

TRANSFER OF TITLE AND RISK OF LOSS

(Match Insurance to cover Ownership of goods)

At some point in the life of a transaction for the purchase of goods, the ownership of the goods passes from the seller to the buyer. Along with that transfer is also the transfer of risk of loss or damage to the goods.

In many contracts for the sale of goods, the parties involved do not express their intention as to when, how or under what conditions title to the goods is to be transferred. Title to the goods may not even be discussed in the negotiations. It is implicit or taken for granted. The parties are more interested in reaching agreement on matters such as price, quantity, quality, warranties, delivery schedule credit terms, discounts, and other important features.

Transfer of Title to goods which have been identified to the contract of sale passes from the seller to the buyer in any manner and on any conditions agreed upon by the parties to the contract of sale. The rule is: **Title to the goods passes when the parties intend it to pass**. Where parties have no explicit agreement as to the transfer of title, then title passes to the buyer;

- At the time the seller completes his performance relating to the delivery of the goods.
- At the time of shipment when the sale does not require the seller to deliver the goods to the buyer at destination.
- Upon tender of the goods to the buyer at destination, if the contract requires delivery at destination.
- Upon delivery of a document of title where the contract calls for delivery of such document without moving the goods.

Incoterms do not address transfer of title. Incoterms are concerned only with cost apportionment and delivery of the goods. However, once the goods have been identified to the contract of sale, the buyer assumes a special property in the goods. This special property gives the buyer an insurable interest in them even though in fact they may not conform to the contract of sale.

RISK OF LOSS

As a General rule, the risk of loss or damage to goods is borne by the person who is the owner at the time of the loss or damage. This is true in every case. Even where the buyer may have assumed risk of loss, the holder of title to the goods still bears risk of loss. There is nothing to prevent both the buyer and seller at the same time carrying insurance on goods in which they both have a property interest, whether it be Title, security interest or special property.

Transfer of Title is essential to a sale of goods. **Transfer of Title is not essential to the imposition of risk of loss to the goods**. Risk of loss may follow ownership of the goods but this is not necessarily so. Risk of loss may exist independently of ownership of the goods. A determination of whether Title to goods has been transferred continues to be important with respect to liability for taxes, duties, inventory management and its effect on the balance sheet. We strongly recommend that your questions be directed to your Attorney for a complete discussion of this important subject