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Update on INCOTERMS® 2020 Rules

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Incoterms[®] 2020 - The Update

The Content

- Why to choose the Incoterms[®] 2020
- What are the relevant changes in the Incoterms[®] 2020
- What Incoterms[®] 2020 to choose
- E-Group, F-Group, C-Group
- Insurance and risk management - Trader's insurable risks in a delivery
- D-Group
- Requirements for insurance

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Why to choose the Incoterms[®] 2020 ?

- Simplification of sales contract by international uniform understanding of sales terms
- Transfer of risk
- **Transfer of ownership**
- Payment obligations
- **Commencement of limitation period**
- **Commencement of warranty period**
- Transport obligations
- **Insurance**, export/transit/import clearance

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What are the relevant changes in the Incoterms[®] 2020 ?

- Complete overhaul of the internal order of the Incoterms: General Obligations, Delivery, Transfer of risks, Carriage, Insurance, Transport document, Clearance, Checking, Allocation of costs, Notices
- Different levels of insurance cover in CIF and CIP
- Changes in the three-letter initials from DAT to DPU
- Comply with transport-related security requirements
- FCA, DAP, DPU and DDP – seller's own means of transport – ready for unloading

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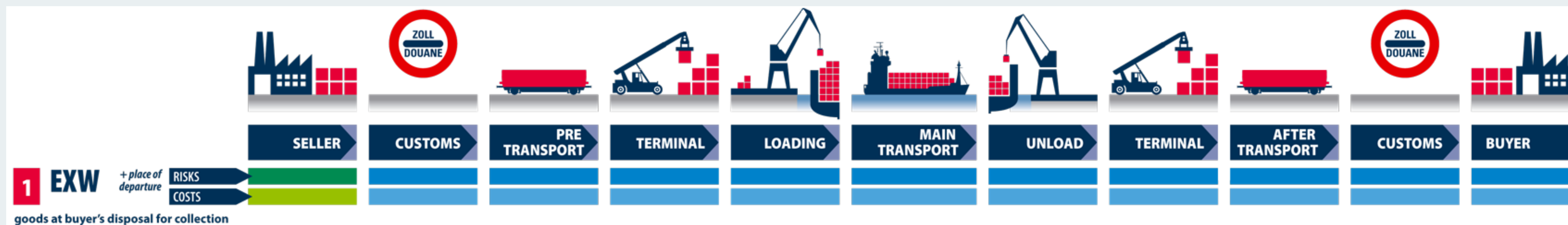
What Incoterms[®] 2020 to choose

- E-Group (EXW)
- F-Group (FCA – FAS – FOB) blue coloured = terms for
- C-Group (CPT – CIP – CFR – CIF) sea/inland waters transport only
- D-Group (DAP – DPU (Delivered at Place Unloaded) – DDP)

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E-Group: EXW = Ex Works

- Minimal number of seller's obligations
- Seller's obligation to place the goods at the disposal of the buyer at a named place (e.g. warehouse, terminal)
- Often the seller's premises



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E-Group: EXW = Ex Works

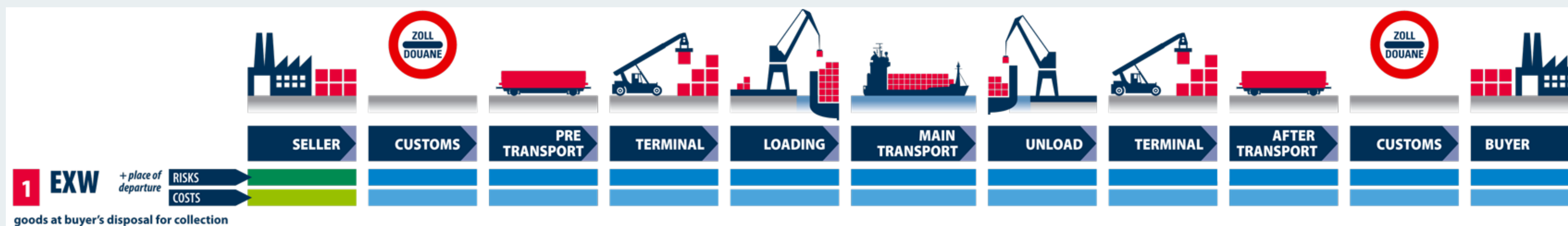
- Loading on means of transportation by buyer
- Buyer's obligation to take delivery at agreed time



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E-Group: EXW = Ex Works

- Transport to buyer's risk and expense
- Clearance and cargo insurance by buyer
- Buyer's obligation to provide seller with evidence of having taken delivery



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F-Group characteristics

- Seller's obligation to deliver the goods to the carrier of the "main transport" at his own risk and expense
- Place of delivery: premises of seller or any other place like "on board the vessel"
- "Pre"-transportation by seller to place of delivery could be necessary

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F-Group characteristics

- “Main transport” at buyer’s risk and expense
- Export clearance by seller
- Import/transit clearance by buyer
- Insurance for main carriage by buyer – no obligation

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C-Group characteristics

- Transportation of goods to the carrier of the “main transport” at seller’s risk and expense
- “Main transport” at buyer’s risk and seller’s expense
- Export clearance by seller
- Import/transit clearance by buyer
- Only CIP and CIF Incoterms[®] 2020 contain an obligation to insure

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C-Group: CPT = Carriage Paid To

- Seller's obligation to hand goods over to carrier of "main transport"
- Carrier of "main transport" must obtain custody of goods



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C-Group: CPT = Carriage Paid To

- Seller contract or procure a contract for the carriage of the goods
- No obligation to load container on to means of transport
- Suitable for container transport by sea



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C-Group: CPT = Carriage Paid To

- No obligation for either seller or buyer to procure cargo insurance for “main transport”
 - Buyer should, however, take out insurance



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C-Group: CPT = Carriage Paid To

- Seller's obligation to provide transport document if customary or on buyer's request
- Transport document must be negotiable, if customary or agreed



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C-Group: CIP = Carriage And Insurance Paid To

- Additionally to CPT-term obligation of seller to cover cargo insurance for “main transport”
- Cover provided by Clauses (A) of the Institute Cargo Clauses (LMA/IUA) or similar clauses unless agreed otherwise
- Enable person having an insurable interest (owner of cargo) to claim directly from insurer



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C-Group: CIP = Carriage And Insurance Paid To

- Additionally to CPT-term obligation of seller to cover cargo insurance for “main transport”
- If required by buyer, seller must provide at buyer’s cost additional cover such as cover complying with the Institute War Clauses and/or the Institute Strike Clauses unless such cover is included with the cargo insurance cover provided by Clauses (A) of the Institute Cargo Clauses or similar clauses



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Insurance and risk management - LMA and IUA

- Lloyd's Coffee Shop 1680 → today's insurance/reinsurance market
- Lloyd's Market Association (LMA)
- International Underwriting Association of London (IUA)
- Joint Cargo Committee
- Institute Clauses have a substantial market share (in cargo app. 70%)



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Requirements for insurance - Institute Cargo Clauses

- Institute Cargo Clauses A ('all risks' – exclusions)
- Institute Cargo Clauses B (named risks, including entry of sea, washing over board, total losses in cases where packing drops – exclusions)
- Institute Cargo Clauses C (named risks in situations where entire means of transport is confronted with a loss – exclusions)



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CFR/CIF contract

- CFR/CIF Incoterm[®] 2020 not appropriate for container cargo
- Container handed over at port terminal to ocean carrier
- Although handed over, seller bears risk until cargo is on board the vessel



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CFR/CIF contracts

- Using CFR/CIF Incoterm[®] 2020 for container cargo can make it difficult to determine whether damage occurred within seller's or buyer's sphere of responsibility



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C-Group: CFR = Cost And Freight

- Seller's obligation to load goods on to the ship
 - No obligation for either seller or buyer to procure cargo insurance for "main transport" - Buyer should, however, take out insurance
 - Seller's obligation to tender a usual and negotiable transport document (e.g. on board B/L)



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C-Group: CIF = Cost Insurance And Freight

- Additionally to CFR-term obligation of seller to cover cargo insurance for main carriage
- Minimum cover, the Clauses (C), of Institute Cargo Clauses (LMA/IUA)
- Enable person having an insurable interest (owner of cargo) to claim directly from insurer
- Limited cover (only situations where means of transport carrying goods suffers damage including general average)



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Requirements for insurance - Insurance amount under CIP and CIF

➤ Delivery risk

- Seller can not have insured the consequences of non-delivery including liquidated damages for delay or other contractual sanctions or remedies, a possible liability for consequential loss for the buyer etc.

➤ Price risk

- The buyer has to pay the price despite the fact that the goods have been lost or damaged, or have not arrived to the buyer after the delivery in time
- Buyer can have the price paid/payable covered +10% to cover the costs of compensatory purchases



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Insurance and risk management - Trader's insurable risks in a delivery

- Loss of the goods
- Damage to the goods
- Peril to the goods → general average
- Delay
- War
- Strikes
- Liability (damage from the goods as the shipper, product liability)
- Credit risks
- Political risks

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D-Group characteristics

- Maximum number of seller's obligations
- Transportation of goods including the “main transport” until place of delivery at seller's risk and expense
- Export/transit clearance by seller

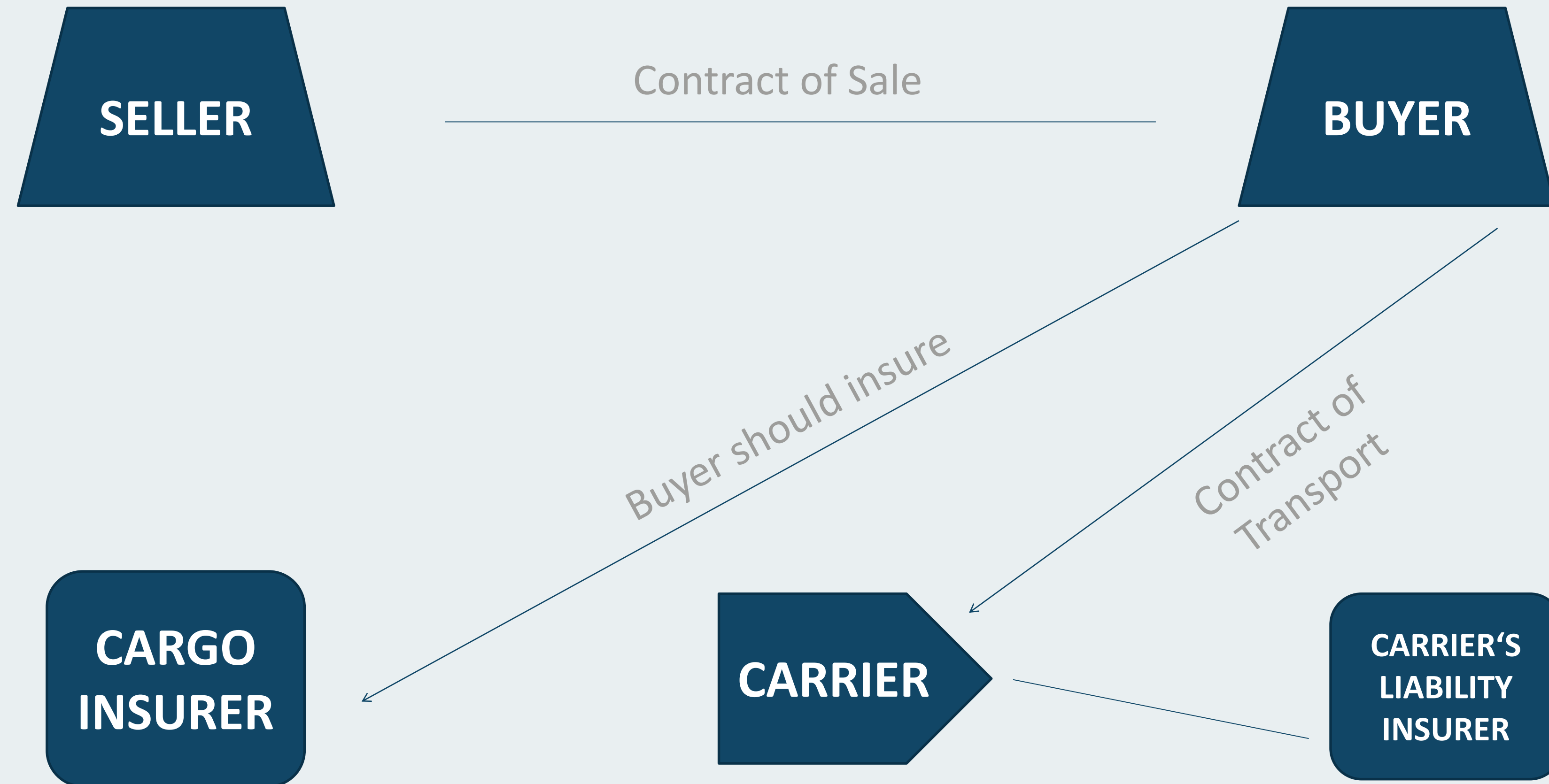
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D-Group characteristics

- No obligation for either seller or buyer to procure cargo insurance for “main transport”
 - Seller should, however, take out insurance
- Seller’s obligation to tender a document enabling the buyer to take delivery of the goods
 - B/L, waybill

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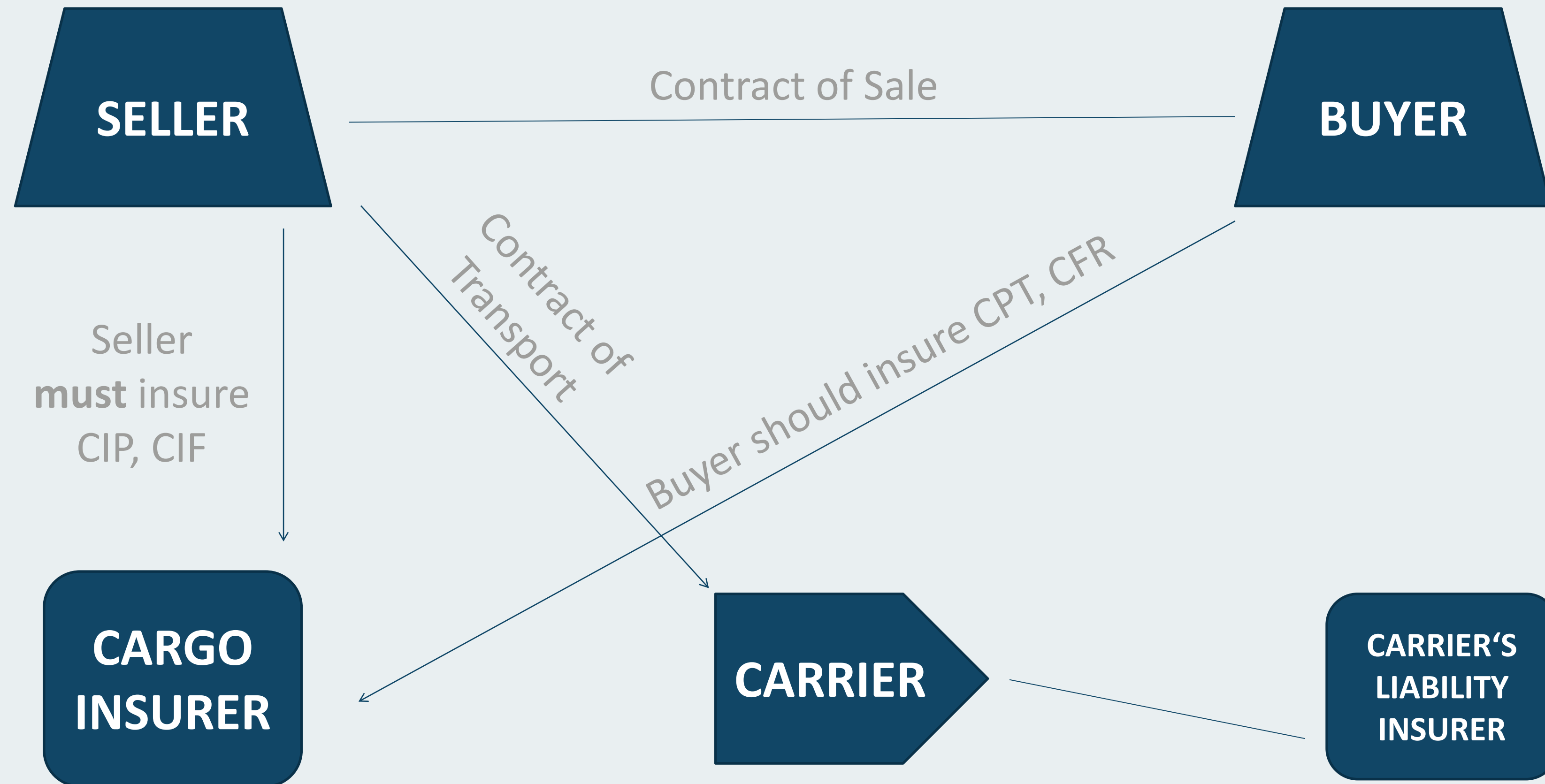
Requirements for insurance - EXW, FCA, FAS and FOB



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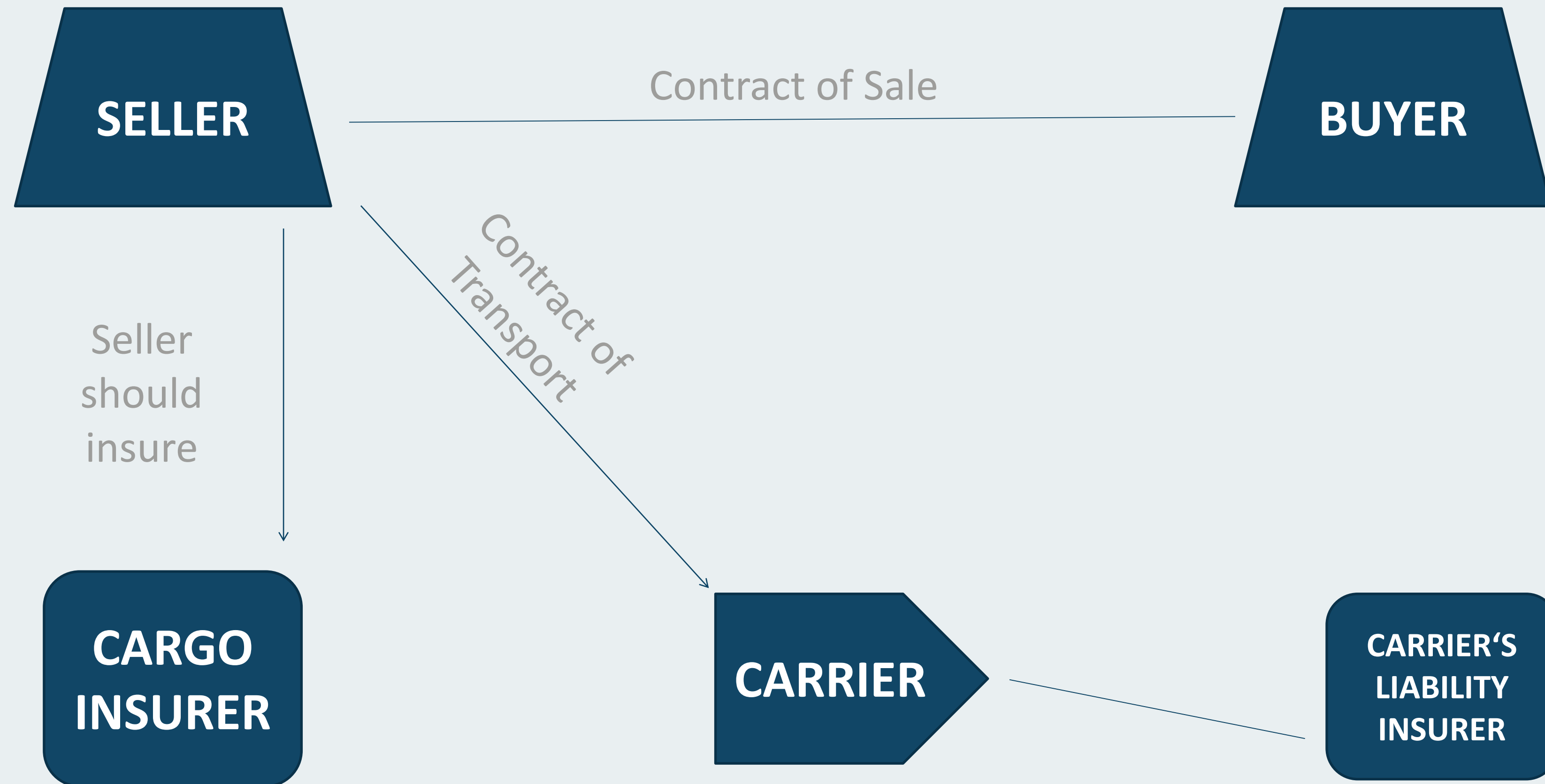
Requirements for insurance

CPT, CIP, CFR and CIF



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Requirements for insurance DAP, DPU and DDP



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What does Transport Law got to do with Incoterms[®] 2020?

- Contract for the carriage of the goods remains unaffected
- Consequence: Seller's/buyer's obligations and risks may not be compatible to consignor's/carrier's obligations and risks
- Not every Incoterm[®] 2020 sales contract is compatible with every Contract for the carriage of the goods

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Requirements for insurance - Cargo Insurance

- Both parties could insure, if there is need for additional cover
- Freight forwarders may help to procure insurance → insurance laws may be affected
- Some countries have limitations as to the nationality of the insurer
- Deductibles/franchises as thresholds and insurance techniques such as excess of loss, stop loss etc. can be used to tackle costs
- No cover for delay

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Requirements for insurance - Insurance

- Risk assessment
 - Nature of the goods
 - Conditioning and value
 - Quality of carrier and its mandatory liability
 - Transport mode and route

- Companies may decide to conclude a 'subscription' or 'global policy' covering all incoming and outgoing shipments due to overall need of cargo insurance

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Requirements for insurance - Supplementary insurance

- Institute War Clauses
- Institute Strike Clauses
- Seller's/Buyer's Interest Clause
- Debris Removal Clause
- Frozen Food Clause
- Nuclear Damage Non-Exclusion Clause

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Requirements for insurance - Insurance

- Liability of Carrier limited to maximum amount depending on applicable convention per mode of transportation (unless carrier acted reckless/with gross negligence/intent)
- Reservations on transport document made by carrier can result in refusal of carrier and its liability insurance to cover any loss
- Certain damages (e.g. delay) may not be taken into account
- Sellers/Buyers should always consider cargo insurance independent of liability of carrier

CURRICULUM VITAE

Dr. Oliver Peltzer LL.M. (Stellenbosch)

EXPERIENCE

Oliver Peltzer advises companies in the energy, maritime and transport industries and advises on the purchase and sale of companies and projects in the offshore, maritime, transport and aviation industries. Oliver Peltzer is regularly asked to act as arbitrator. Before joining Arnecke Sibeth Dabelstein, he worked for several years as a consultant to the venture capital industry and as head of the legal and risk management department at Volkswagen Logistics GmbH & Co. OHG. Oliver Peltzer is Vice Chairman of the International Chamber of Commerce (ICC) Trade Facilitation Commission.

EDUCATION

Senior Lecturer at the University of Hamburg in Law & Logistics (since 2011); CFA I and II (Chartered Financial Analyst) (2002-2003); Doctorate, University of Tübingen (1999); Legal clerkship in Berlin and Singapore (1995-1996); LL.M. in Stellenbosch/South Africa (1994); Studies in Berlin, Paris, Stellenbosch, Tübingen and Bonn (1988–1993)

TRACK RECORDS

M&A transaction involving the sale of the entire offshore wind section of a construction company, combined asset and share deal, transfer of various financing models, negotiation with a number of stakeholders

M&A transaction for the sale of a logistics project, seller due diligence, share deal, defense against unfounded claims by third parties, simultaneous signing and closing

Extensive and complex tender proceedings with several suppliers, preparation of contracts, negotiation with tenderers, contract signing

Support of a Chinese, listed company in the restructuring of numerous projects in the renewable energy industry

Several ICC arbitration proceedings



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ATTORNEY AT LAW (GERMANY), PARTNER

PRACTICE AREAS

MARITIME INDUSTRY, TRANSPORTATION,
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