CZU 341.241.8 **DOI 10.5281/zenodo.7184957**

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CONTRACT FOR THE INTERNATIONAL SALE OF GOODS AS AN EXAMPLE OF AN INTERNATIONAL COMMERCIAL AGREEMENT

The Contract for the International Sale of Goods is the most important of all foreign trade contracts. This agreement is closely related to various types of work contracts - transactions aimed at the performance of work and the provision of services related to the supply of machinery and equipment. Execution of this type of contract involves the conclusion of a contract of carriage and insurance, and often also a license agreement, which is concluded in order to ensure the production of goods provided for by the contract for the international sale of goods.

Keywords: international agreements, convention, state, commercial enterprise.

CONTRACTUL DE VÂNZARE INTERNAȚIONALĂ DE MĂRFURI CA EXEMPLU DE ACORD COMERCIAL INTERNAȚIONAL

Contractul de vânzare internațională de bunuri este cel mai important dintre toate contractele de comerț exterior. Acest acord este strâns legat de diverse tipuri de contracte de muncă - tranzacții care vizează executarea lucrărilor și prestarea de servicii legate de furnizarea de mașini și echipamente. Executarea acestui tip de contract presupune încheierea unui contract de transport și asigurare, precum și de multe ori și a unui acord de licență, care se încheie în scopul asigurării producției de mărfuri prevăzute de contractul de vânzare internațională de mărfuri.

Cuvinte - cheie: acorduri internaționale, convenție, stat, întreprindere comercială.

Introduction. A prerequisite for the recognition of a contract as an international sale contract subject to the regulation of the Convention is the location of the commercial enterprises of the parties to the contract in different states. Neither the national (state) affiliation of the parties, nor the civil or commercial nature of the contract are taken into account when determining the applicability of the Vienna Convention, in accordance with Art. 1 of the Convention. This means that, by virtue of the Convention, an international sales contract concluded between firms of different nationalities located on the territory of one state. At the same time, it will be considered an international contract of purchase and sale, concluded

by firms of the same state, but commercial enterprises, which are located in different states.

When writing the article, the following **methods** were used: comparative legal, logical, imperial, historical .

By virtue of the Convention, the main obligations of the seller are to deliver the goods, transfer documents and title to the goods in accordance with the requirements of the contract and Art. 30 of the Vienna Convention. The main obligations of the buyer are to pay the price for the goods and take delivery in accordance with the requirements of the contract and Art. 53 of the Vienna Convention. It is also significant that the object of the contract is movable property acquired not for personal, family or home use.

Thus, the sales contract is a document indicating that one party to the transaction (the seller) undertakes to transfer the goods (or other subject of the agreement) specified in the contract to the ownership of the other party (the buyer), which, in turn, undertakes to accept him and pay the fixed price for it [3, p. 214].

There are different types of sales contracts:

a) a one-time supply agreement - a one-time agreement that provides for the delivery of an agreed quantity of goods by a certain date, time, period of time.

Delivery of goods is made one or more times within a specified period. Upon fulfillment of the obligations assumed, the legal relationship between the parties and, in fact, the contract is terminated. One-time contracts can be with short delivery times and long delivery times.

b) a contract with periodic delivery provides for the regular (periodic) supply of a certain quantity, consignments of goods during the period established in the terms of the contract, which can be short-term (usually one year) and long-term (5-10 years, and sometimes more).

Depending on the form of payment for the goods, there are:

a) contracts with payment in cash. They provide for settlements in a certain currency agreed by the parties using the payment methods stipulated in the agreement (cash payment, payment with an advance and on credit) and payment forms (collection, letter of credit, check, bill of exchange).

b) contracts with payment in commercial form in whole or in part.

c) contracts with payment in a mixed form, for example, in construction on a turnkey basis of directed lending to a company, the costs are paid partly in cash and partly in commodity form.

Scope, Principles and Interpretation of the UN Vienna Convention on Contracts for the International Sale of Goods

Interstate legal acts resulting from the unification of substantive law are very important in the legal regulation of contracts for the international sale of goods between business entities of the CIS countries. By displacing to a large extent the application of the norms of national law, they, as a result, lead to the erasure of national characteristics in the legal regulation of the treaty in question. The most widely used act of universal unification of material norms governing the international sale of goods is the 1980 UN Convention on Contracts for the International Sale of Goods.

The convention was adopted by the UN at an international conference specially convened for this purpose, held in Vienna from March 10 to April 11, 1980, and therefore was called the Vienna Convention. In its thirty-three years of existence, the Vienna Convention has become an important instrument of international trade. The Convention creates a uniform basis for the conclusion and execution of contracts for the sale of goods between the parties, whose commercial enterprises are located in different states [6, p. 115].

By defining the rights and obligations of the parties in an accessible form, the Convention helps to increase predictability in the field of international trade law, which leads to lower transaction costs. As of January 1, 2013, 78 states are parties to the Convention. Among

the CIS states, Armenia, Belarus, Kyrgyzstan, Moldova, Russia, Uzbekistan and Ukraine participate in the Convention.

One of the reasons for the widespread application of the Convention, as noted in the UNCITRAL Digest of Case Law on the United Nations Convention on the International Sale of Goods, is its flexibility. For this purpose, the drafters of the Convention used various means, in particular, they used neutral terminology, sought to ensure universal observance of the principle of good faith in international trade, established a rule according to which the general principles underlying the Convention should be used to fill any gaps in the set of rules established by the Convention, and also recognized the mandatory nature of the agreed or implied customs and practices.

The States Parties to this Convention, *take into account* the general objectives of the resolutions adopted by the sixth special session of the General Assembly of the United Nations to establish a new international economic order, *consider* that the development of international trade on the basis of equality and mutual benefit is an important element in promoting the development of friendly relations between states, *believe* that the adoption of uniform rules governing contracts for the international sale of goods and taking into account different social, economic and legal systems will contribute to removing legal barriers to international trade and promoting the development of international trade.

The Convention consists of four parts: "Scope and General Provisions", "Conclusion of a Contract", "Sale and Purchase of Goods" and "Final Provisions", which include 101 articles. Parts II and III have an independent meaning: States parties can, at their discretion, establish for themselves the obligation of both parts of the Convention, and one of them. Part III consists of chapters on general provisions, obligations of the seller and the buyer, transfer of risk, general provisions for the obligations of the seller and the buyer. The chapter on the obligations of the seller includes sections on the supply of goods and the transfer of documents, the compliance of the goods and the rights of third parties, remedies in cases of violation of the contract by the seller. The chapter on the obligations of the buyer contains the rules on payment of the price, acceptance of delivery, remedies in cases of violation of the contract by the buyer. The chapter on the provisions common to the obligations of the seller and the buyer includes sections on the foreseeable breach of the contract and contracts for the supply of goods in separate batches, on interest, the consequences of termination of the contract, preservation of goods, on losses, and on exemption from liability.

The need for close attention to the Vienna Convention is explained by the fact that it differs significantly from domestic law in terms of technology, concepts and categories used, their meaning and role in regulating contractual relations. In addition, its theoretical significance is determined by the place that the sales contract occupies in the civil law system. Consideration of issues of sale and purchase of goods often allows us to highlight such phenomena, features and trends common to all contract law, which reflect the commercial nature of relations between the parties and which should be taken into account in rule-making activities.

Since the most numerous international trade transactions are sales transactions, the sales contract is the most important international trade contract.

In national legislation, an international sale and purchase agreement is governed by the Civil Code, foreign trade legislation (customs, tax, etc.) and the norms of private international law. Commercial practices, especially codified ones, also play an important role in the discipline of this type of contract. In this context, it is worth noting the process of legislative uniformity, which achieved its most significant role through the United Nations Convention on Contracts for the International Sale of Goods, adopted in Vienna in 1980, and the Convention

on Contracts for the International Sale of Goods, adopted in New York. 1974 and supplemented by the Vienna Protocol 1980 [7, p. 120].

The ordinary sales contract is studied in both civil law and commercial law. Given the importance of this treaty in international trade law, it is necessary to consider it in the specific regime of the Vienna Convention. In countries that have signed or acceded to the Vienna Convention, it has become a party to the internal legal order, and the Convention has the force of law, applicable when necessary. To the extent that the applicable law is the law of a country that has not yet acceded to the Vienna Convention, due to its widespread acceptance, we can conclude that it is possible to invoke the provisions of the Convention in relation to commercial use.

Already in its first article, the Vienna Convention states that it applies to contracts for the sale of goods between parties established in different states when these states are parties to the Convention or when rules of private international law lead to the application of the law of a state party to the Convention. It is considered that the location of the parties is located in different states, if this arises from the contract, previous transactions between the parties or from information transmitted by the parties before or after the conclusion of the contract. The nationality of the parties and the civil or commercial nature of the contract are of no interest in determining the applicability of the Convention.

Article 2 of the Venice convention states that it does not apply to the sale of goods purchased for personal, family or household use, unless the seller knew before or at the conclusion of the contract that the goods were intended for use. The Convention does not apply to auctions, the sale of seized goods or sales organized by the judiciary, the sale of real estate, the transfer of bills of exchange or currency, the sale of ships, hovercraft and aircraft.

The agreement governs solely the conclusion of the sales contract, as well as the rights and obligations of the seller and the buyer arising from it. It does not apply, except in certain cases expressly provided for in special provisions, to the terms of the contract, the effect of the contract on the ownership of the goods sold and the seller's liability for death or personal injury caused by the goods. For all of these areas, the applicable law on the matter indicated by the parties, or the law determined in accordance with the conflicting regulations, will apply.

The Vienna Convention does not give an abstract definition of the sale of goods, but only establishes its international character, which means that generally accepted definitions on this issue find their full application. In Art. 3 of the Vienna Convention specifies that contracts for the supply of goods to be manufactured or manufactured are considered sales if the parties who order them do not supply a significant part of the raw materials necessary for the manufacture or production, and also if the seller's obligation is to provide labor or other services.

The international nature of the sale is determined by the location of the contracting parties. If a party has several offices, then the office that has the closest connection with the contract and its execution should be taken into account taking into account the circumstances known or taken into account by the parties before or at the conclusion of the contract. If a party does not have a registered office, its usual place of residence must be taken into account, according to Art. 10 of the Vienna Convention. As for the nationality of the parties, in this case, it does not matter.

The issues regulated by the Convention, but not finding a clear solution in its text, are regulated in accordance with the principles on which the Convention is based, and if such principles do not exist, in accordance with applicable legislation in accordance with conflict of laws rules.

Content and Structure of the Contract for the International Sale of Goods

The content of a foreign trade agreement consists of its terms, rights and obligations of the parties. The consequences of an international contract for the sale of goods are realized in obligations arising from the burden of the parties, as well as in the transfer of property rights and risks.

Responsibilities of the seller - the position of the seller in the contract for the international sale of goods is very important, embodied in several basic obligations:

1) delivery of goods;

2) transfer of ownership of it;

3) delivery of documents related to goods [14, p. 24].

Delivery of goods means a substantial transfer of goods, consisting of the actions, facts or procedures by which the goods are transferred to the buyer.

The seller is obliged to deliver the goods on the date specified in the contract if such date has been specified in the contract or if the date is determined by reference to the contract [18].

The seller is obliged to deliver the goods at any time within the period of time established by the contract or determined by reference to the contract, unless circumstances indicate that the choice of the date does not depend on the buyer. In all other cases, the seller is obliged to deliver the goods within a reasonable time, calculated from the date of the conclusion of the contract.

Conformity of goods - the seller is obliged to deliver goods whose: a) quantity, b) quality, c) type correspond to those specified in the contract, therefore, when all these elements comply with the contractual conditions. Quantity, quality and type of goods are important elements of any sales contract. The seller is obliged to take all measures to ensure that these elements comply with those agreed in the contract. Any violation of the requirements stipulated in the contract in relation to these elements entails the responsibility of the seller.

The transfer of ownership, although it is the seller's responsibility, is not regulated by the Convention. On the other hand, in the case of the transfer of goods to which there is a right or a claim by a third party, the consequences of the fact that the property was not transferred or the transfer was uncertain are taken into account. In such situations, the buyer may not accept the goods. However, he must condemn the rights or claims of the third party. The sanction in such cases is replacement of goods and damages.

Delivery of documents related to the goods should be made only if it is provided for by the contract. The audit must be performed at the time, place and in the form specified in the contract. Such documents can be: an invoice, a quality certificate, a certificate of origin, a copy of a consignment note, a bill of lading or - others agreed by the parties, necessary either for the import of goods into a certain country, or for their receipt.

Seller's responsibility. In case of failure to fulfill the delivery obligation, the buyer may demand the fulfillment of the obligation, announce the termination of the contract, receive losses equal to the losses incurred and unrealized profits. The seller is responsible for any discrepancy that exists during the transfer of risks to the buyer, even if this discrepancy only occurs later. With regard to the delivery deadline, if noncompliance is a material violation, this may lead to a request for performance of the obligation, termination of the contract and losses. Failure to comply with the place of delivery is punished in the same way as failure to comply with the established time limit [13, p. 494].

The buyer's responsibilities are:

1) pay the price;

2) accept the goods.

The price is usually determined by the agreement of the parties. If the sale is reasonably completed without specifying the price of the goods, directly or indirectly specified in the contract, or a clause allowing this to be determined, the parties shall be deemed, unless otherwise stated, to have referred tacitly at the price normally charged at the time of conclu-

sion of the contract at the respective commercial subsidiary the same items sold in comparable circumstances.

Acceptance of the goods is the second responsibility of the buyer and consists in performing the actions that the seller can reasonably expect to effect delivery, as well as in the actual takeover of the goods.

Buyer's responsibility. In case of non-payment of the price, the seller can request the buyer's obligation to fulfill it, can announce the termination of the contract. If the failure to pay the price does not constitute a material breach of the contract, no cancellation of the contract can be announced, but damage can be claimed. In case of failure to fulfill the obligation to accept the goods, the seller may demand the fulfillment of the obligation in kind, terminate the contract or demand compensation for damages. After defining the specific obligations of the seller and the buyer, the Convention defines general rules regarding the consequences of non-performance.

As with any synallagmatic contract, non-performance of an international contract for the sale of goods has three specific effects: a) exclusion of non-performance, b) authorization, c) contract risks.

Exclusion of non-performance. Each party can postpone the fulfillment of its obligation if the other party fails to fulfill a significant part of the obligation due to its economic situation or how it prepares to fulfill the contract. If the seller has already dispatched the goods, he may object to the transfer of the goods to the buyer, even if the latter has a document allowing him to receive it.

Termination of an agreement. Depending on how it works, the resolution may be declared a unilateral act by the interested party or may result from an agreement between the parties. The statement of termination of the contract comes into force only if it was made by notifying the other party [17, p. 289].

Contract risks. During the negotiations, special attention was paid to determining with the greatest possible accuracy the moment of risk transfer. It was decided that the rule was that risks were transferred from seller to buyer at the time the goods were delivered. In order for the transfer of risks to take place, the goods must be individualized, that is, identified and separated from other goods with the same characteristics in accordance with those agreed in the contract or otherwise, in accordance with the specifics of the goods and the conditions on which the delivery is carried out. From the moment of transfer of risks, the buyer must pay the price, even if the goods are lost or damaged, unless the loss or damage to the goods is due to the fault of the seller.

Foreign trade agreements have a certain structure: sections of the agreement, located in a certain logical sequence. It seems that it is advisable to consider an international sales contract in accordance with its structure. The first section of this type of contracts is:

a) Determination of the parties. The text of the contract begins with a preamble, which gives the full legal name of the parties to the contract and indicates which of the parties are the seller and the buyer. The first page of the contract indicates its registration number, place and date of signing.

b) Subject of the contract. In this section, the type of foreign trade contract is defined shortly (in this case, purchase and sale), basic terms of delivery and goods.

When trading large volumes of goods, the amount of which is measured in weight units, it is difficult to withstand the weight of the actually delivered goods with an accuracy of tens, and sometimes hundreds of tons. For such cases, the contracts indicate the permissible deviations in one direction or the other as a percentage of the nominal weight, or the clause "about" is made. The number of machinery and equipment, durable goods and consumer goods is indicated in pieces, sets, pairs, and so on.

In 1953, 1980 and 1990, the International Chamber of Commerce published a collection of interpretations of international trade

terms called INCOTERMS, which, having become a custom in international trade, to a certain extent simplified and standardized the sale of goods abroad. In the edition of INCOTERMS 1990 [8, p. 438].

, international trade terms have been divided into four categories: E, F, C, D. The first category E consists of one term EXW - "ex-enterprise". This term means that the seller is considered to have fulfilled his obligations to supply the goods when he placed the goods at the disposal of the buyer, this moment is the moment of transfer of risk. The seller is not responsible for loading the goods onto a vehicle provided by the buyer, for customs clearance of the goods for export, unless otherwise agreed. The buyer bears all risks and all costs of moving the goods from the seller's premises to their destination.

The second category of terms is F. There are the following basic conditions: FCA, FAS, FOB. Under the FCA (Free Carrier) term, the seller is deemed to have met his delivery obligations when he handed over the goods cleared for export to the carrier chosen by the buyer at the specified place or point. According to the FAS (free on board) term, the seller fulfills its obligations when the goods are placed at the ship's berth, and according to the FOB (free on board) term, the seller fulfills its conditions when the goods have crossed the ship's rail. For FAS and FOB terms, the seller must also clear the goods for export.

The third group of terms - C. The terms of this group CFR, CIF, CPT, CIP impose the following obligations on the seller: he must conclude a contract of carriage at his own expense, under the terms of CIF and CIP terms, he is also obliged to arrange and pay for insurance. The seller also provides customs clearance for the goods for export for all terms in this group. For the terms CFR (cost and freight) and CIF (cost, insurance and freight), the seller bears the risk of loss of the goods and any additional costs until the goods pass the ship's rail at the port of shipment. According to the terms CPT (freight paid to) and CIP (freight and insurance paid to), the transfer of risk from seller to buyer occurs when the seller transfers the goods to the carrier.

The fourth group of terms - D. Here, the seller is responsible for the arrival of the goods at the agreed point or port of destination and bears all kinds of risk and delivery costs. According to the terms DAF (delivery free of border), DES (delivery free of charge) and DDU (delivery without payment of duty), the seller is obliged to carry out only customs clearance for export, and according to the terms DEQ (delivery free on berth) and DDP (delivery duty paid) in addition, the seller is obliged to clear customs for import. When concluding a contract, the delivery condition, the counterparties may agree on the exclusion of certain obligations from the seller's (buyer's) obligations [4, p. 275].

c) The price of the goods and the total amount of the contract. The price of a commodity is the amount of monetary units of a certain currency system that the buyer must pay to the seller for the entire commodity or unit of commodity. "The prices of international contracts are expressed in monetary units of a certain currency system, the value of goods. They, by agreement of the parties, are fixed in the contract in the currency of one of the counterparty countries or in the currency of a third country. In international trade, several methods of setting and fixing prices are practiced.

Fixed prices - they are not subject to change during the execution of the contract, it is advisable to establish a fixed price for the goods if the contract is short-term, since the level of world prices fluctuates significantly and one of the parties to the contract may incur significant losses as a result of changes in world prices.

Sliding prices - used in contracts with long lead times, during which the economic conditions for the production of goods can change significantly.

Prices with subsequent fixation - are set

at the time specified by contracts on the basis of agreed sources. So, the contract may provide that the prices for goods sold under it will be set at the level of prices on the world market on a certain date or day of delivery of the goods to the buyer. The contract may provide for exchange quotations as sources of prices. It seems that price negotiation is one of the most difficult stages of contracting; it requires high commercial and technical qualifications, as well as experience in conducting such negotiations.

d) Delivery times of the goods. Delivery times are the calendar dates by which the goods must be delivered by the sellers to the geographic locations specified in the contracts. The contract may, for example, indicate: "The delivery time is July 1, 2001 FOB port Odessa". This means that the goods must be loaded on board the vessel before the expiration of the established date, which is recorded in the bill of lading - a certificate of carriage by sea.

In most cases, contracts specify monthly, quarterly, semi-annual or annual delivery times. Thus, the wording "the goods must be delivered on FAS terms on lighters in the first half of 2001" - means that the seller can, from January 1 to July 1, 2001, bring the cargo to a lighter carrier, chartered by the buyer upon receipt of a notification from the seller about the readiness of the goods for delivery. Under certain conditions, it is allowed to indicate delivery times in contracts without fixing calendar dates or periods (when supplying goods from exhibitions, when trading between neighboring countries). According to the custom of international trade, "immediately" means the obligation of the seller to deliver the goods on any day within no more than two weeks; under the condition "as soon as possible" the seller is obliged to take all measures to deliver the goods as soon as possible. There are also such terms as "as soon as they are ready", "upon the opening of navigation" [5, p. 608].

i) Terms of payments - this is a section of a foreign trade contract containing the terms of payment agreed by the parties, it defines the method and procedure for settlements between counterparties, as well as guarantees of the parties' fulfillment of mutual payment obligations.

Cash payments are payments for goods immediately after they have been handed over by the seller to the buyer. In international trade, cash settlement is carried out in four ways: checks, transfers, letters of credit and collection. In most cases, cash payments take a long time: from several days to several months.

Payments by bank transfers. Here, from the moment the goods are delivered by the seller, until they receive the money, it takes time to carry out the following operations: the seller issues an invoice and, complete with other documents specified in the contract, sends it to the buyer; the buyer, having received a set of documents, checks their compliance with the terms of the contract, makes the necessary amounts to his bank and gives him an order to transfer money from his account to the seller's account; the buyer's bank notifies the seller's bank about the transfer of money to him; the seller's bank notifies its client about the crediting of the amount to his account. This settlement system does not guarantee sellers that buyers will pay for the delivered goods at all. Therefore, the terms of contracts usually include obligations of buyers to provide financial guarantees of payments. The most reliable are guarantees from banks, which undertake obligations to make payments stipulated by contracts for buyers. Buyers pay banks the cost of guarantees, which are an assessment of the risk of default.

Letter of credit settlement provides for the buyer's obligation to open a letter of credit in favor of the seller for the agreed amount by the deadline set in the contract in a certain issuing bank. *A letter of credit* is the bank's obligation to transfer money to the seller's account against providing them with a set of documents confirming the delivery of goods in accordance with the terms of the contract. After delivering the goods, the exporter transfers the set of

payment documents specified in the contract to the authorized bank, which formally checks their composition and sends them to the issuing bank for payment. The issuing bank, after making sure that the documents are correct and that the exporter has fulfilled the obligations, makes the payment with the letter of credit. It seems that the letter of credit form of settlements is convenient for exporters, since it guarantees and accelerates payments, but it is more expensive than settlements by bank transfers [19, p. 176].

Collection form of settlements - carried out through the mediation of two correspondent banks: the collecting bank of the exporter and the bank - the payer of the importer. The exporter, after the delivery of the goods, transfers to the collecting bank of his country, the set of documents provided for by the contract. The collecting bank forwards the documents to the payer's bank, which, in turn, presents them to the importer for verification. If the documents meet all the requirements, then the importer confirms to the bank (accepts) his consent to pay for the goods. Bank Issues documents of title to the buyer against transferring the invoice amount to the bank account and transfers the money to the collecting bank for settlement with the exporter (collection with preliminary acceptance).

Prepayment. Recently, such a settlement procedure as prepayment has become widespread. Quite often, prepayment is used in foreign trade contracts. According to this form of payment, payment for products is made before the buyer receives it.

f) Packaging and labeling. In the practice of international trade, the type of packaging depends on its purpose: for packaging goods, for advertising purposes, for the safety of goods during transportation, and so on. The cost of packaging, depending on its purpose and nature, can also vary widely: from a few percent to half of the cost of the goods. Product packaging requirements can be divided into general and specific. General requirements for packaging are determined by the obligation of all exporters to ensure the physical safety of goods when delivered on basic terms. Special requirements for packaging are put forward by importers. The reasons for such requirements may be: the importer needs special packaging of the goods; the importer makes special requirements for the weights and dimensions of cargo packages in relation to the vehicles at his disposal, and so on.

Cargo marking performs the following functions: presents shipping information (containing details, contract number, trance number); is an instruction to transport companies for handling cargo; if necessary, it is used to warn of the dangers that the handling of the cargo may pose. These functions define the mandatory labeling details that must be applied by exporters.

j) Seller Warranties. Each foreign trade contract contains guarantees of sellers regarding the technical characteristics of goods and their quality, and also defines the responsibility of sellers for compliance with guaranteed indicators.

Sellers guarantee that the goods comply with the technical conditions of contracts, national and international standards, samples and such a concept as "normal quality of goods", accepted in international trade. Technical guarantees are usually verified during the use of goods by consumers and, if necessary, through special tests and inspections. The section of the guarantee contains provisions on the responsibility of sellers associated with the supply of substandard goods [11, p. 342].

There are the following ways to resolve such disputes: 1) partial replacement or return of the entire consignment of goods - in cases where the goods cannot be used at all; 2) markdown of goods - the cost of transportation is high or it is unprofitable for the importer to lose time for replacement; 3) correction of defects by the supplier at his own expense - upon detection of defects in durable goods; 4) correction of defects by the buyer with the attri-

bution of costs to the supplier - the latter cannot perform these works within the time frame necessary for the buyer. The supplier sets the same warranty period for the replaced product as it was stipulated by the terms of the contract.

k) Penalties and damages. Penalties are established for non-fulfillment or improper fulfillment of contractual obligations. The general rule of commercial relations between counterparties is the principle: penalties in their size should lead to the fulfillment of obligations, and not be ruinous in nature. Unjustified tightening of penalties by importers often provokes a response from exporters who overcharge commercial offers. For delays in deliveries, the penalty increases as the delays increase, giving the violator chances to take the necessary remedial action, and is usually capped at 5% or 10% of the shortfall.

The method of calculating losses, depending on delays in the fulfillment of obligations or on the degree of deviation from the guaranteed characteristics of the goods, is agreed by the parties in the process of concluding a contract. The contracts also set limits on the amount of losses, upon exceeding which the buyers acquire the right to terminate the contract.

l) Insurance. This section of the contract includes four basic conditions of insurance: what is insured; from what risks; who insures; in whose favor it insures. In purchase and sale transactions, goods are insured against the risks of damage or loss during transportation. The terms of the contracts often specify who (the seller or the buyer) will bear the insurance costs. In fact, we are talking about who will pay for the insurance, and the costs are always borne by the buyer, and they are taken into account in the price of the goods. The terms of the contracts usually include the obligation of exporters to provide buyers with insurance policies, which are included in the package of payment documents.

m) *Force majeure* circumstances. On the execution of contracts can have a significant impact on circumstances, the occurrence of which is impossible in advance. Such circumstances are called *force majeure* circumstances. These usually include fires, floods, earthquakes, epidemics, accidents, and so on. Upon their occurrence, the deadline for fulfilling the obligation for the party affected by these circumstances is postponed for the entire period of their validity and elimination of consequences. To determine what circumstances can be attributed to *force majeure*, contracts usually contain a list agreed by the parties.

The party for which it has become impossible to fulfill the obligation must inform the counterparty about the onset and termination of *force majeure* within a strictly limited period (3-5 days) and provide the relevant supporting documents, which are most often the evidence of the national chambers of commerce.

Contractors set deadlines in contracts after which the parties have the right to cancel mutual obligations. At the same time, it is always stipulated that neither of the parties will have the right to demand damages from the other party. An exception is sometimes the requirement of importers to return the paid advances, but it seems to be insufficiently substantiated, since it is very difficult to prove that the exporters, by the time the force majeure circumstances occurred, had not spent the advances on design work, the purchase of materials, the manufacture of equipment, and so on.

n) Arbitration and litigation of disputes. Often, during the execution of contracts between the parties, disputes arise due to different understandings of mutual obligations due to the unequal interpretation of the terms of contracts or the absence of appropriate conditions. To do this, the parties need to include a conciliation clause in the contract when it is concluded. Conciliation is preferred over arbitration. However, reconciliation can only be successful if there is a favorable atmosphere, when relations between the parties are friendly enough to have the prospect of a friendly settlement of the dispute.

When the disagreement cannot be re-

solved, thus, the parties refer the case to arbitration (arbitration courts) [16, p. 201].

The Procedure for Concluding a Contract for the International Sale of Goods

The procedure for concluding an agreement has come a long way of evolution from a strictly formalized process to concluding an agreement using computer networks. Currently, almost all legal systems regulate the main stages of the pre-contractual process - the direction of the offer, its analysis and acceptance to the addressees, as well as the conclusion of the contract during the negotiation process. However, the intensity of such regulation and the range of regulated relations differ in each legal family and even in states belonging to the same legal family (for example, Great Britain and the United States).

The process of negotiations between the parties during the conclusion of an agreement remained the least regulated, although attempts to regulate some elements of the negotiation process are observed in almost all legal systems (for example, the establishment of pre-contractual responsibility, the legal status of pre-contractual relations). For this reason, it is of particular interest to analyze the UN Vienna Convention on Contracts for the International Sale of Goods, in particular those provisions that relate to the procedure for concluding contracts. Since the development of the Vienna Convention reflected all theories and approaches to regulating the pre-contractual process that were developed by each legal system. As a result, the Convention is one of the most successful examples of unification built on a compromise developed by representatives of different legal systems.

Modern civil circulation requires accelerating the procedures for concluding an agreement, including through the use of various forms of acceptance of an offer to conclude an agreement. Consequently, acceptance by action is now recognized as a proper acceptance by virtually all legal systems. In the case when the acceptance by action is limited to certain situations in which the use of such a form of acceptance is permissible, in practice the parties (especially in foreign economic transactions) regard the actions of the addressee of the offer as a proper acceptance. Since the acceptance by action comes into force from the moment the actions are taken to execute the contract, there is no legal need to notify the offeror of the acceptance, even if in the absence of such notification the offeror will not be able to find out about the acceptance within the period for acceptance.

An international sales contract is concluded, like any contract, by a meeting between an offer and its acceptance. An offer is an offer made to one or more specific persons, if it is sufficiently accurate and expresses the will of the tenderer to accept the obligation if accepted. The offer comes into force when it reaches the recipient [1, p. 302] when it is done orally or delivered to the recipient himself by any means [2, p. 245]. An offer is considered sufficiently accurate if it identifies the goods and specifies, explicitly or implicitly, the quantity and price, or gives indications that allow them to be identified.

An offer addressed to indefinite persons is not considered an offer, but an invitation to tender, unless the applicant clearly expresses the opposite intention. The offer can be withdrawn until it reaches the recipient, including if the withdrawal reaches the offer. An offer cannot be withdrawn before the deadline for admission has expired - if it includes such a deadline - or if it provides that it is irrevocable, or if the recipient reasonably deemed it irrevocable and behaved accordingly.

Acceptance is represented by a declaration or other manifestation of will, by which the recipient of the offer expresses his consent to conclude an agreement [15, p. 184].

Silence or inaction does not mean acceptance. The acceptance takes effect - and the contract is concluded - from the moment it reaches the tenderer. Acceptance must reach the tenderer within the time period specified

by the tender or, in the absence of a reservation, within a reasonable period of time. An oral proposal must be accepted immediately, unless the circumstances indicate otherwise.

If on the basis of the offer, customs that has been established between the parties or customs - the recipient of the offer can show that he accepts it by performing some actions of nature in order to confirm this conclusion (for example, by sending goods) without notifying the tenderer, the acceptance becomes effective when such actions are performed within the agreed period or within a reasonable period, taking into account the circumstances of the relevant transaction [12, p. 183].

However, it should be noted that the negotiators of the Convention also included one of the conditions for direct acceptance. The condition is that the act of tacit acceptance must be completed within the period specified by the trading participant, or, in the absence of such a condition, within a reasonable period of time, taking into account the circumstances of the transaction and the rate of use of funds by the trading participant.

The rule established by the Convention regarding the content of the acceptance is that the acceptance must be pure and simple, that is, agree with the content of the offer. A response that is generally acceptance of the offer, but which contains additions, restrictions, or other changes, is a rejection of the offer and constitutes a counter-offer.

An exception to this rule is the Convention, which provides that, however, a response, which, as a rule, is an acceptance of an offer, but contains additional or different elements that do not materially change the terms of the offer, is an acceptance [10].

Thus, the contract is concluded on the basis of a proposal containing changes from the moment of acceptance. In this exception, the Convention provides for an exception: the case where the tenderer, without undue delay, has identified or expressed an opinion on the matter. In this case, the answer will not be considered acceptance, although it does not materially change the terms of the offer.

With regard to the acceptance period, the Convention specifies that it takes effect from the moment the telegram is delivered for dispatch or from the date the letter was sent or, if this is not the case, from the date indicated on the envelope. Therefore, if the tenderer has set a deadline, it starts working depending on the means of communication used. If the tenderer sets a deadline for acceptance by telephone, telex or other means of instant communication, he begins to act as soon as the tender reaches the recipient.

Late acceptance is one that comes to a party after the expiry of the time period specified in the proposal, or a reasonable time period governed by the Convention. Such acceptance becomes effective if the tenderer promptly informs the addressee orally or sends a notice thereof. If late acceptance means that it was sent under conditions such that, if the transfer was normal, it reached the tenderer in time, this will result in timely acceptance unless the tenderer notifies him of this, assuming that he believes that the offer has expired. An acceptance may also be withdrawn to the extent that the withdrawal reaches the tenderer before or together with the acceptance.

Fulfillment of Obligations under the Contract for the International Sale of Goods

In accordance with Art. 35 of the Vienna Convention, the seller must deliver goods that, in terms of quantity, quality and description, comply with the requirements of the contract.

Quantity of goods. The rules of the Vienna Convention are based on the unconditional obligation of the seller to deliver the goods in the quantity specified in the contract. The quantity of goods is determined, as a rule, in the units of measurement adopted for it: pieces, volumes, weight units. Based on the units of measurement specified in the contract, the seller is obliged to determine the volume of the shipped (delivered) goods. On the basis of these indicators and the seller's documents certifying the

quantity of the goods, its acceptance by the buyer is carried out.

In the case of delivery of only a part of the goods, the Vienna Convention grants the buyer the right to establish an additional period of reasonable length for the seller to fulfill his obligations, and in case of non-delivery of the goods and in an additional period, to declare the termination of the contract.

Requirements for the quality of the goods to be delivered are agreed by the parties in the contract based on its properties and purpose, the purposes for which it is purchased and must be used. In the absence of sufficiently complete data in the contract defining the necessary quality requirements, the seller must transfer to the buyer a product of ordinary average quality, corresponding to the purposes for which it is customary to use it.

In paragraph (2) of Art. 35 of the Vienna Convention contains a list of conditions that are the basis for recognizing the delivered goods as not complying with the terms of the contract. Unless the parties have agreed otherwise, the goods do not comply with the contract if they:

a) not suitable for the purposes for which the product of the same description is usually used;

b) unsuitable for any specific purpose that the seller was directly or indirectly made aware of at the time of the conclusion of the contract, unless the circumstances presume that the buyer did not rely or that it was unreasonable for him to rely on the seller's competence and judgment ;

c) does not possess the qualities of the goods presented by the seller to the buyer as a sample or model;

d) is not packaged or packaged in the usual way for such goods, and in the absence of such - in a way that is appropriate for the preservation and protection of this product.

The listed conditions should be considered as criteria that must be borne in mind by the seller when fulfilling the obligations to supply the goods, and the buyer when carrying out its acceptance.

The UNIDROIT Principles contain a general provision regarding the determination of the quality of performance, in accordance with Art. 5.1.6. It provides that if the quality of performance is not established by the contract or cannot be determined on the basis of the contract, the party is obliged to carry out the performance on the basis of their reasonable quality requirements, which should not be lower than the average, taking into account the specific circumstances. The concept of "average quality" means that the goods must meet those characteristics and have those properties that contain the same goods on the relevant market at the time of execution.

The seller is responsible for any non-conformity of the goods that exists at the time of the transfer of risk to the buyer, even if this non-conformity becomes apparent only later than paragraph (1) of Art. 36 of the Vienna Convention. This refers to any non-conformity of the goods resulting from the violation by the seller of any of its obligations.

The Vienna Convention does not directly establish the seller's warranty obligations, but proceeds from the possibility of establishing them in the contract and indicates the consequences of the seller's violation of such obligations. A guarantee in the Convention means a guarantee (for a certain period) that the goods will remain suitable for the usual purposes or a specific purpose, or will retain the conditioned qualities or properties.

If a discrepancy in the goods is revealed, the buyer must notify the seller within two years (from the moment of the actual transfer of the goods). Otherwise, he loses the right to refer to defects in the quality of the goods. This provision of the Convention is valid if it does not contradict the contractual period of the guarantee.

The buyer, based on the nature of the defects identified in the product, has the right to declare to the seller the following requirements: to replace the product, if the revealed

discrepancy can be attributed to significant violations of the contract; on the correction of defects (if they are of a correctable nature), except in cases where it would be unreasonable under the circumstances; on the devaluation of goods in the proportion to which the value that the goods actually delivered had at the time of delivery is correlated with the value that the goods would have at the same time, corresponding to the contract. In case of a material breach of the contract, including those related to the quality of the goods, the buyer is given the right to terminate it [9, p. 536].

The principles of UNIDROIT in terms of ensuring the fulfillment of obligations largely coincide with the Vienna Convention. Pointing to the need to fulfill the obligation in kind, the Principles of Art. 7.2.2, however, derogations from this requirement are allowed in the following cases:

a) when performance is impossible legally or *de facto*;

b) execution or, where applicable, enforcement is unreasonably burdensome or costly;

c) the party entitled to the performance can reasonably obtain the performance from another source;

d) the performance is purely personal;

f) the party entitled to the performance does not demand it within a reasonable time after it has learned or should have learned of the non-performance.

The execution of the contract for the international sale and purchase in the proper place and within the time frame established by the contract is one of the main obligations of the seller. The place of transfer of the goods to the buyer is determined in most cases by the parties to the contract. Determination of the moment of execution of the contract (delivery date) is also associated with the place of delivery of the goods. In cases where the place of performance is not determined by the parties in the contract, the seller in accordance with Art. 31 of the Vienna Convention is recognized as having fulfilled its obligation to deliver the goods (if it is necessary to transport it) at the time of transfer of the goods to the first carrier for delivery to the buyer.

If the subject of the contract is a product defined by individual characteristics, and the parties to the contract knew that the product must be manufactured in a specific place, the seller's obligation to transfer the goods is considered fulfilled at the time the goods are provided to the buyer at that place. In all other cases, the seller is obliged to place the goods at the disposal of the buyer in the place where the seller's business was located at the time of the conclusion of the contract.

The delivery time is determined in accordance with the procedure provided for in paragraph (a) in art. 33 of the Vienna Convention, namely: "if the contract establishes or allows to determine the date of delivery, the seller must deliver the goods on that date".

The most common in foreign trade practice is the coordination of indicative terms that determine not a specific date for the delivery of goods, but periods of time, calculated in months, weeks, days. In these cases, in accordance with paragraph (b) of Art. 33 of the Vienna Convention, the seller may deliver the goods at any time within the relevant period, unless it follows from the circumstances that the date of delivery is fixed by the buyer. If the parties have not agreed on a deadline for performance, the seller must deliver the goods within a reasonable time after the conclusion of the contract.

The obligation to transfer the documents related to the goods to the buyer is another obligation of the seller provided for in Art. 30 and 34 of the Vienna Convention. He must fulfill this obligation on time, in a place and in the form stipulated by the contract. When transferring documents earlier than the agreed period, the seller may, before the expiration of such a period, eliminate any inconsistency in the documents, provided that the exercise of this right by him does not cause unreasonable inconvenience or unreasonable expense to the buyer.

The buyer in this case retains the right to claim damages in accordance with the provisions of the Convention.

In the General Conditions of Delivery, the place of delivery, the moment of transfer of title and the risk of accidental loss or accidental damage to the goods were determined by the basic delivery condition applicable to this contract. The general rule about the place of performance of the obligation is established in paragraph (1) of Art. 6.1.6 of the UNIDROIT Principles: a party, according to this article, must fulfill its obligation at the place where its enterprise is located. Monetary obligations are fulfilled at the location of the creditor enterprise. In cases where, after the conclusion of the contract, there is a change in the location of the enterprise of one of the parties, it must assume the burden of increasing costs due to this circumstance.

The clause on the deadline for the parties to fulfill their obligations contained in the Principles coincides with the corresponding provision of the Vienna Convention. Establishing requirements for the procedure for fulfilling obligations, the Principles distinguish two cases:

1) when the performance by both parties can be performed simultaneously. In such a situation, the parties, if possible, are obliged to carry out execution simultaneously;

2) when only one party requires a certain period of time to fulfill an obligation, this party is obliged to carry out its performance first (Art. 6.1.4).

The creditor has the right to refuse to fulfill the obligation ahead of schedule, unless he has no legitimate interest to do so (Article 6.1.5). Acceptance by a party of early performance does not affect the term for its fulfillment of obligations, if this term was established regardless of the performance of obligations by the other party. If, as a result of early performance, the creditor incurs additional costs, they are borne by the other party.

Conclusions. The contract must be implemented in full.

The parties are not entitled to conclude agreements with third states that are in conflict with their obligations under existing agreements.

The provisions of the contract may be changed only with the consent of the parties.

The parties to a contract may not invoke the provisions of their internal law to justify non-performance of the contract.

Bibliographic references:

1. Blatov, N.T., Melkov, G.M. International Law in Documents: a Tutorial. Moscow: INFRA-M. 1997.
2. Boguslavsky, M.M. International Private Law: Textbook. Moscow: Lawyer. 2004.
3. Chibac, G., Băieşu, A., Rotari, A., Efrim, O. Drept civil. Contracte şi succesiuni. Chişinău: Editura Cartier. 2018.
4. Dmitrieva, G.K. International Private Law. Moscow: Prospect. 2016.
5. Erpyleva, N.Yu. International Private Law. Moscow: Higher School of Economics. 2015.
6. Getman-Pavlova, I.V. International Private Law: a Textbook for Master Students. Moscow: Yurayt Publishing House. 2013.
7. Getman-Pavlova, I.V. International Private Law: a Textbook for Master Students. Moscow: Yurayt Publishing House. 2013.
8. Getman-Pavlova, I.V. International Private Law: a Textbook for Master Students. Moscow: Yurayt Publishing House. 2013.
9. Glariozov, A.G., Mikhailov, D.M. Foreign Trade Financing and Warranty Business: a Practical Guide. Moscow: Yurayt Publishing House. 2011.
10. International Rules for the Interpretation of Trade Terms Incoterms 2000 [date of visit 28.09.2022]. Available: http://

www.consultant.ru/document/cons_doc_LAW_57195/.
11. Kanashevsky, V.A. International Transactions: Legal Regulation. Tutorial. Moscow: International relations. 2016.
12. Komarov, A.S. Commercial Liability. Moscow: Legal literature. 1991.
13. Lunts, L.A. Private International Law Course. Moscow: Spark. 2002.
14. Marysheva, N.I. International Private Law: Textbook. Moscow: Law firm contract. 2018.
15. Rosenberg, M.G. International Agreement and Foreign Law in the Practice of the International Commercial Arbitration Court. Moscow: Statute. 2000.
16. Skvortsov, O.Yu., Savransky, M.Yu., Sevastianov, G.V. International Commercial Arbitration: Textbook. Moscow: Statute. 2018.
17. Trunina, E.V., Fedasova, Yu.V. Commercial Law. Textbook. Moscow: Yurayt. 2009.
18. United Nations Convention on Contracts for the International Sale of Goods. Vienna, 11 April 1980 [date of visit 28.09.2022]. Available at: http://www.cisg.ru/tekst-venskoj-konvencii-polnostyu.php.
19. Veshkin, Yu.G., Avagyan, G.L. Settlement and Credit Relations in Foreign Economic Activity. Moscow: Master. 2018.

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