

Article 31

[Time of delivery]

The seller must deliver the goods:

- (a) if a date is fixed by or determinable from the contract, on that date; or
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or
- (c) in any other case, within a reasonable time after the conclusion of the contract.

PRIOR UNIFORM LAW

ULIS, articles 20, 21 and 22.

Commentary

1. Article 31 deals with the time at which the seller must fulfil his obligation to deliver the goods.
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2. Since the seller's obligation is to deliver at a certain time, he must hand over the goods to the carrier, place the goods at the buyer's disposal at the appropriate place as required by article 29 or do such other act as may constitute delivery under the terms of the contract at or by the time specified. Article 31 does not require that the buyer have taken physical possession on the date on which delivery was due or even have been in a position to take physical possession if, for example, delivery was made by handing over the goods to a carrier.

Delivery on fixed or determinable date, subparagraph (a)

3. If the date for delivery is fixed by or determinable from the contract, the seller must deliver on that date. The date for delivery is fixed by or determinable from the contract if it is fixed by or determinable from a usage made applicable to the contract by article 8.

Delivery during a period, subparagraph (b)

4. In international trade it is common for the date of delivery to be fixed in terms of a period of time. This is generally to allow the seller some flexibility in preparing the goods for shipment and in providing for the necessary transportation. Therefore, subparagraph (b) authorizes the seller to deliver goods "at any time within that period".

5. However, it should be noted that in some cases the parties may have modified their original agreement which called for delivery within a period by specifying a particular date for delivery, a date which might fall within or without the period of time originally specified. For instance, if the contract originally called for delivery in July, by subsequent agreement the seller may have agreed to deliver on 15 July. In such case delivery must be made on that date.

6. On occasion the provision in the contract or in an applicable usage that delivery must be within a specified period of time is intended to permit the buyer to arrange for carriage of the goods or to schedule the exact arrival time of the goods in order to fulfil his needs and not overtax his storage or handling capacity as those needs or capacity may be determined subsequent to the conclusion of the contract. Subparagraph (b) states, therefore, that the seller may not choose the exact delivery date if the "circumstances indicate that the buyer is to choose a date".

7. It should be noted that where the buyer is to choose the delivery date, the seller will need notice of that date in time to prepare the goods for shipment and to make any contracts of carriage he may be required to make under the contract of sale. If the buyer does not give such notice in adequate time, the seller would not be liable for his own non-performance to the extent he could prove that this lack of knowledge constituted an impediment beyond his control within the meaning of article 65 (1).

Delivery in all other cases, subparagraph (c)

8. In all other cases not governed by subparagraphs (a) and (b) the seller must deliver the goods within a reasonable time after the conclusion of the contract. What is a reasonable time depends on what constitutes acceptable commercial conduct in the circumstances of the case.

Early delivery

9. For the right of the buyer to take delivery or to refuse to take delivery of goods delivered before the date fixed, see article 48 (1) and the commentary thereto.

10. If the seller has delivered goods before the date for delivery, his right to remedy before that date any lack of conformity in those goods is governed by article 35. His right to remedy the lack of conformity after the date for delivery is governed by article 44.