is responsible for clearing the goods for export and the buyer is responsible for entering into the contract for carriage of the goods and clearing the goods for import.



TAKEAWAYS.

1. Traders should be wary of using FOB for containerised goods because it creates avoidable risk and results in a 'lose-lose' situation for both the seller and buyer.

2. Given that loss and damage to goods frequently occurs at the terminal due to natural disasters, theft or poor handling by the carrier or stevedores, the degree of risk is significant.

3. Traders should carefully consider their approach to selecting an appropriate Incoterms® rule to prevent problems in the future if goods are lost or damaged.

If you need help with your sale of goods agreements, including choosing the Incoterms® rule that best fits your business or is most suitable for a specific transaction, **contact Bespoke for assistance**.

CONTACT US NOW

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