

Sale and Storage of Goods in the Dominican Republic: Overview

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CONTRACTS FOR THE SALE OF GOODS

Legislative Framework

1. What domestic legislation and international rules apply to a sale of goods contract in your jurisdiction? Are standard international contractual terms commonly used?

Domestic Legislation

The Civil Code (*Código Civil*) is the main legislation governing civil and private sale of goods contracts in the Dominican Republic. However, the Commercial Code also governs sale of goods contracts and commercial transactions between entities.

The Civil Code sets out the rules and requirements that apply to contracts of a civil nature, including capacity requirements, rules on consent, substance and cause, extinction of obligations, and general rules on liability and consequences of a breach.

Most provisions of the Civil Code on sale of goods contracts are aligned with standard international rules.

Certain contracts are governed by complementary regulations (for example, distribution contracts are governed by Law No. 173-66 on the Protection of Import Agents), which has been amended with respect to Caribbean Community (CARICOM) and the Dominican Republic-Central America FTA (DR-CAFTA) countries.

The General Law No. 358-05 on the Protection of the Rights of Consumers and Users contains general regulations on consumer protection. It establishes a National Consumer Rights Protection Institute (known as Pro-Consumidor), a governmental agency that protects consumers from abuses.

International Rules

The Dominican Republic has signed and ratified the UN Convention on Contracts for the International Sale of Goods 1980 (CISG) and the Convention for the Unification of Certain Rules for International Carriage by Air 1999 (Montreal Convention).

It is not very common for Dominican Republic parties to designate the CISG as the law applicable to their transactions.

Standard Contractual Terms

The Dominican Republic's connection with global markets requires Dominican companies to be active in the field of international trade. Therefore, contractual parties in the Dominican Republic use international standard terms to facilitate transactions, including the International Chamber of Commerce (ICC) International Commercial Terms (Incoterms®) 2020.

Additionally, the International Private Law No. 544-14 allows parties to include an applicable law clause and terms relating to negotiation and liability.

Formation

2. What are the essential requirements to create a legally enforceable contract for the sale of goods?

Substantive Requirements

The requirements to create a legally enforceable sale of goods contract are as follows:

- The parties must have legal capacity to contract.
- The parties must give mutual consent.
- The seller must convey title to the goods.
- The goods must be determined, existing, and tradable.
- The sale must have a licit purpose.
- The price must be determined or determinable, expressed (in money) and real.

Formal Requirements

Contracts are formed by exchange of consent. Some exceptions apply for certain contracts, but not sales of goods. Therefore, a sale of goods contract can be made orally. However, a written contract, whether hardcopy or electronic, is recommended to provide evidence of the transaction. Any transaction in excess of USD1 requires written evidence (whether hard or electronic copy) (*Article 1341, Civil Code*).

Consumer contracts must:

- Be in writing (hard or electronic copy).
- Include the name and address of the supplier.
- Include a description of the goods or services provided.
- Set out the consumer guarantees and requirements relating to the goods.
- Not exclude the consumer's right to bring claims for breach of the contract.

(*General Law No. 358-05 on the Protection of the Rights of the Consumer or User.*)

To be equivalent to a written document, a contract in electronic form must contain an electronic signature or an electronic approval.

Under Law No. 126-02 for Digital Commerce, an electronic document has the same legal effects as a handwritten document and is admissible in litigation proceedings.

Some special laws require agreements to be in Spanish, such as General Law No. 358-05 on the Protection of the Rights of Consumers and Users and the General Health Law No. 42-01.

Additionally, regulations on food, beverages, cleaning products, and other items require consumer products to be labelled in Spanish.

Commercial agreements are commonly drafted in English when one of the parties is from a non-Spanish speaking country. In the event of litigation before a Dominican court or arbitration in Spanish, the contract and documents must be translated into Spanish by an appointed legal translator.

Price and Payment

3. If price provisions are not agreed by the parties, does local law impose requirements in relation to price (for example, the time, method and place of payment)?

The price must be determined in the contract or must be determinable. For example, the price is considered determinable if it is left to a third party's appraisal, or expressed by reference to the fair market price or daily price in the relevant market.

The parties are free to agree on the currency, time, method, and place of payment.

If the currency of payment is not determined, it may be difficult to establish that the contract was formally agreed, since the price is an essential element of a sale of goods contract. If there is a disagreement on currency, this may also mean that there was no agreement on price. However, a judge can determine the currency of the contract under the circumstances.

If the parties do not indicate the place or time payment, the price must be paid after delivery at the buyer's domicile (*Civil Code*) or at the main place of execution of the contract (*International Private Law No. 544-14*).

The parties are free to agree on responsibility for related costs.

Delivery

4. If delivery provisions are not agreed by the parties, does local law impose requirements in relation to delivery (for example, the time, method and place of delivery)?

If the contract does not indicate a place for delivery, delivery must be made at the place where the goods were located at the time of the sale, unless agreed otherwise (*Article 1247, Civil Code*). However, in a sale of future goods, delivery must be made at the place where the goods come into existence.

If there are no provisions on the time of delivery, the goods must be delivered within a reasonable time in the circumstances and in accordance with the practice for the type of goods in question.

Passing of Title and Risk

5. If not agreed by the parties, when does title to the goods pass to the buyer?

Unless the contract provides otherwise, ownership is transferred to the buyer after the parties have agreed on the price and goods, even if the goods have not been delivered or the price has not been paid (*Article 1583, Civil Code*). In sales of generic and uncertain goods, title passes when the goods are individualised or selected for the buyer.

6. Are retention of title clauses enforceable in your jurisdiction? If so, what are the requirements to create a legally enforceable retention of title clause?

Retention of titles clauses are enforceable in the Dominican Republic.

Articles 1947 and 1948 of the Civil Code expressly allow the insertion of retention of title clauses in deposit contracts.

In certain contracts, the seller is deemed to have title to the goods towards third parties until transfer of title is executed before the competent public authorities. This applies to:

- Vehicles, which must be registered with the Tax Administration (*Law No. 492-08*).
- Real estate, for which transfer of title must be registered with the Title Registry.

For example, the sale of a car is valid between the parties as soon as they reach an agreement, but must be recorded before the Tax Administration to be enforceable against third parties.

Alternatively, a creditor can take security over movable (intangible or intangible) assets, bank accounts, contracts, receivables, and so on under Law No. 45-20. However, the government and the authority that will administer the Electronic registry of guarantees over movable assets are working on drafting a regulation for the law to be effective.

Additionally, any party has the right to withhold performance of their obligations until the other party have complied with their obligations, provided that these are essential obligations that are directly related to the obligations withheld.

7. If not agreed by the parties, when does risk in relation to the goods pass to the buyer?

Unless otherwise provided in the contract, risk in relation to the goods passes to the buyer as soon as the parties agree on the price and goods (*Civil Code*). For generic goods, risk passes to the buyer as soon as the seller individualises the lot or cargo to be delivered to the buyer.

It is common to rely in Incoterms® for the passing of risk. The most used Incoterms® are EXW (Ex Works), FOB (Free on Board), and CIF (Cost, Insurance and Freight).

Enforcement and Remedies

8. What are the seller's obligations in relation to the description and quality of the goods?

The goods must meet the specifications agreed by the parties and provided by the seller (*Article 1243, Civil Code*). However, limited variations are tolerated in accordance with the principle of good faith. If specifications are not agreed, the seller must provide goods of common or standard quality (*Article 1246, Civil Code*).

If one of the parties is a final consumer, the goods must:

- Be of the expected quality for such goods.
- Be safe.
- Not pose a risk to the user's health or security.

Specific guarantees and quality requirements also apply to consumer contracts. All suppliers in the commercial chain can be held liable to consumers for defective goods, dangerous goods,

and fabrication defects (*General Law No. 358-05 on the Protection of the Rights of Consumers and Users*). The manufacturer and retail seller are both liable to consumers for defective products, even if the manufacturer is located outside the Dominican Republic.

The above rules also apply to sales of second-hand goods.

9. What are the main remedies and rules for losses and damages for breach of a sale of goods contract?

The main remedies for breach of a sale of goods contract are:

- Specific performance of the contract.
- Contract termination and compensations for damages.

Damages are available for:

- Direct losses.
- Loss of profits (loss attributable to the impossibility for the innocent party to carry out the expected business under the contract).

The innocent party can request the court to have the contract terminated and claim compensation. The non-breaching party does not have a legal duty to mitigate losses. However, if the damage is partly attributable to the fault of the innocent party, the amount of damages awarded will be lower.

The Dominican courts award damages based on evidence presented by the parties. The judge cannot grant more damages than what is claimed by the parties. However, the parties are free to agree on liquidated damages or penalties (amount and method of payment), provided that the agreement shows that each party was aware of the liquidated damages provisions.

The courts interpret the compensation provisions of Law No. 173-66 on the Protection of Import Agents in favour of local agents of foreign companies, unless the parties are nationals of a country member of the DR-CAFTA) or the CARICOM. However, the Supreme Court recently held that a choice of jurisdiction clause in an agency contract is valid despite the application of Law No. 173-66, but has not stated whether Law No. 173-66 or the law of the selected forum should apply.

10. What are the buyer's remedies for breach of a sale of goods contract?

The buyer can request either:

- Specific performance of the contract.
- Termination of the contract and compensations for damages.

See *Question 9*.

The buyer can agree to waive their right to claim remedies.

11. What are the seller's remedies for non-payment or late payment?

The seller can claim any one of the following remedies:

- Specific performance of the contract.
- Payment of the price and interest. If no interest is agreed in the contract, the court will determine the applicable interest rate.
- Foreclosure of the debtor's assets to collect an unpaid debt.
- Termination of the contract and compensation for damages.

Exclusion of Liability

12. Are exclusion clauses enforceable in your jurisdiction? If so, what are the requirements to create a legally enforceable exclusion clause?

Exclusion clauses are enforceable in the Dominican Republic. However, the Supreme Court has ruled that liability cannot be excluded for:

- Voluntary or fraudulent breach.
- Personal injury or physical damage to a human being.
- Breach of an essential obligation that is considered a serious fault.

Therefore, exclusion clauses can only relate to breaches that are considered a minor or simple fault.

The contract should clearly identify the parties' obligations to ensure that exclusion clauses are effective.

Choice of Law

13. Will local courts recognise a choice of foreign law in a sale of goods contract? Are there any mandatory local rules that apply, despite a choice of foreign law?

The local courts and arbitration international centres recognise and enforce a choice of foreign law in a sale of goods contract (*International Private Law No. 544-14; Commercial Arbitration Law No. 489-08*). However, the following laws will apply despite a choice of law:

- Local laws referring to public order and general social protection.
- Local laws applicable to foreclosure procedures and the administration of local assets.

14. If the parties do not make a choice of law, what rules determine the law applicable to a sale of goods contract?

If the parties do not make choice of law, the law of the place of performance of the contract will generally govern the contract. A court can take into account the circumstances and behaviour of the parties to determine the law applicable to a contract between parties residing in different countries (*International Private Law No. 544-14*).

Choice of Jurisdiction

15. Will local courts recognise a choice of foreign jurisdiction in a sale of goods contract? Are there any mandatory local rules that apply, despite a choice of foreign jurisdiction?

The local courts and arbitration centres recognise and enforce a choice of foreign jurisdiction in a sale of goods contract.

16. If the parties do not make a choice of jurisdiction, what rules determine the jurisdiction applicable to a sale of goods contract?

If the parties do not make a choice of jurisdiction, the jurisdiction will be determined in accordance with the behaviour of the parties during the life of the contract.

Arbitration

17. Are arbitration clauses commonly included in sale of goods contracts in your jurisdiction?

Since the approval of the Commercial Arbitration Law No. 489-08, arbitration clauses have been increasingly common in sale of goods contracts.

The Dominican Republic ratified the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) on 11 April 2002, and is a party to the Inter-American Convention on International Commercial Arbitration 1975.

STORAGE OF GOODS

18. How is title to goods in storage protected and evidenced? Are warehouse receipts recognized as documents of title in your jurisdiction?

There are no local regulations governing title over goods in storage in the Dominican Republic. The only regulations relating to ownership of such goods are those that apply to supervised storage facilities pending payment of import taxes and customs duties.

The general rule under the Civil Code is that the holder of a merchandise is considered the owner. Therefore, warehouses and depositors of goods must enter into a contract of deposit. To be valid, a contract of deposit must be in writing (hardcopy or electronic) and requires consent of the parties and physical delivery of the goods. Goods must also be stored in compliance with the rules of the Tax Administration and be declared by the depositor for tax purposes.

Warehouse receipts are not considered documents of title. To transfer ownership, an invoice or sale contract is needed. The invoice or sale contract must also be declared to the Tax Administration.

19. What conditions and formalities must warehouse receipts comply with?

See *Question 18*.

Warehouses do not require a licence or authorisation unless they operate in a regulated sector (for example, health or fuel). However, fiscal warehouses (for goods pending payment of customs duties) must be authorised by the Customs Authority under the Customs Law No. 168-21.

20. Are other interests over goods in storage recognised?

Goods in storage are subject to the terms of the deposit contract.

If the contract of deposit is silent, the depositor must compensate the warehouse for the full maintenance costs of the goods. The warehouse has a legal privileged credit over the stored goods and can foreclose them in the event of default, in accordance with the legal procedures for standard foreclosure.

A creditor can also be granted a pledge or chattel pledge over the goods, which will serve as guarantee and allow foreclosure in the event of non-payment.

REFORM

21. Are there impending developments or proposals for reform of national legislation affecting sale of goods contracts and/or storage of goods in your jurisdiction?

Law No. 45-20 relating to guarantees over movable assets was enacted in 2020. However, it is not yet applicable as its implementing regulation has not yet been issued by the President and the authority that will administer the electronic registry of guarantees for movable assets has not been created.

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- Assisted the Ministry of Commerce of the Dominican Republic in the DR-CAFTA negotiation rounds with the US Government.
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- Advised hotel chains and commercial real estate developers on corporate and financing matters.

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