

THE LEGAL ASPECTS OF EXPORT CONTRACTS

Presented by the NEPC Legal Unit



WHAT IS AN EXPORT CONTRACT?

- An Export Contract is a consensus document between two parties who intend to go into export trade.
- It is also known as a Sales Contract.



HOW DO I GET AN EXPORT CONTRACT?

- Offer
- Acceptance
- Consideration
- Legal Relations



WHAT IS THE OBJECTIVE OF AN EXPORT CONTRACT?

- In an Export Contract, it basically spells out the duties and obligations each party owes each other.

NOTE: Your Sales Contract must be accurate, unambiguous, and must not be vague.

WHAT LAW APPLIES TO INTERNATIONAL CONTRACTS?

International Contract Law

United Nation Convention on Contracts for the International Sale of Goods

- Contracts for the International Sales of Goods were adopted by United Nations in 1980.
- 78 countries have adopted the UN convention of (CISG).
- CISG governs transactions and sales of goods globally.
- CISG, Deals with contracts formation, obligation of parties, balancing interest of both parties and provides a comprehensive set of remedies in case of non performance.



IS NIGERIA A CONTRACTING STATE?

- Unfortunately, Nigeria has not adopted the United Nations convention on Contracts for International Sales of Goods (CISG).
- However, CISG applies in lieu of the applicable domestic law, regardless of whether the State of the Forum is or not the contracting State.



Phytosanitary Certificate

Railway Receipt

Packing List

Inspection Certificate

Bill of Exchange



Delivery Note

Truck Receipt

Commercial Invoice



International Trade Documents

Certificate of Origin

Quality Certificate

Insurance Certificate



Bill of Lading



Analysis Certificate

Weight List Airway Bill

Sales / Purchase Contract

Fumigation Certificate





CIRCUMSTANCES / INSTANCES THAT VITIATES A CONTRACT

- ✓ Non performance of the buyer to pay the price at the agreed time
- ✓ Non performance of the seller to deliver at the agreed time
 - ✓ Lack of conformity

WHAT ARE THE CLAUSES OBTAINABLE IN AN EXPORT CONTRACTS?

- ✓NAME
- ✓PRODUCT STANDARD/
SPECIFICATION
- ✓QUANTITY
- ✓INSPECTION
- ✓TOTAL VALUE
- ✓TERMS OF DELIVERY
- ✓PACKAGING
- ✓TERMS OF PAYMENT
- ✓LICENSING AND PERMITS
- ✓INSURANCE
- ✓DOCUMENTS REQUIRED
- ✓DELAY IN DELIVERY
- ✓FORCE MAJEURE
- ✓APPLICABLE LAW
- ✓ARBITRATION
- ✓SIGNATURE

INCOTERMS

What are INCOTERMS?

- INCOTERMS - International Commercial Terms
- Published by the International Chamber Of Commerce
 - INCOTERMS are a ICC set of rules and guidelines that help facilitate international and domestic trade. They spell out the liability, responsibility of parties to a contract as related to cost, risk and tariffs in the movement of goods.
 - They define the different delivery points (11 INCOTERMS Rules) where the cost and risk is transferred from seller to buyer.

CATEGORIZATION OF INCOTERMS

- Based on contractual obligations, INCOTERMS can be divided into four categories E, F, C and D
- Category E - Departure, which contain EXW (Ex Works)
- Category F - Main Carriage Unpaid
 - FCA - (free Carrier)
 - FAS - (Free Alongside Ship)
 - FOB - (Free on Board)

CATEGORIZATION OF INCOTERMS : CONTD.

- Category C - Main Carriage Paid
 - CPT (Carriage paid to)
 - CIP (Cost And Insurance Paid To)
 - CFR (Cost and Freight)
 - CIF (Cost Insurance and Freight)
- Category D - Arrivals
 - DAP (Delivered at Place)
 - DDP (Delivered Duty Paid)
 - DPU (Delivered at Place Unloaded)

CATEGORIZATION BY MODE OF TRANSPORTATION

Any mode of transport

- EXW - EX WORKS
- FCA - FREE CARRIER
- CPT - CARRIAGE PAID TO
- CIP - CARRIAGE AND INSURANCE PAID
- DPU - DELIVERED AT PLACE UNLOADED
- DAP - DELIVERED AT PLACE
- DDP - DELIVERED DUTY PAID

Sea and inland water way transport

- FAS - FREE ALONGSIDE SHIP
- FOB - FREE ON BOARD
- CFR - COST AND FREIGHT
- CIF - COST INSURANCE AND FREIGHT

COMMONLY USED INCOTERMS

However, for most international freights, the commonly used terms of contract include the following:

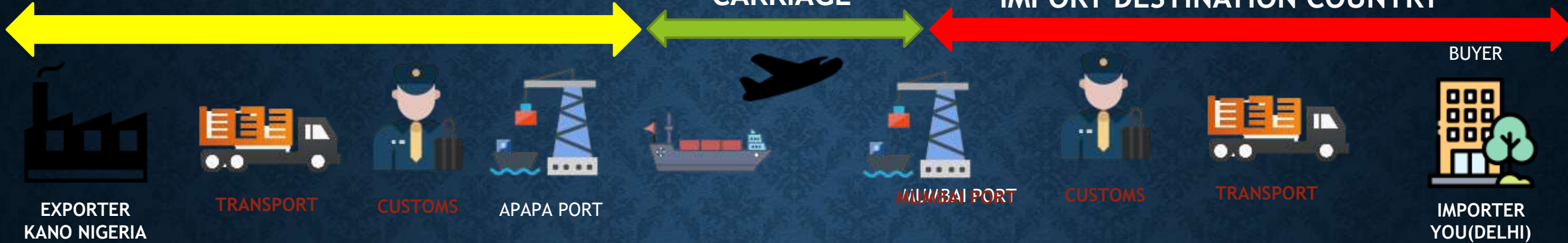
- EXW – EX Works
- FOB – Free on Board
- CFR – Cost and Freight
- CIF – Cost Insurance & Freight

EXW - EX WORKS

EXPORTCOUNTRY

CARRIAGE

IMPORT DESTINATION COUNTRY



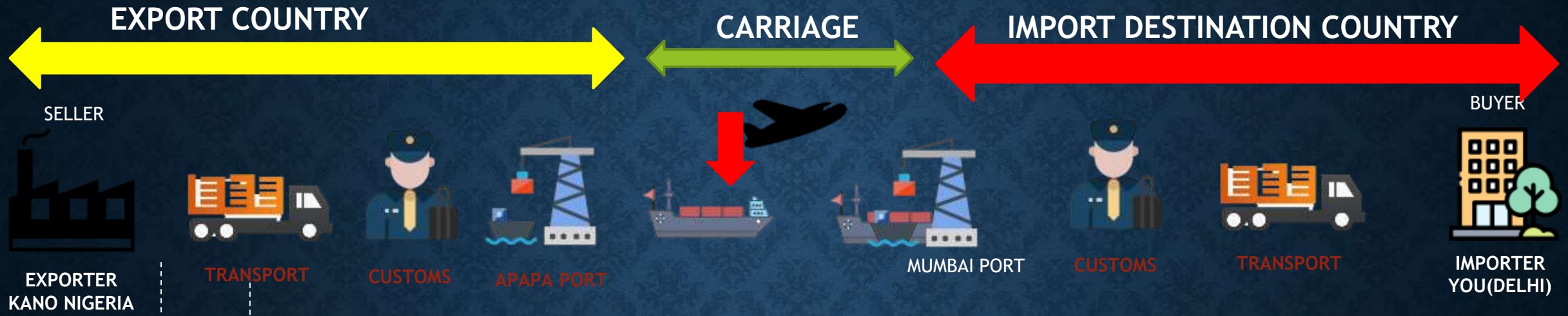
seller	Buyer
seller	Buyer
seller	Buyer

- Cost
- Risk
- Insurance

Under EXW, the seller makes the goods available to the buyer at the named place of delivery. Typically, this is a factory or warehouse where the buyer arranges for pickup and is responsible for the rest of the shipping journey.

- The seller is only responsible for having the goods packed and made available at the seller's premises only.
- It imposes only minimum obligations on the seller as they do not need to worry about the freight once it left their premises.

FOB - Free on Board



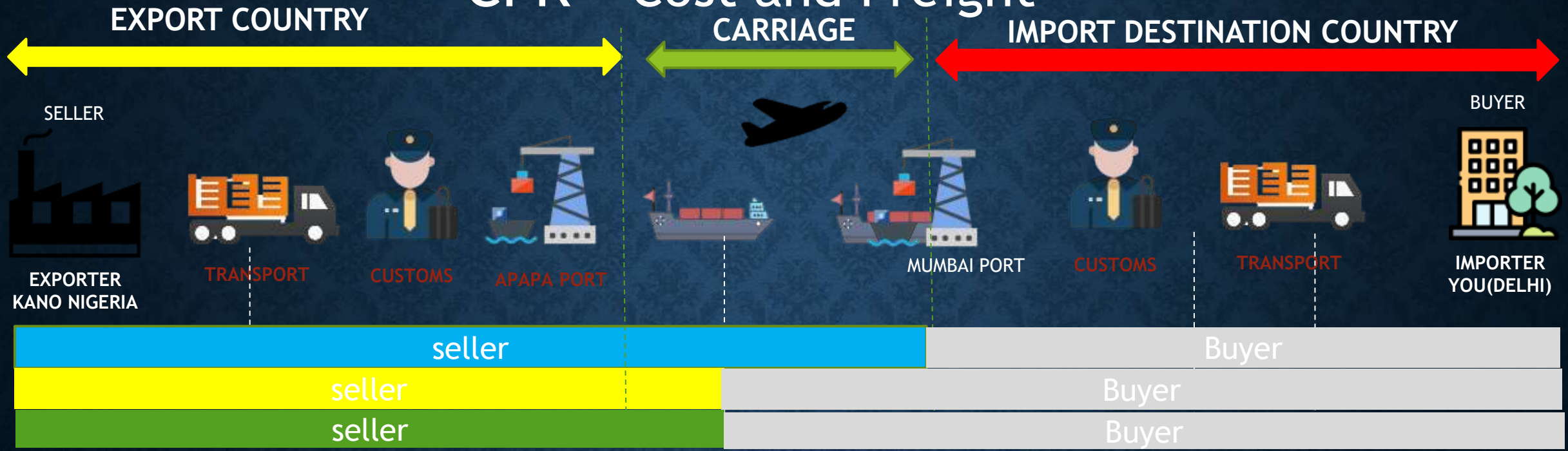
seller	Buyer
seller	Buyer
seller	Buyer

Under the FOB INCOTERMS, the goods are deemed to be delivered by the seller to the buyer when they are delivered on board the vessel nominated by the buyer at the named Port of shipment.

- The risks are shifted to the buyer once the goods are placed on board the ship.
- The seller clears the goods for export, not import.

■ Cost
■ Risk
■ Insurance

CFR - Cost and Freight

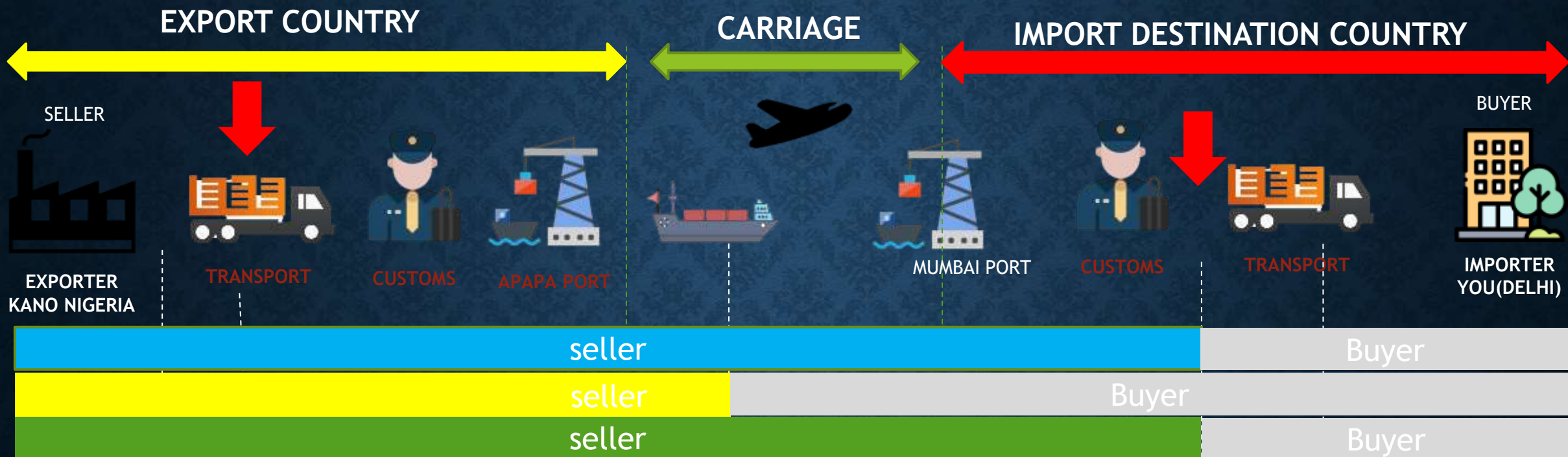


For CFR INCOTERMS, the seller has the obligations to deliver the goods to the buyer by placing them on board the vessel and procuring them to be delivered at the Port of destination.

- The risk of loss/damage is shifted to the buyer once the goods are placed on board the vessel.

- Cost
- Risk
- Insurance

CIF - COST INSURANCE & FREIGHT



This is an agreement to sell goods at a price inclusive of the cost of goods, insurance coverage and freight.

- The seller covers the cost of insurance and freight to a named Port of destination
- Risk is transferred when the goods have been loaded on the vessel
- CIF requires the seller to purchase min. insurance cover complying with institute cargo clauses © in the buyers name.

Cost
 Risk
 Insurance

HOW TO CHOOSE THE RIGHT INCOTERMS

- 1. The regulations of the buyer's country.
- 2. Standard practice
- 3. The agreed mode of transportation
- 4. Customer Service: one should use a competitive term which is suitable for buyer and seller and not only important for one party to get, maybe an advantage from that.



THANK YOU