



The F.O.B. Term of Sale, Part I: Just the Basics

In previous issues of PARCEL Counsel, we focused on the relationship between shippers and carriers, including, most recently, contracts for transportation services between a shipper and a carrier. In this issue, we will look at another aspect of the supply chain — the relationship between a seller (consignor) and a buyer (consignee). While the exact nature of the contractual arrangements between buyers and sellers are as varied as the buyers and sellers, the basic document is typically a Purchase Order or a Sales Order, which almost always will include a F.O.B. Term of Sale derived from the UCC.

UCC stands for the “Uniform Commercial Code.” The UCC is not a law but rather a “model act” that an individual state may use as a basis for its own statutes. It should also be noted that while the provisions of the UCC relating to terms of sale were removed from the model act itself in 2003, no individual state has repealed their laws based upon the prior provisions of the UCC.

F.O.B. stands for “Free on Board” and “is a delivery term under which

- ▶ (a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this article (section 2-504) and bear the expense and risk of putting them into the possession of the carrier; or
- ▶ (b) when the term is F.O.B. the place of destination, the seller must pay for, and stand the risk of, the transportation of the goods to that place and there tender delivery of them in the manner provided in this article (section 2-504).”

This means the term “F.O.B. Origin” or “F.O.B. Destination” in a Purchase or Sales Order will determine, unless otherwise agreed, the responsibility for the shipment of the goods, payment of freight charges, risk of loss and passage of title. These factors are summarized in the following chart.

In order to fully understand the obligations of a seller, one must also look to the section of the UCC referred to above — section 2-504. This section relates to the seller’s obligations when the term of sale is a “shipment contract,” i.e., “FOB Origin.” In such event the seller must:

Who’s Responsible?

TERM OF SALE	FREIGHT CHARGES PAID BY	RISK OF LOSS PASSES TO BUYER	PASSAGE OF TITLE
FOB ORIGIN	Buyer	When goods are delivered to carrier	AT ORIGIN
FOB DESTINATION	Seller	Completion of delivery by carrier	AT DESTINATION

- ▶“(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and
- ▶ (b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and
- ▶ (c) promptly notify the buyer of the shipment.”

Keep in mind that this language was adopted during a point in time when it was customary for the seller to make the arrangements for transportation even though the buyer would be the one paying the freight charges. This reflects the fact that prior to the 1980s, there was no such thing as a “national carrier,” so the seller would be most familiar with the local carriers who would begin the movement to destination through a series of one or more interline (interconnecting) carriers. And the air cargo industry was not yet off the ground.

So what responsibilities would a seller have today with respect to the shipping arrangements? If the seller and buyer have an agreement whereby the buyer has agreed to undertake the obligation of making the arrangements for the transportation, colloquially known as a Customer Pick-Up (CPU),

the seller would be relieved of its responsibilities under section 2-504, except for a duty to properly package the goods so as to withstand the rigors of the contemplated transportation.

In the absence of such an agreement, the seller must make a “reasonable” contract with the carrier to transport the goods. This means that the freight rate must be reasonable, that is, at or near the prevailing market rate. For air shipments, arrangements must be made for “excess value coverage” when the carrier’s package limitation is less than the value of the goods. It also means that the seller must ensure that the motor carrier they select does not have a limit of liability in its tariff that would be less than the value of the goods shipped.

This latter consideration was not of particular concern prior to 1996 because the Interstate Commerce Act imposed full liability on the carrier with a very limited number of exceptions, i.e., commodities for which the ICC had authorized released rates. However, with the passage of the Interstate Commerce Commission Termination Act, since 1996 most motor carriers have put into their tariffs substantial limits of liability. In the

event of a cargo loss where a buyer could not recover against the carrier because of a valid tariff limit, the buyer would then have a right to go after the seller pursuant to the seller’s obligation under the FOB Origin term of sale.

All for now! ■

BRENT WM. PRIMUS, J.D., is the CEO of Primus Law Office, P.A., the Senior Editor of transportlawtexts.com, and is the co-author of the text U.S. Domestic Terms of Sale and Incoterms 2000 and Uniform Commercial Code vs. Incoterms 2000. Previous columns, including those of William J. Augello, may be found in the “Content Library” on the PARCEL website (parcelindustry.com). Your questions are welcome at brent@transportlawtexts.com.