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## GWA ARTIKELSERIE

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**Titel:** Sales of Goods between China and Sweden

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### **Sales of Goods between China and Sweden**

*The UN Convention on Contracts for the International Sale of Goods explained.*

The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) established a comprehensive code of legal rules regarding contracts for international sales of goods, including the obligations of the buyer and seller and remedies for breach of contract. CISG entered into force on 1 January 1988 and has been ratified by both China and Sweden.

### **The Applicability of CISG**

CISG applies to contracts of sale of goods between parties whose places of business are situated in different states when these states are Contracting States, i.e. have ratified CISG.



A contract of sale is defined as a contract in which one party is obliged to deliver goods and to transfer the property in the goods, and the other party is obliged to pay a price in money for the goods. The scope of application of CISG is limited to goods, and contracts regarding services are excluded. However, the Convention does not apply to sales of goods bought for personal, family or household use.

Even though CISG is applicable between Chinese and Swedish parties, the contracting parties may exclude the application of the Convention or derogate from or vary the effect of its provisions. Although this freedom of contract permits derogations from the CISG regulations, the Convention makes it easier for contracting parties to consider the risk assessment. Thus, the Convention can be used as a basis for a specified contract. If contracting parties have failed to consider certain matters, CISG will also be used to fill such contractual gaps.

However, if a Contracting State has declared that it does not consider itself bound by provisions regarding the freedom of form or regarding the formation of the contract, the contracting parties may not derogate from or vary the effect of such a declaration. The following exceptions apply to China and Sweden respectively.

CISG stipulates that a contract of sale does not need to be concluded in or evidenced by writing and that it is not subject to any other requirements as to form. However, China has declared that it is not bound by the principle which permits contracts to be entered into by the mere agreement of the parties.



CISG contains rules regarding the offer (the proposal for concluding a contract) and the acceptance (indication of assent). Since the formation of contracts is already regulated in the Swedish Act of Contracts of 1915, Sweden has declared it is not bound by the corresponding provisions in CISG. Consequently, China will apply

Chinese law regarding these matters, instead of the corresponding rules in CISG, when dealing with a Swedish party.

### **Delivery of the Goods**

In international transactions, the contract usually includes transport of the goods to the buyer. In that case, if no particular place for delivery is determinable from the contract, the seller's obligation consists only in handing the goods over to the first carrier for transport to the buyer.

If the contract does not include carriage of the goods, the seller is obliged to place the goods at the buyer's disposal at the place where the seller had his place of business at the time for the conclusion of the contract or, if known by both parties at the time for the conclusion of the contract, at the place where the goods were at or were to be produced at.

The seller must deliver the goods on the date or within the period determinable from the contract unless the buyer is to choose a date. If no date or period follows from the contract, the seller must deliver the goods within a reasonable time after the conclusion of the contract.

The seller must deliver goods of the agreed quantity, quality and description and packaged in accordance with the contract. If the parties



have not agreed otherwise, the goods do not conform with the contract unless they are fit for the purposes for which goods of the same description would ordinarily be used and are fit for any particular purpose expressly made known or implied to the seller at the time of the conclusion of the contract. Furthermore, the goods must possess the characteristics that were held out to the buyer as a sample or model. The goods must also be contained or packaged in the manner usual for such goods.

Apart from the main obligation to pay the price for the goods, the buyer must take delivery. This obligation consists of doing all that could reasonably be expected of the buyer in order to enable the seller to make delivery and in taking over the goods.

### **Passing of Risk**

The passing of the risk of loss of or damage to the goods from the seller to the buyer means that the buyer from the moment of the passing runs all the risks and costs for the goods. This responsibility covers for example accidents. After the risk has passed to the buyer, loss of or damage to the goods does not discharge him from his obligation to pay the price.

It is natural that the risk of loss of or damage to the goods is connected to the access to the goods. Therefore, when the contract of sale does not involve carriage of the goods, the risk usually passes to the buyer when he takes over the goods.

When the contract of sale involves carriage of the goods, the risk during the transport must be distributed between the seller and the buyer. According to the CISG regulations, the risk passes to the buyer when the



goods are handed over by the seller to the first carrier for transport to the buyer, unless the parties have concluded an arrival or destination contract.

Thus, the passing of the risk for the goods is in general connected to the fulfilled delivery of the goods.

In case of loss or damage, the party who is bearing the risk of the goods in transit has the possibility to turn to the carrier and claim compensation.

This claim has to be based on the contract of carriage, since CISG is only applicable between the buyer and the seller of the goods. However, since carriers' liability is limited, transport insurance could be necessary.

### **Remedies for Breach of Contract**

If one of the parties fails to perform any of his obligations under the contract or CISG, the other party may exercise certain rights. Each party may require performance by the other party of his obligations. If the goods do not conform to the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a notice is given within a reasonable time. Further, the buyer may require the seller to remedy the lack of conformity by repair. The buyer may also proportionally reduce the price.

Each party may declare the contract void if the failure by the other party to perform any of his obligations under the contract or CISG amounts to a fundamental breach of contract, or if the other party does not perform his obligations within an additional period of time fixed by the demanding party.



A certain kind of remedy is damages, which may be claimed by each of the parties for breach of contract. The damages consist of a sum equal to the loss, including the loss of profit. Thus, the purpose of damages is to put the party not in breach in the same economical position as if the contract had been fulfilled.

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