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WE WILL LOOK AT

- Contracts of sale, documentary credit and contracts of carriage
- Bills of lading
- Letters of indemnity

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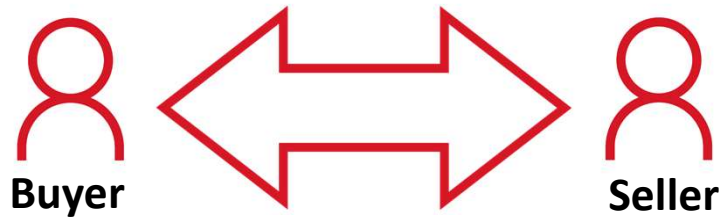
CONTRACTS OF SALE / DOCUMENTARY CREDIT / CONTRACTS OF CARRIAGE

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CONTRACT OF SALE

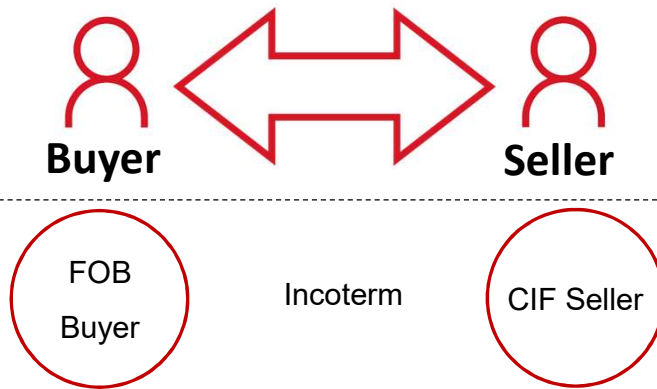
CONTRACT OF SALE



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CONTRACT OF SALE

CONTRACT OF SALE



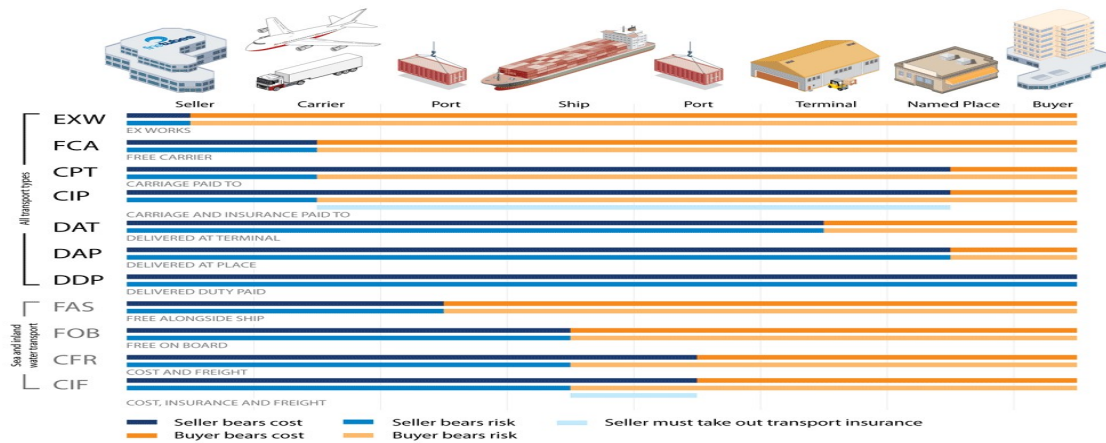
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INCOTERMS

- Originated 1936 – INCOTERMS 2019

11 terms in use

Buyer



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CIF

- Seller
 - Nominates ship and load port
 - Places cargo on board and obtains b/l
 - Insures cargo
 - Pays freight
 - Informs buyer of discharge port and ship
- Buyer
 - Collects the cargo from the discharge port nominated by the seller

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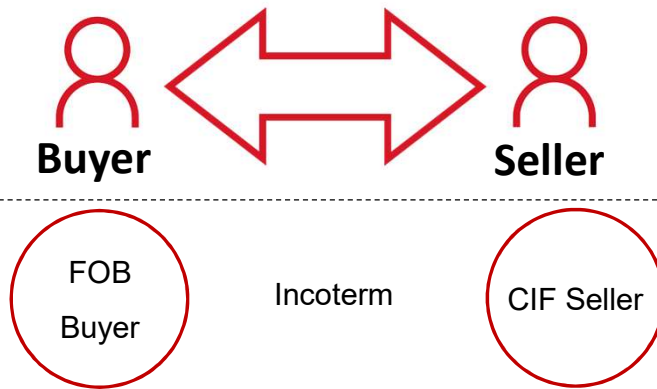
FOB

- Buyer
 - Nominates ship and load port
 - Informs seller of load port and ship
 - Insures cargo
 - Pays freight
- Seller
 - Delivers the cargo on board ship at the load port nominated by the seller
 - Obtains bill of lading?

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CONTRACT OF SALE

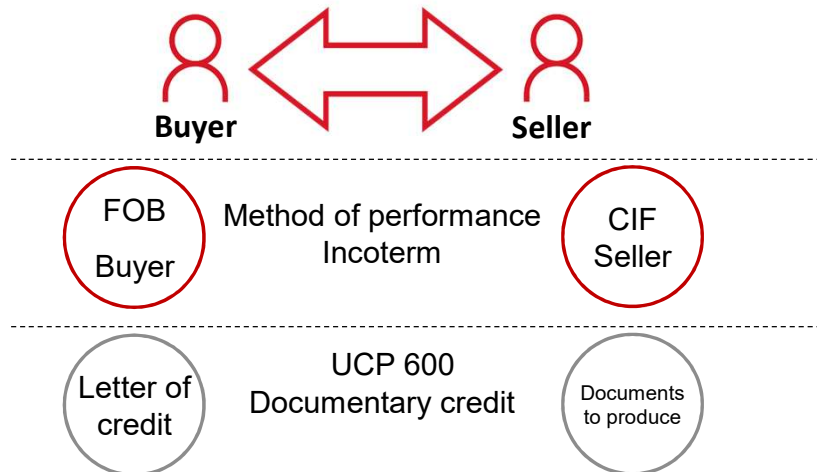
CONTRACT OF SALE



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DOCUMENTARY CREDIT

CONTRACT OF SALE



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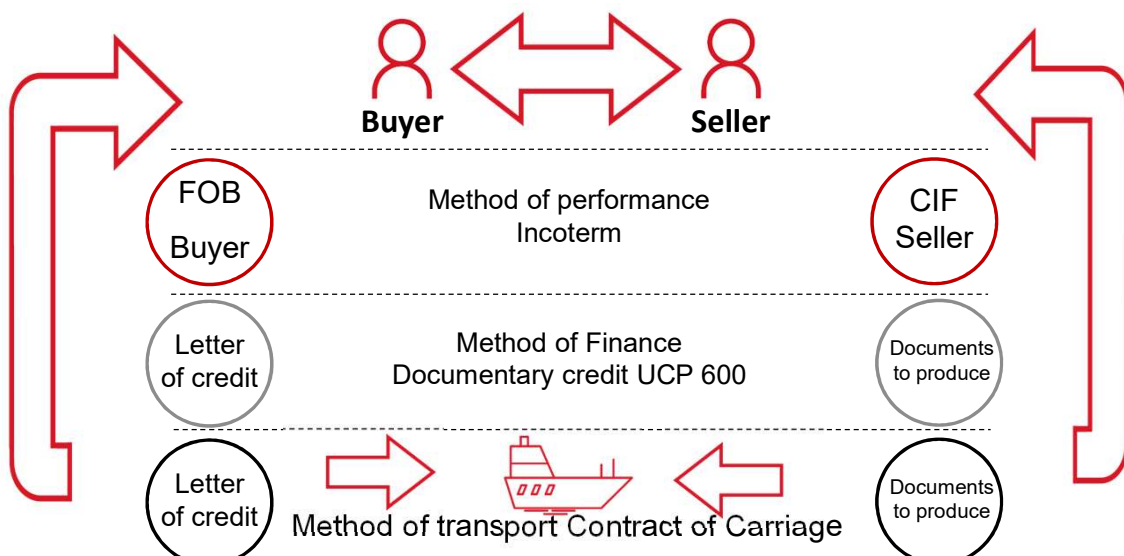
CONTRACTS OF CARRIAGE

Contracts of Carriage

- Bill of lading & cargo conventions
 - Hague or **Hague-Visby Rules**
 - Hamburg Rules
 - Rotterdam Rules
- Charterparty

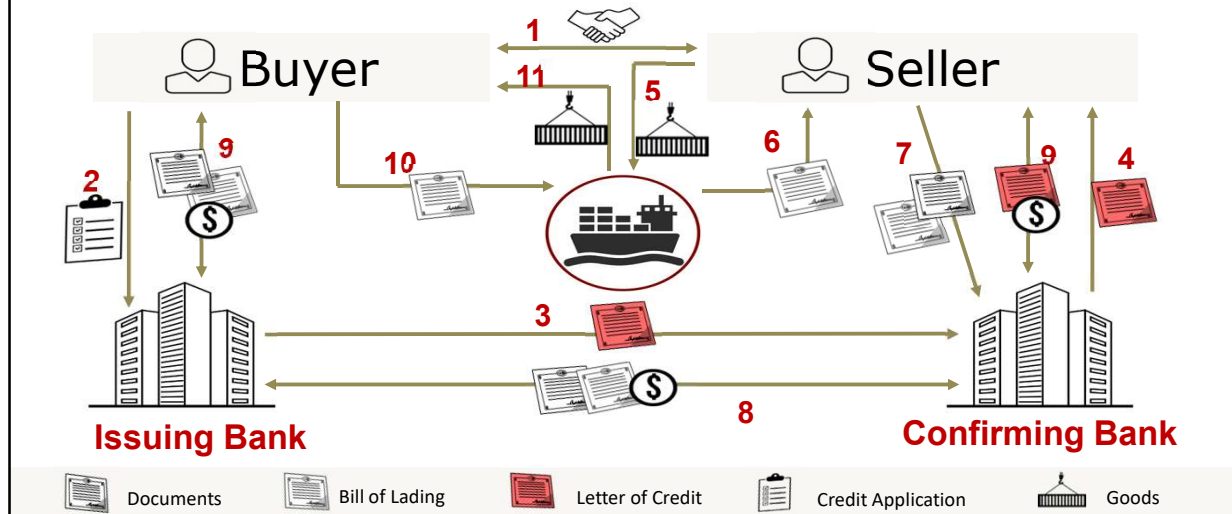
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CONTRACTS OF CARRIAGE



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INTERNATIONAL TRADE TRANSACTION



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BILLS OF LADING COMMERCIAL FUNCTION



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BILLS OF LADING – COMMERCIAL FUNCTION

Why are they commercially important?

Ship Owner

- Getting paid

Seller

- Statement that goods in apparent good order and condition on board
- Clean bill allows seller to get paid

Buyer

- Clean bill tells buyer (and his bank) that he is going to get what he contracted to buy and that goods are on their way
- Bill allows buyer to collect goods from the ship

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BILLS OF LADING – COMMERCIAL FUNCTION

...and to achieve all of this the bill of lading is performing three distinct legal functions

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BILLS OF LADING – LEGAL FUNCTIONS

3 functions of a bill of lading

- Document of title to cargo
- Evidence of contract of carriage
- Evidence of receipt of cargo

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BILLS OF LADING – LEGAL FUNCTIONS

- Document of title to cargo
- Goods should only be released against production of one of the original bills of lading

Golden Rule 1

- Remember that someone somewhere has the bill

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BILLS OF LADING – LEGAL FUNCTIONS

- Evidence of contract of carriage
- In the hands of the shipper the bill of lading is evidence of the contract of carriage
- In the hands of a third party the bill of lading is exclusive evidence of contract of carriage

Golden Rule 2

- Keep your promise

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BILLS OF LADING – LEGAL FUNCTIONS

- Evidence of receipt of cargo
- Evidence as to the nature, quantity and apparent order and condition of the cargo on shipment
 - Prima facie evidence as between the shipowner and the shipper or charterer
 - Conclusive evidence as between the shipowner and a third party

Golden Rule 3

- The bill of lading must tell the truth

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BILLS OF LADING – LEGAL FUNCTIONS

- Each of these Golden Rules is important
- Each underpins P&I cover

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BILLS OF LADING – LEGAL FUNCTIONS

- Provisos to P&I cargo risks covered
- Contract of carriage should be subject to Hague /Hague-Visby Rules
- Cargo should only be delivered at the port named in the bills of lading
- Cargo should only be delivered upon production of the original bills of lading
- Bills of lading should not be antedated or post-dated
- Bills of lading should contain a correct description of the cargo, quantity and condition

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BILLS OF LADING – LEGAL FUNCTIONS

- The first two Golden Rules can be dealt with commercially if you wish by taking LOIs. Examples:
 - Delivery of cargo without production of bills of lading
 - Delivery at a different destination
- (Your decision – but it has P&I implications)...

Golden Rule 1

- Remember that someone somewhere has the bill

Golden Rule 2

- Keep your promise

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BILLS OF LADING – LEGAL FUNCTIONS

- ...but the hardest of these Golden Rules is the

Golden Rule 3

- The bill of lading must tell the truth

- because that is where the stakes are at their highest...

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BILLS OF LADING – RECEIPT

Not telling the truth can give rise to liability of the shipowner.

- Misrepresentation

Carrier may be bound by statements as to condition of cargo on BL even if untrue

- Deceit

Tort of deceit gives rise to civil liability and damages

- Fraud

Criminal counterpart of deceit – gives rise to criminal liability

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BILLS OF LADING – RECEIPT

Fraud is proved when it is shown that a false representation has been made

- knowingly, or
- without belief in its truth, or
- recklessly whether it is true or false.

- Derry v Peek (1889)

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BILLS OF LADING – RECEIPT

Apparent order and condition of the goods

- If the master reasonably concludes the cargo is not in good order and condition then he should clause the bills of lading

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BILLS OF LADING – RECEIPT

Clausing bills – objective standard

- “[Master’s] view must be consistent with that which could properly be held by a reasonably observant master”
- Not an expert surveyor
- Can seek expert advice but unlikely to be criticised for not doing so
- Entitled to form his own opinion from his own observations
- The Master’s view is capable of objective evaluation

The David Agmashenebeli (QBD May 2002)

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BILLS OF LADING – RECEIPT

Apparent order and condition of the goods

- Clausing bills – words to use
 “The words used should have a range of meaning which reflect reasonably closely the actual apparent order and condition of the cargo and the extent of any defective condition which he, as a reasonable observant master, considered it to have”

The David Agmashenebeli

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BILLS OF LADING – RECEIPT

Apparent order and condition of the goods

- Clausing bills – words to use
 – For example - “Damaged” is not sufficient



- Buyer should know what he is getting

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BILLS OF LADING – RECEIPT

The Saga Explorer

- Cargo claim for rust damage to steel pipes
- BL included RETLA clause: disclaimer that “apparent good order and condition” does not mean steel is free of rust.
- Carrier defends cargo claim saying no unqualified statement steel was shipped in good order and condition

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BILLS OF LADING – RECEIPT

The Saga Explorer

- English Court applied *David Agmashenebeli* principles: Master must state honest and reasonable view of cargo in BL
- Despite the RETLA qualification, Master responsible for fraudulent misrepresentation
- RETLA clause could only protect carrier for superficial rusty appearance

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BILLS OF LADING – RECEIPT

- Similar issues arise in relation to quantity
- Master's obligations
 - Issue to the shipper a bill of lading showing:
 - the marks, quantity or weight of the goods as furnished in writing by the shipper
 - the apparent order and condition of the goods
- Hague Visby Rules – Article III, Rule 3

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BILLS OF LADING – RECEIPT

- Disputed weight / quantity
- The Master cannot be made to sign for a figure he does not believe in
- Hague Visby Rules – Article III, Rule 3

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BILLS OF LADING – RECEIPT

Disputed weight / quantity

- What should master do?
 - If he believes the figures
Sign it
 - If he does not believe the figures
Do NOT sign it
 - If in doubt
Consult the P&I Club

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BILL OF LADING PROBLEMS

- Look at the golden rules – which one applies?

Golden Rule 1

- Remember that someone somewhere has the bill

Golden Rule 2

- Keep your promise

Golden Rule 3

- The bill of lading must tell the truth

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LETTERS OF INDEMNITY



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LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?

- The law and International conventions (Hague Visby Rules) and P&I Club Rules set standards and law that applies to carriage of goods
- Applies to bills of lading
- Commercial practice may put the carrier and traders in conflict with each other and with these rules

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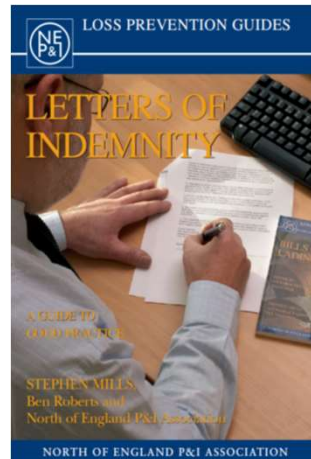
LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?

Carrier

- Issue a bill of lading
 - Accurate
 - Compliant

Seller

- Satisfies sale contract
- Avoids delays



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LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?

What is a Letter of Indemnity?

- A Letter of Indemnity is essentially a promise that:
 - “if you do what I ask, I will make sure that you do not suffer any loss”
 i.e. a conditional promise

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LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?

In exchange for agreeing to e.g.

- Deliver without production of the bills of lading
- Change of destination
- Split bills of lading
- Switch bills of lading
- Replace lost bills of lading
- Co-mingle, blend or mix cargo
- Add dye to liquid cargoes
- Mis-describing information on bills of lading

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LETTERS OF INDEMNITY - WHY ARE THEY OFFERED?

Who benefits from a Letter of Indemnity?

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LETTERS OF INDEMNITY

- Accepting a letter of indemnity
 - Do you trust the issuer?
 - Is the risk acceptable?

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LETTERS OF INDEMNITY – POINTS TO NOTE

- Owners are often asked to do things that may breach the provisos of their P&I cover in return for an LOI
- Variety of circumstances – not all are legitimate
- P&I Clubs can NOT approve or recommend the acceptance of a LOI - commercial decision for owners
- LOI only as good as authority/creditworthiness of its issuer
- LOIs normally replace P&I cover
 - Claims arising as a direct result of accepting a LOI are likely to be subject to Club director's discretion
- LOI may not be enforceable if it facilitates dishonest conduct
- Careful consideration / drafting required

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SUMMARY

- Commercial function
- Legal function – the Golden Rules
- Particular problems with description
- P&I cover
- Where letters of indemnity may or may not help
- Checklist when using them – see LP publication

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THANK YOU

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