

**International Trade Law:
Applied international trade law
Academic Year 2012-2013
ICC INCOTERMS 2010 EDITION**

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[Macerata],
[18-19 April 2013]**

University of Macerata

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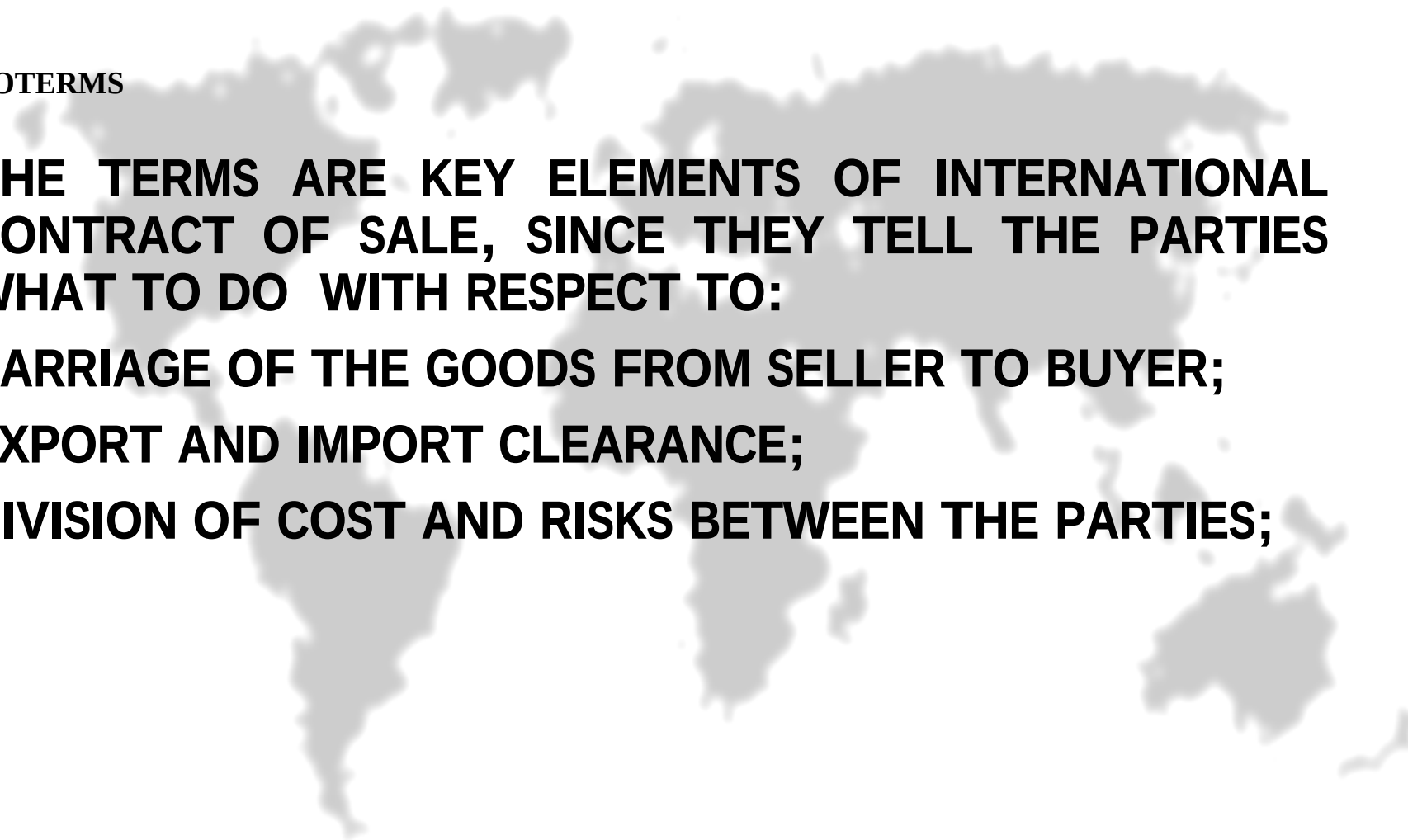
Mr. Giuseppe De Marinis

**International Commercial Terms
Incoterms 2010 ICC**



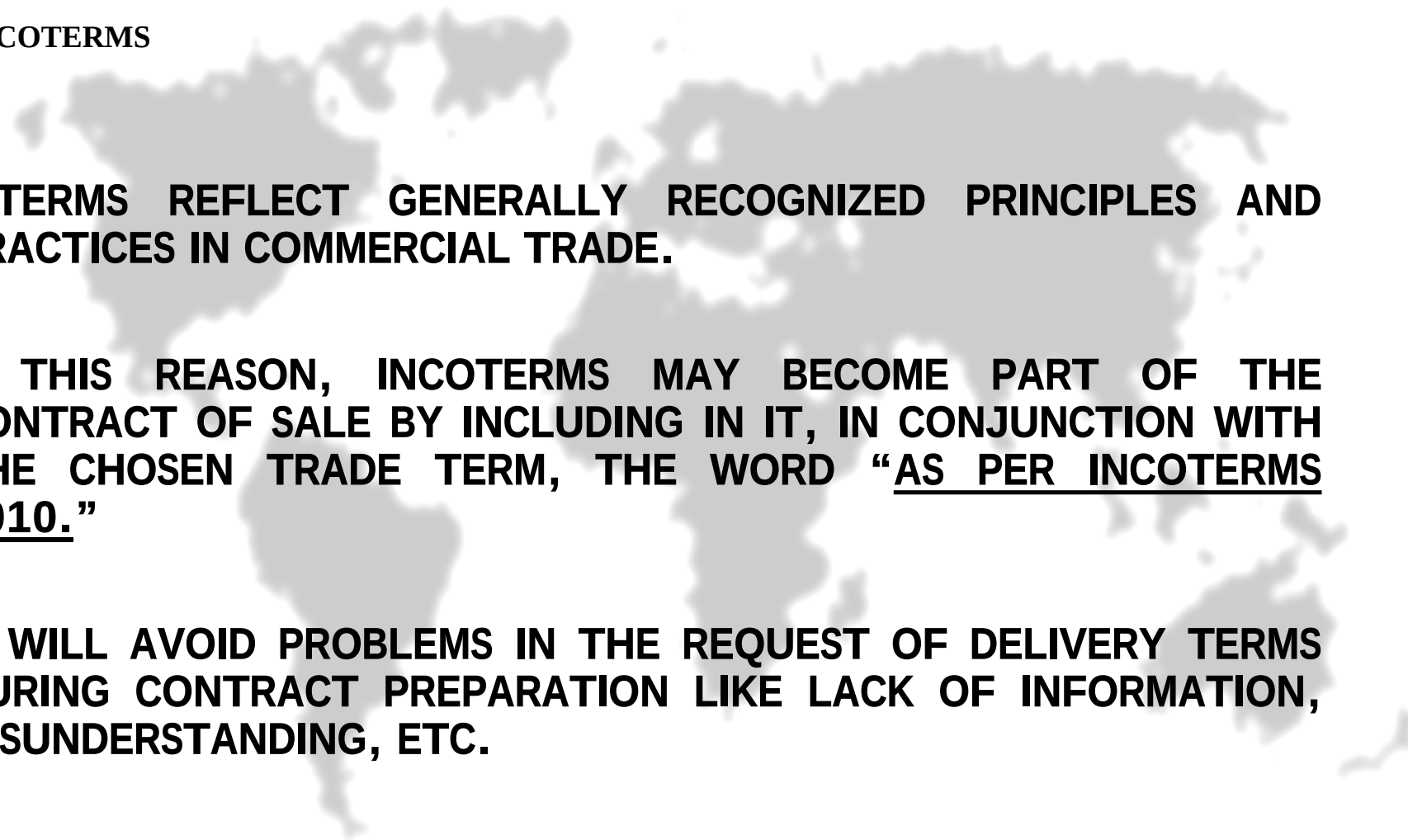
INCOTERMS

- **INCOTERMS ARE A SET of INTERNATIONAL TERMS/RULES ESTABLISHED BY ICC (INTERNATIONAL CHAMBER of COMMERCE) FOR INTERPRETATION OF TRADE TERMS USED IN FOREIGN TRADE.**



INCOTERMS

- **THE TERMS ARE KEY ELEMENTS OF INTERNATIONAL CONTRACT OF SALE, SINCE THEY TELL THE PARTIES WHAT TO DO WITH RESPECT TO:**
 - ⇒ **CARRIAGE OF THE GOODS FROM SELLER TO BUYER;**
 - ⇒ **EXPORT AND IMPORT CLEARANCE;**
 - ⇒ **DIVISION OF COST AND RISKS BETWEEN THE PARTIES;**



INCOTERMS

INCOTERMS REFLECT GENERALLY RECOGNIZED PRINCIPLES AND PRACTICES IN COMMERCIAL TRADE.

FOR THIS REASON, INCOTERMS MAY BECOME PART OF THE CONTRACT OF SALE BY INCLUDING IN IT, IN CONJUNCTION WITH THE CHOSEN TRADE TERM, THE WORD “AS PER INCOTERMS 2010.”

THIS WILL AVOID PROBLEMS IN THE REQUEST OF DELIVERY TERMS DURING CONTRACT PREPARATION LIKE LACK OF INFORMATION, MISUNDERSTANDING, ETC.

INCOTERMS (cont.)

- **INCOTERMS ARE ACCEPTED WORLD-WIDE;**
- **REVISED IN 2010 TO TAKEN INTO COSIDERATION CHANGES IN TRASPORTATIONS SINCE LAST ISSUE;**

INCOTERMS (CONT.)

THE ICC GUIDE TO INCOTERMS EXPLAINS IN DETAIL EACH TRADE TERMS

IN ADDITION TO THE OFFICIAL DEFINITION, THE GUIDE GIVES, FOR EVERY TERM, VERY USEFUL EXPLANATORY NOTES DIVIDED IN TWO PARTIES:

- **THE SELLER'S OBLIGATIONS**
- **THE BUYER'S OBLIGATIONS**



INCOTERMS (CONT.)

**INCOTERMS COVER THE SHIPMENT OF THE GOODS BY THE
MAJOR TRANSPORT METHODS:**

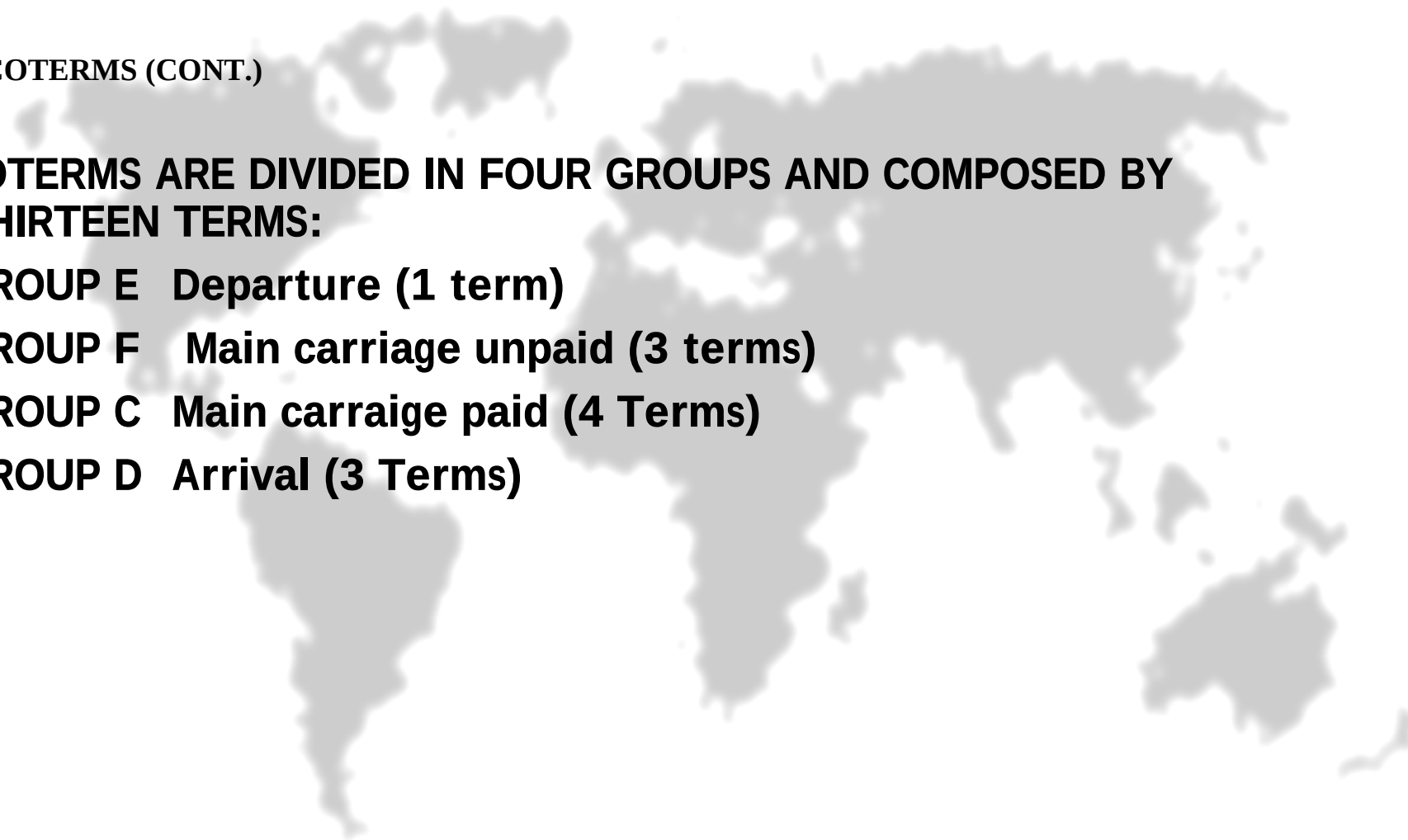
- **RAIL**
- **ROAD**
- **SEA**
- **AIR**
- **INLAND WATERWAY**
- **MULTI-MODAL (COMBINATION)**



INCOTERMS (CONT.)

INCOTERMS ESTABLISH THE TRANSFER OF LEGAL RESPONSIBILITY FROM THE SELLER TO THE BUYER AT *NAMED POINT* IN CASE OF:

- **DAMAGE OR LOSS**
- **DELIVERY PERIOD**



INCOTERMS (CONT.)

INCOTERMS ARE DIVIDED IN FOUR GROUPS AND COMPOSED BY THIRTEEN TERMS:

- **GROUP E Departure (1 term)**
- **GROUP F Main carriage unpaid (3 terms)**
- **GROUP C Main carriage paid (4 Terms)**
- **GROUP D Arrival (3 Terms)**

INCOTERMS (CONT.)

GROUP E

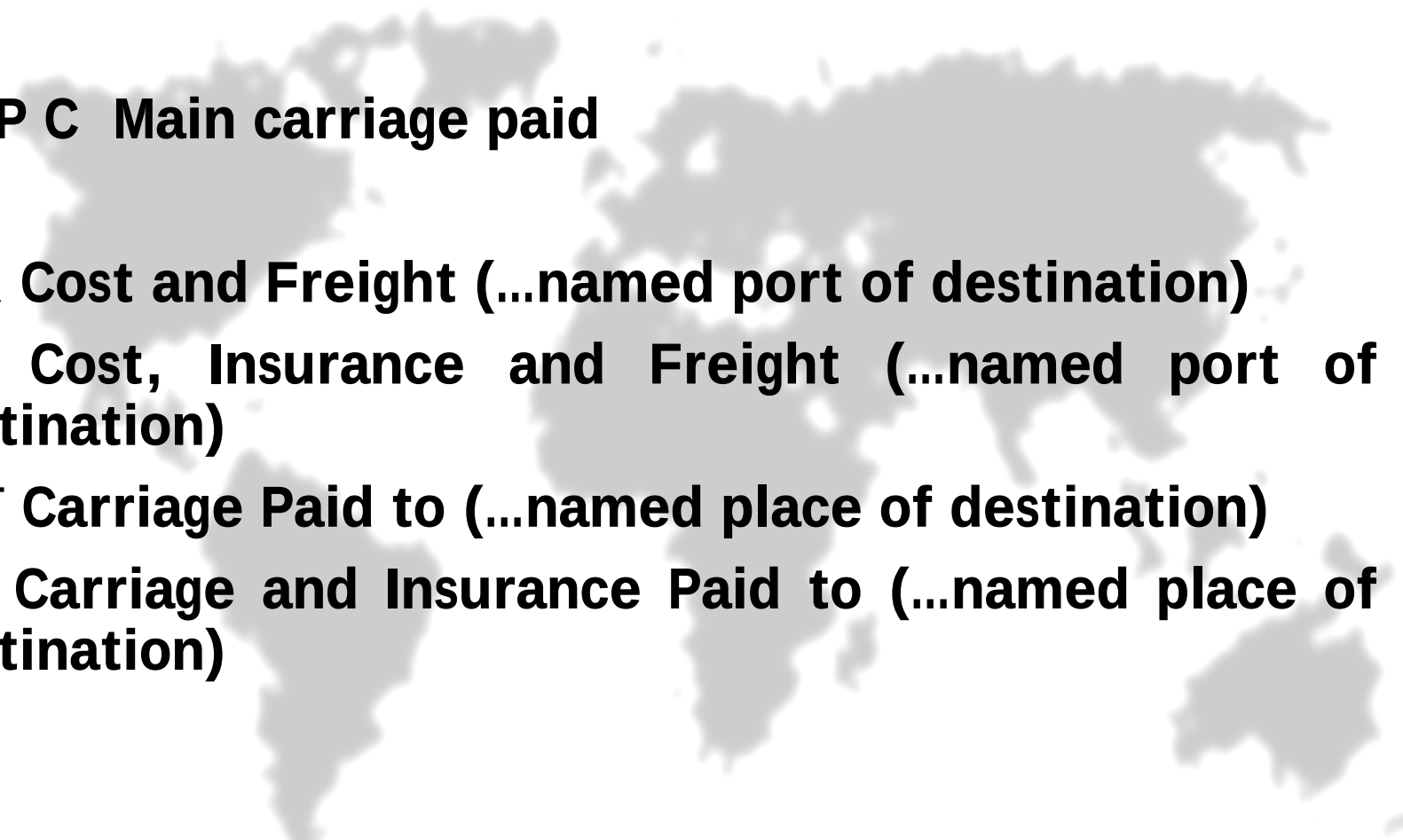
Departure

EXW (...named place)

GROUP F

Main carriage unpaid

- **FCA: Free Carrier (...named place);**
- **FAS: Free Alongside Ship (...named port of shipment;**
- **FOB: Free on Board (...named port of shipment).**



GROUP C Main carriage paid

- **CFR Cost and Freight (...named port of destination)**
- **CIF Cost, Insurance and Freight (...named port of destination)**
- **CPT Carriage Paid to (...named place of destination)**
- **CIP Carriage and Insurance Paid to (...named place of destination)**

.)

INCOTERMS (CONT

GROUP D ARRIVAL

- **DAT Delivered at Terminal (...named place);**
- **DAP Delivered et Place (...named port of destination);**
- **DDP Delivery Duty Paid (...named place of destination);**

AVVERTENZE

- I. Nella presente Tavola, in cui sono rappresentate schematicamente le condizioni di resa delle merci secondo le 11 Regole degli Incoterms® 2010, la voce "spese" comprende sempre, salvo diversa precisazione, le spese di trasporto. L'**EXW** comporta il livello minimo, e il **DDP** il livello massimo, di obbligazioni per il venditore. Nell'**EXW**, il venditore deve solo mettere la merce a disposizione del compratore nei propri locali o in altro punto convenuto. Nel **DDP**, il venditore deve sdoganare la merce sia all'esportazione sia all'importazione nel Paese di destinazione e deve anche provvedere al suo trasporto sino al "luogo di destinazione convenuto" ove avviene la consegna, con conseguente trasferimento dei rischi; tale luogo può essere situato anche in un qualsiasi punto interno del Paese di destinazione. Tutto ciò vale anche per il **DAP**, fatta eccezione, ovviamente, per lo sdoganamento all'importazione, che è a carico dell'importatore. Anche nel **CPT** e nel **CIP** il "luogo di destinazione" (e nel **CFR** e nel **CIF** il "porto di destinazione") può trovarsi all'interno del Paese di destinazione; però, in queste ultime quattro Regole la consegna avviene "alla partenza", rimettendo la merce al vettore (o primo vettore) e il venditore sopporta il costo (ma non il rischio) per il trasporto della merce a destinazione.
- II. I rischi di perdita o di danni alla merce passano dal venditore al compratore al momento della consegna; se il compratore - o il vettore o altro soggetto che agisce per suo conto - non prende in consegna la merce nel tempo e nel luogo convenuto o se il compratore non dà al venditore, in tempo utile, le istruzioni di cui questi abbisogna per provvedere alla consegna, i rischi che la merce può correre a partire dalla data (o data ultima) prevista per la consegna ed ogni onere supplementare a carico della merce gravano sul compratore in ogni condizione, però, che la merce sia stata individuata quale merce oggetto del contratto.
- III. Il venditore è tenuto ad assicurare la merce solo nelle Regole **CIF** e **CIP**, secondo quanto prescritto in tali Regole; venditore e compratore possono, ovviamente, pattuire una copertura più ampia di quella prevista nelle predette due Regole; possono anche provvedere, ciascuno per proprio conto, ad assicurare la merce per la tratta di rischio di rispettiva spettanza, qualunque sia la Regola utilizzata.
- IV. Nelle Regole **CPT** - **CIP** - **DAP** - **DDP** - **CFR** - **CIF** le spese di scaricazione sono a carico del compratore. Esse invece gravano sul venditore se inserite nel contratto di trasporto, da questi stipulato a sue spese.

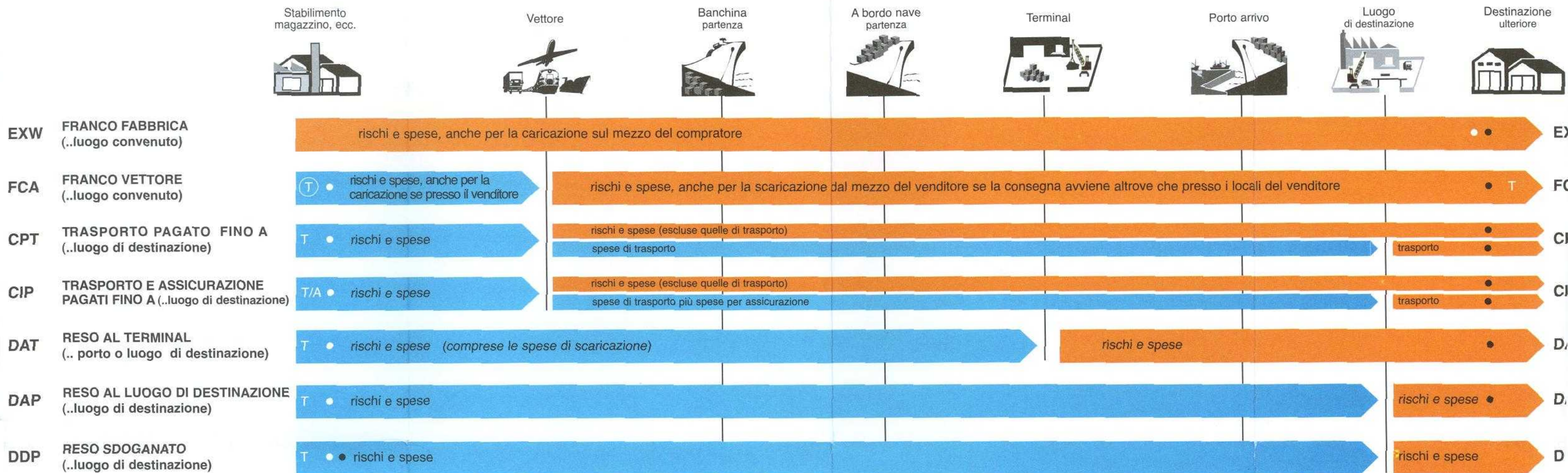
Obbligazioni del

VENDITORE

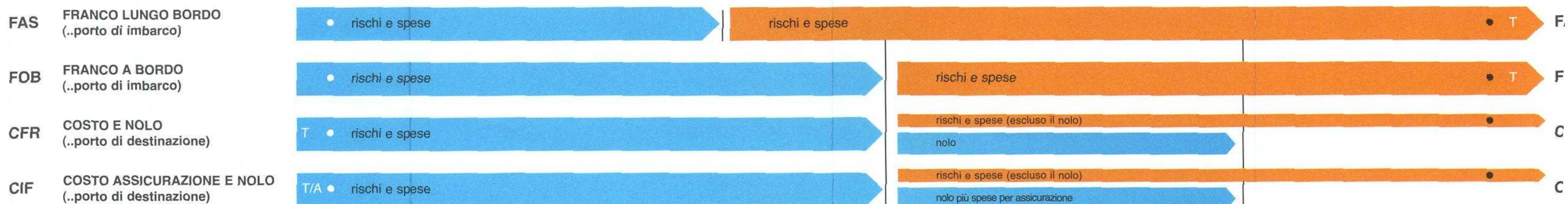
REGOLE PER QUALUNQUE MODO DI TRASPORTO

Obbligazioni del

COMPRATORE



REGOLE SOLO PER IL TRASPORTO MARITTIMO E PER VIE D'ACQUA INTERNE



T indica l'obbligazione di stipulare il contratto di trasporto
 T indica la facoltà di stipulare il contratto di trasporto
 A indica l'obbligazione di stipulare il contratto di assicurazione

• indica l'obbligazione di provvedere allo sdoganamento delle merci all'importazione
 ○ indica l'obbligazione di provvedere allo sdoganamento delle merci all'esportazione

VARIANTI - Le Regole "Incoterms® 2010" non forniscono suggerimenti in merito alla formulazione specifica di varianti rispetto alla singola Regola utilizzata (ad es., se le parti vogliono modificare la Regola **FOB** aggiungendo lo stivaggio a bordo).

EX WORKS (EXW)

- **GROUP E EXW Ex work
DEPARTURE**

The buyer or his agent must collect the contract goods at the place where the seller's works, factory, warehouse or store are situated. With this in mind, the buyer will have to arrange by himself, or through agents, the collection of the goods by a land carrier to be conveyed to a sea port, airport or railhead so that in pursuance of a further contract for transport of the goods, they may be carried to the country of destination.

Ex Works (cont.)

- **Insurance will also need to be arranged as the buyer will bear the risks of loss or damage to the goods from the time of their delivery to him.**



EX WORKS (cont.)

The seller is required to:

- **Supply conforming goods**
- **Supply the invoice and any documents confirming conformity**
- **Deliver goods to buyer by placing them at the buyer's disposal and at the time agreed**
- **Pay any costs incidental to placing the goods at the buyer's disposal**
- **Provide any assistance requested by the buyer in respect of obtaining documents facilitating export.**

Ex Works (cont.)

- **The buyer is required to:**
 - **Accept delivery of and pay for the goods**
 - **Obtain appropriate licences, authorisations for the export of the goods, and comply with customs formalities, whether in the country of delivery or in the exporting country or in a country of transit;**
 - **Pay any costs incidental to the exportation of the goods...**

FCA

Cost: Free Carrier (...named place)

This term is used frequently when goods are to be transported by container whether by ship, rail, road or a combination of them. It is similar to F.O.B. term; The seller fulfills his obligations when he delivers the goods into the custody of the carrier at the named point.

The risks of loss or damage is transferred at that point.

FCA (cont.)

The seller is required to:

- **Supply conforming goods;**
- **Supply the invoice and any documents conforming conformity which have been agreed by whatever means have been agreed, including electronic communication;**
- **Deliver the goods to buyer by placing them in the charge of the carrier named by the buyer at the place agreed for delivery in the manner agreed;**

FCA (CONT.)

- **Obtain any export licence or other official authorization necessary for the export of the goods if required to do so and pay any taxes, fees and charges associated with exportation.**
- **Bear all costs payable in respect of the goods until delivery.**

FCA (CONT.)

- **Provide at his own expense the customary packing of the goods.**
- **Give the buyer without delay appropriate notice of the delivery of the goods.**
- **Assist the buyer in obtaining the contract of carriage and or insurance if agreed.**

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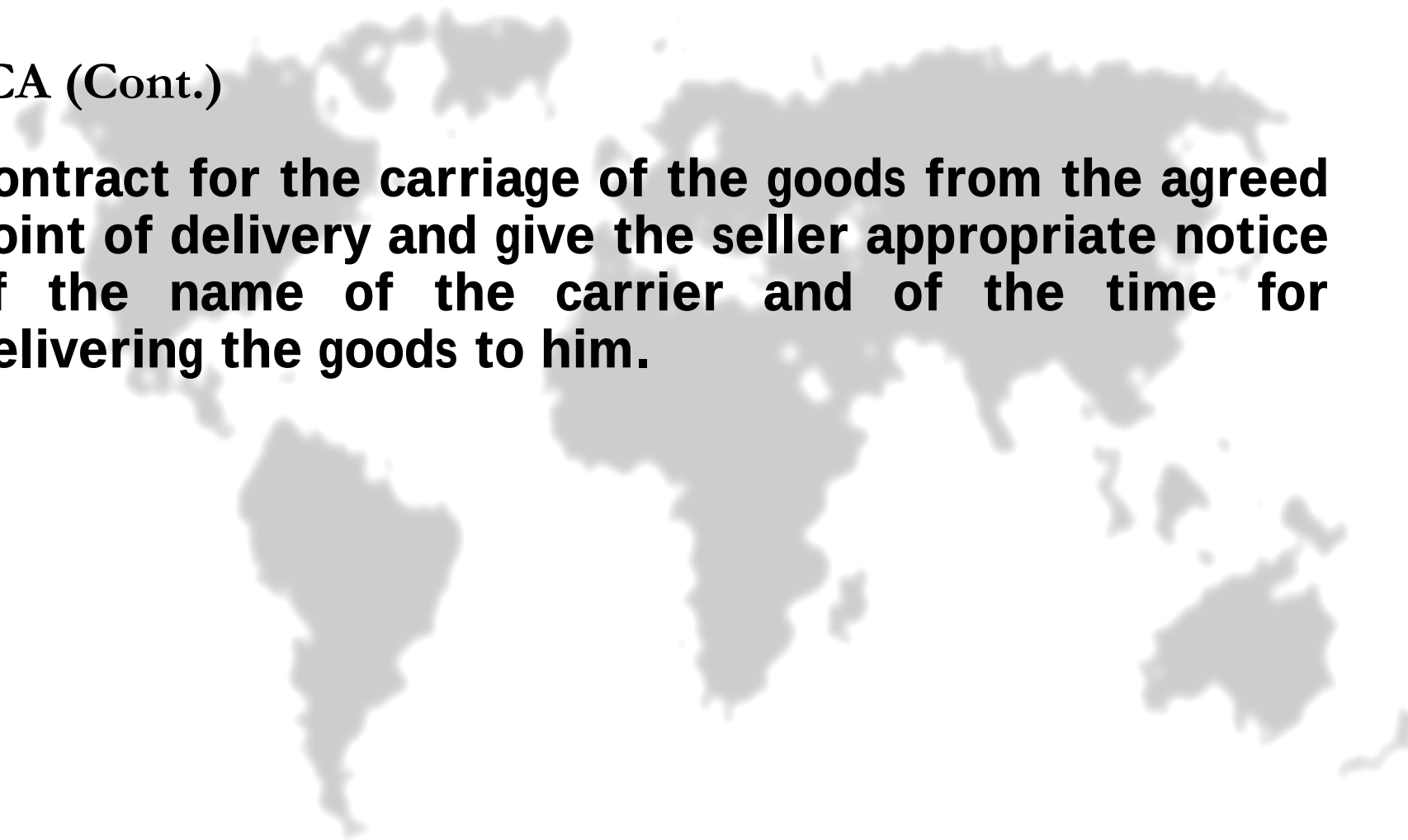
FCA (Cont)

The buyer is required to:

Accept delivery of and pay for the goods;

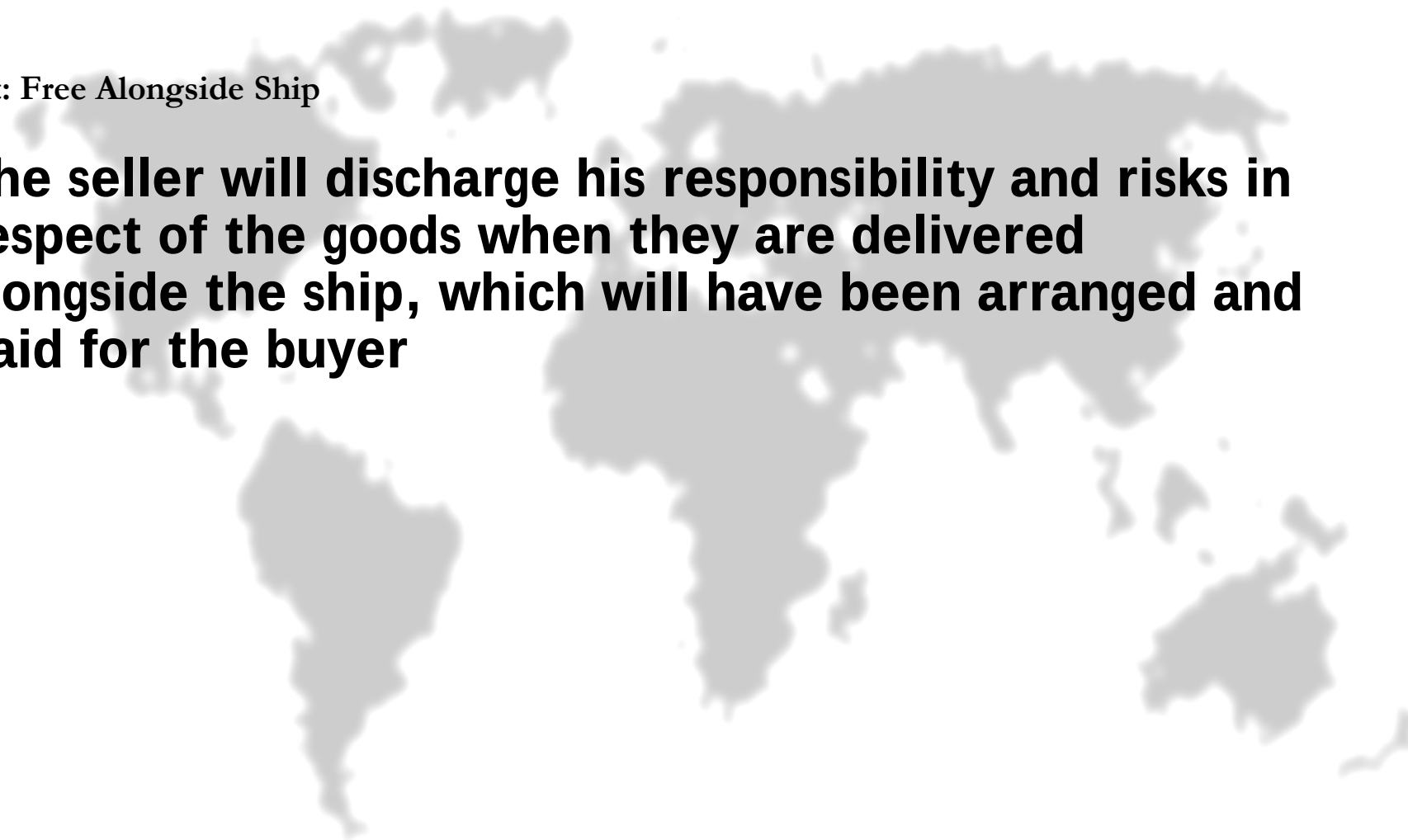
FCA (Cont)

- **Obtain appropriate licences, authorisations for the export of the goods, and comply with customs formalities, whether in the country of delivery, in the exporting country or in a country of transit;**
- **Pay any costs incidental to the exportation of the goods and any costs incurred by the seller in giving any assistance which has been requested by the buyer**



FCA (Cont.)

- **Contract for the carriage of the goods from the agreed point of delivery and give the seller appropriate notice of the name of the carrier and of the time for delivering the goods to him.**



FAS

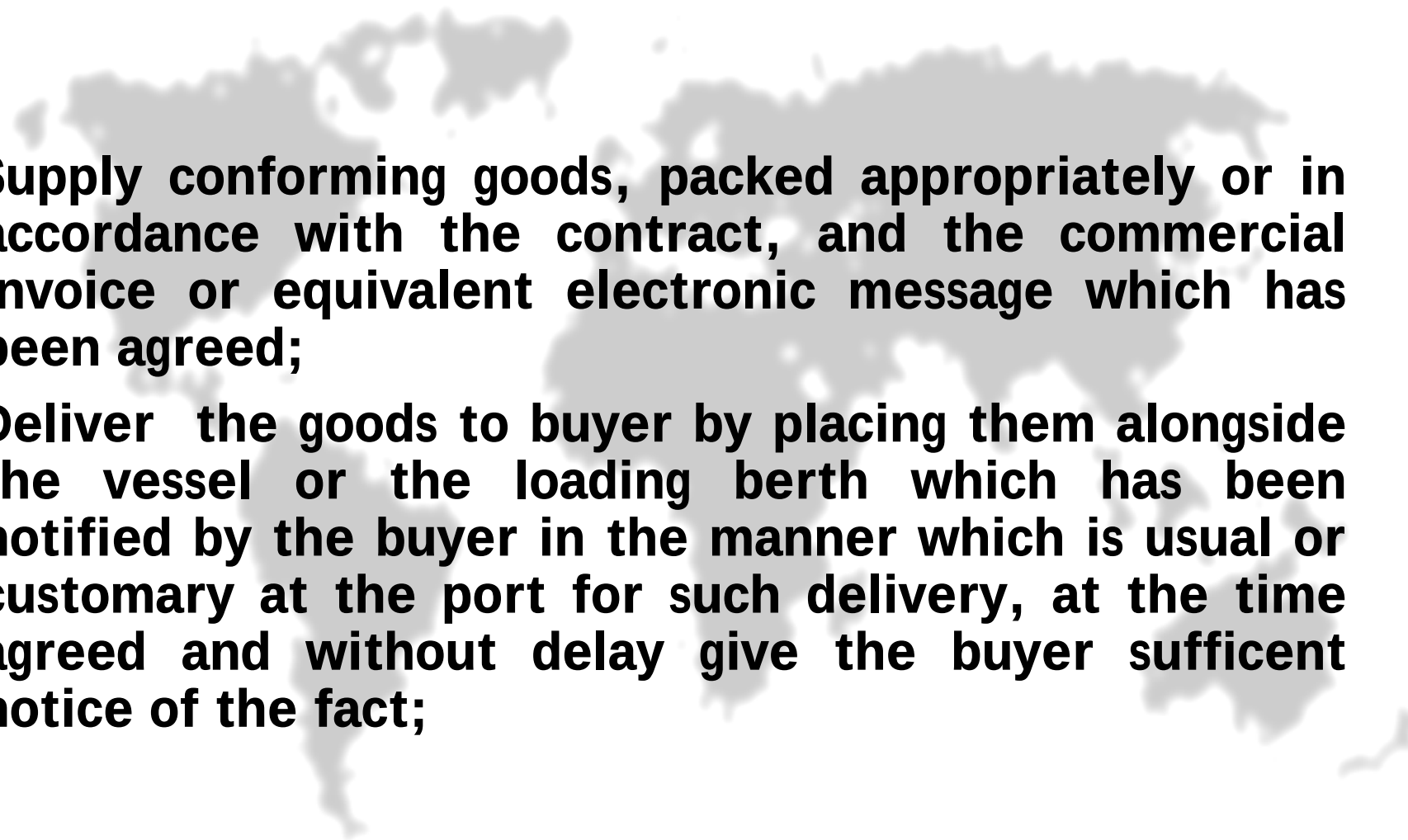
Cost: Free Alongside Ship

- **The seller will discharge his responsibility and risks in respect of the goods when they are delivered alongside the ship, which will have been arranged and paid for the buyer**

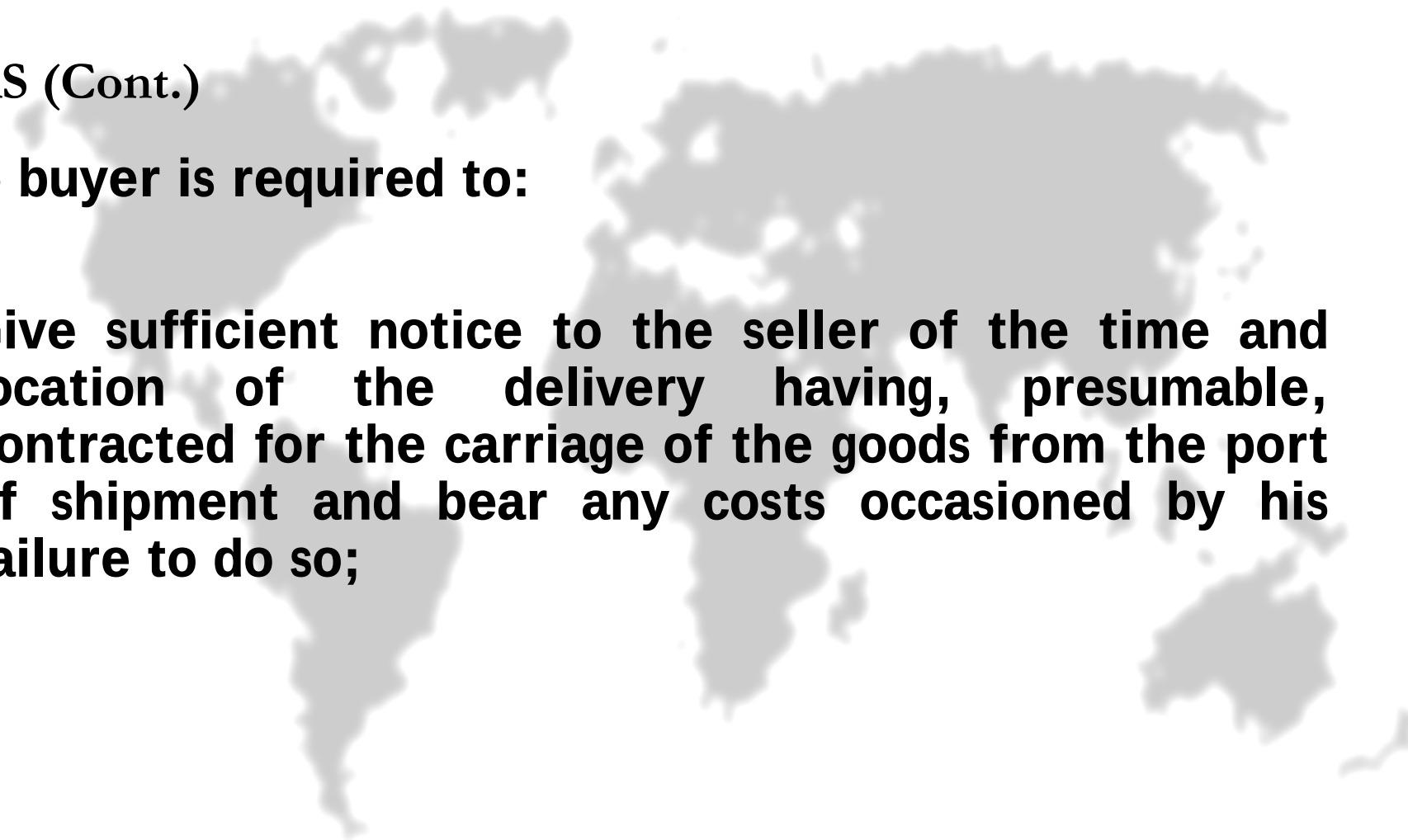
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FAS (Cont.)

The seller is required to:

- 
- **Supply conforming goods, packed appropriately or in accordance with the contract, and the commercial invoice or equivalent electronic message which has been agreed;**
 - **Deliver the goods to buyer by placing them alongside the vessel or the loading berth which has been notified by the buyer in the manner which is usual or customary at the port for such delivery, at the time agreed and without delay give the buyer sufficient notice of the fact;**

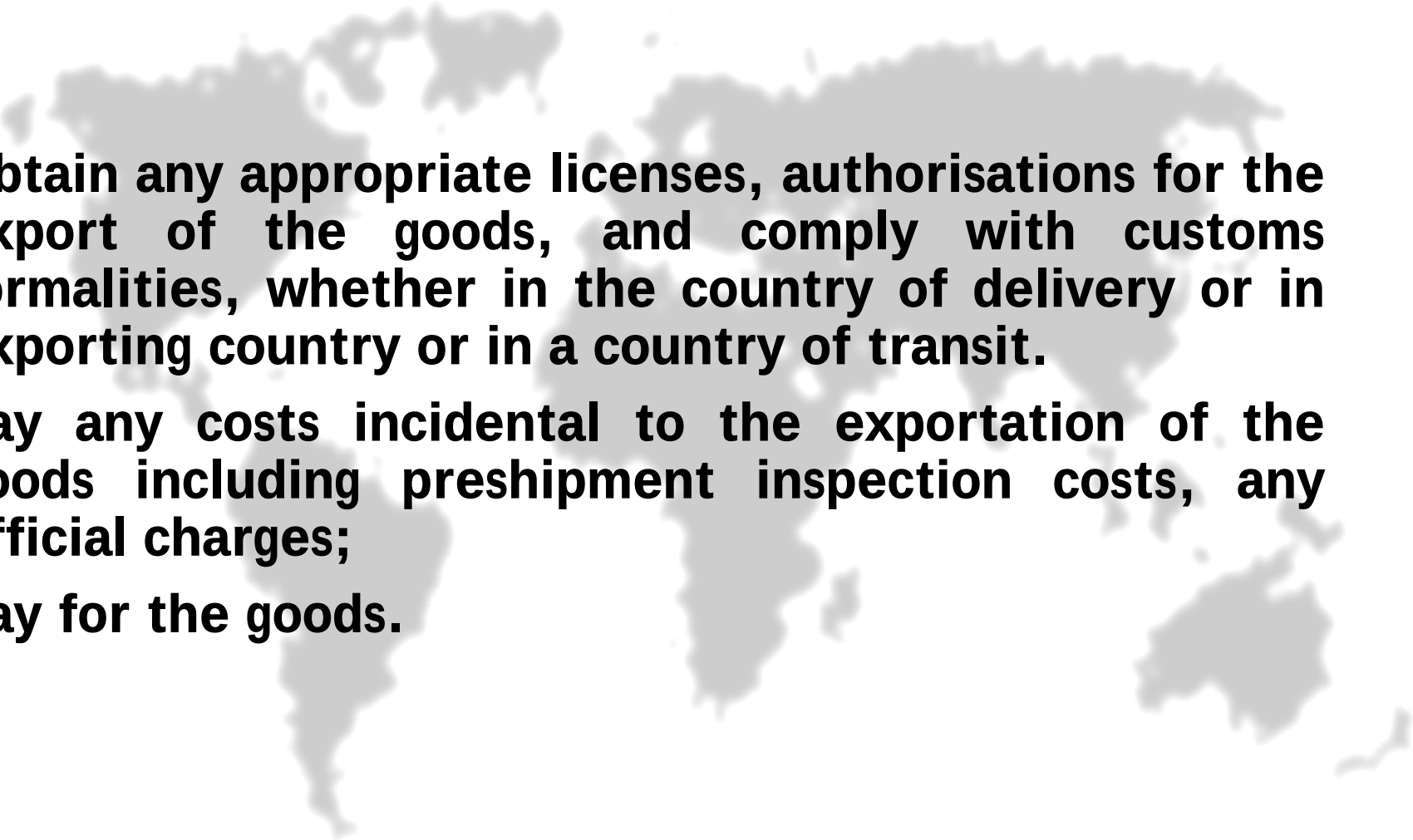
- 
- **Pay any costs incidental to delivery of the goods;**
 - **Provide proof of delivery in the manner agreed and provide documents confirming conformity if required to do so;**
 - **Provide any assistance requested by the buyer in respect of obtaining documents facilitating export and providing information to enable the goods to be insured.**



FAS (Cont.)

The buyer is required to:

- **Give sufficient notice to the seller of the time and location of the delivery having, presumable, contracted for the carriage of the goods from the port of shipment and bear any costs occasioned by his failure to do so;**

- 
- **Obtain any appropriate licenses, authorisations for the export of the goods, and comply with customs formalities, whether in the country of delivery or in exporting country or in a country of transit.**
 - **Pay any costs incidental to the exportation of the goods including preshipment inspection costs, any official charges;**
 - **Pay for the goods.**

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FOB (...named port of shipment)

The seller when selling fob (“free on board”) assumes still further responsibilities.

He undertakes to place the goods on board a ship that has been named to him by the buyer and that is berthed at the agreed port of shipment.

FOB (Cont.)

All charges incurred up to and including the delivery of the goods on board ship have to be borne by the seller while the buyer has to pay all subsequent charges, such as:

- **The stowage of the goods in or on board ship.**
- **Freight and marine insurance.**
- **Unloading charges.**
- **Import duty.**
- **other incidental charges due on arrival of the consignment in the port of destination.**

FOB (Cont.)

The seller is required to:

- **Supply conforming goods, any document conforming conformity which have been agreed and supply a commercial invoice or its electronic equivalent;**

FOB (Cont.)

- **Deliver the goods to buyer by placing them on board, that is over the rail of the vessel which has been notified by the buyer, at the time agreed and without delay give the buyer sufficient notice of the fact;**
- **Place them on the vessel in the position and manner required;**
- **Pay any costs incidental to delivery of the goods**

FOB (CONT.)

- **Obtain an export licence, if so required, or any other document necessary for the exportation of the goods and clear the goods through customs;**
- **Provide proof of delivery in the manner agreed**
- **Provide any assistance requested by the buyer in respect of obtaining documents facilitating export and providing information to enable the goods to be insured.**

FOB (Cont.)

The buyer is required to:

- **Give sufficient notice to the seller of the time and location of the delivery having, presumably, contracted for the carriage of the goods from the port of shipment, bear any costs occasioned by his failure to do so and bear the risk of loss or damage to the goods from the time they pass over the ship's rail.**

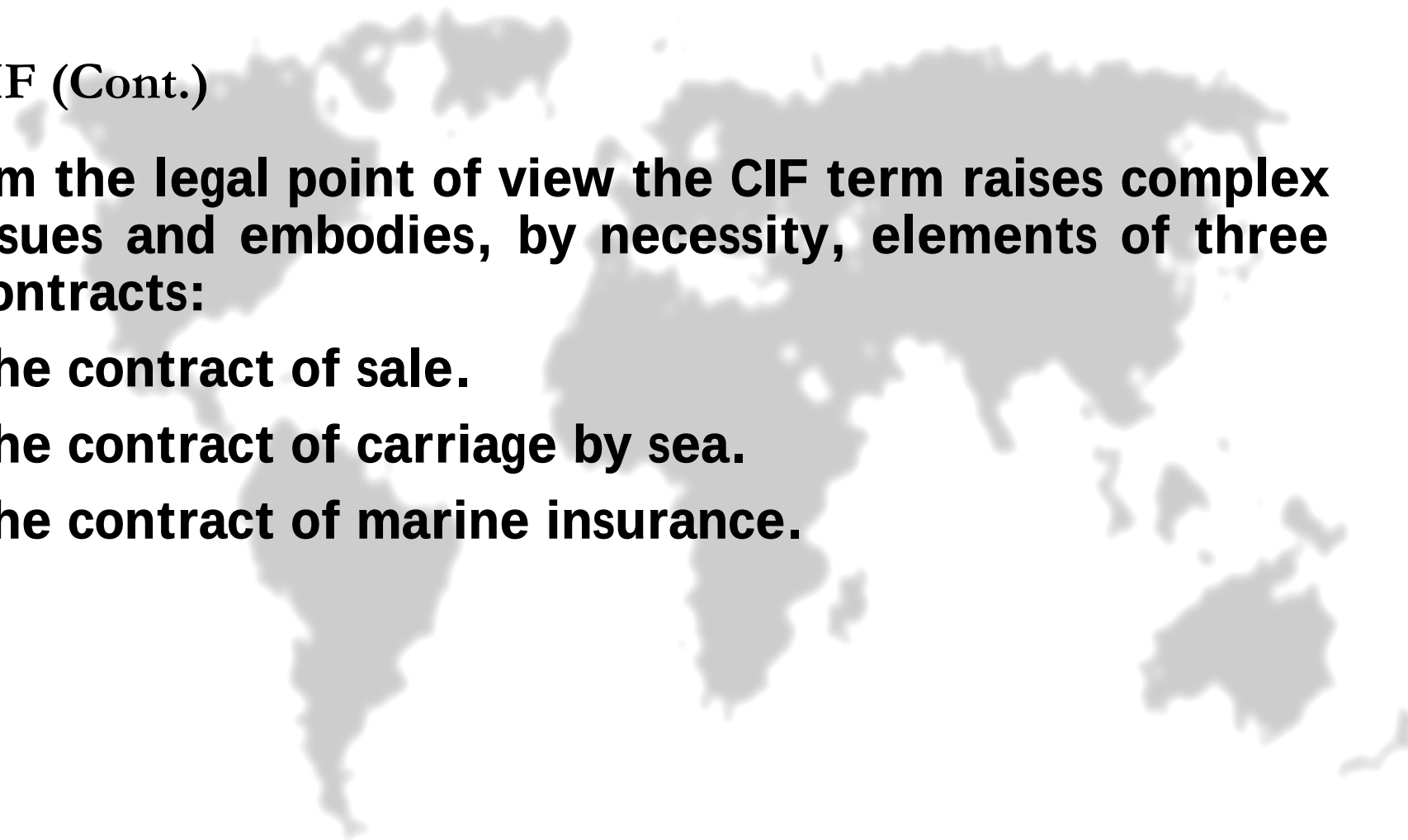
FOB (CONT.)

- **Obtain any appropriate licenses, authorisation for the import of the goods, and comply with customs formalities for importation whether in the country of destination or in a country of transit;**
- **Pay any costs incidental to the importation of the goods from the time of their delivery and bear the costs of the provision of assistance by the seller at the request of the buyer;**
- **Pay for the goods.**

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CIF (named port of destination)
“cost, insurance, freight”

This is the most recognisable term associated with the export trade which the custom of the merchants has evolved.



CIF (Cont.)

From the legal point of view the CIF term raises complex issues and embodies, by necessity, elements of three contracts:

- **The contract of sale.**
- **The contract of carriage by sea.**
- **The contract of marine insurance.**

CIF (cont.)

The seller's obligations under a cif contract may be summarised as follows:

- **To ship goods of the description contained in the contract and clear the goods for export or to buy conforming;**
- **If the goods are not bought afloat, to procure a contract of carriage by sea under which the goods will be delivered at the destination agreed by the contract and obtain the bill of lading as evidence of having done so;**

CIF (Cont.)

- **To arrange, if this has not already done, insurance and provide a policy or insurance document which entitles the buyer to make a claim against the insurer;**

The buyer should note that under the CIF term the seller is required to obtain insurance only on minimum cover.

CIF (Cont.)

- **To tender these documents in the manner agreed whether by presentation directly, transmission by electronic means or otherwise; the bill of lading; insurance policy and invoice to the buyer, together with any other documents which may be agreed between the parties and/or might be required by the customs of the trade.**

CIF (cont.)

The duties of the buyer may be summarised as follows:



CIF (cont.)

- **To accept the documents when tendered by the seller, if they are in conformity with the contract of sale, and pay the contract price;**
- **To receive the goods at the agreed port of destination and bear, with the exception of the freight and marine insurance, all costs and charges incurred in respect of the goods in the course of their transit by sea until the arrival at the port of destination.**

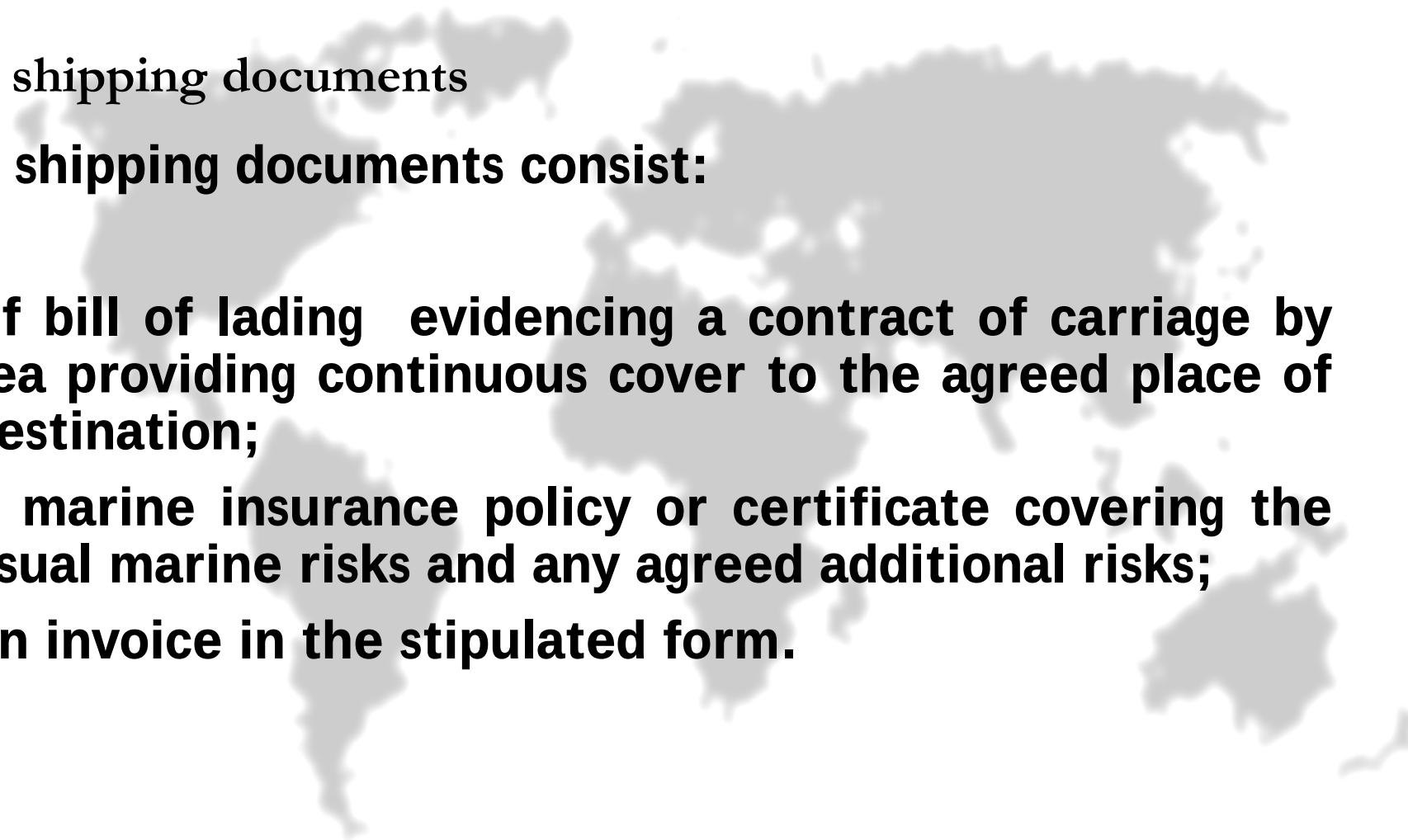
CIF (Cont.)

- **To bear all risks of the goods from the time when they shall have effectively passed the ship's rail at the port of shipment;**
- **To pay the costs and charges incurred in obtaining the certificate of origin and consular documents;**
- **To pay all Customs duties as well as any other duties and taxes payable consequent upon the importation;**
- **Obtain and provide at its own risk and expenses any import licence.**

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The shipping documents

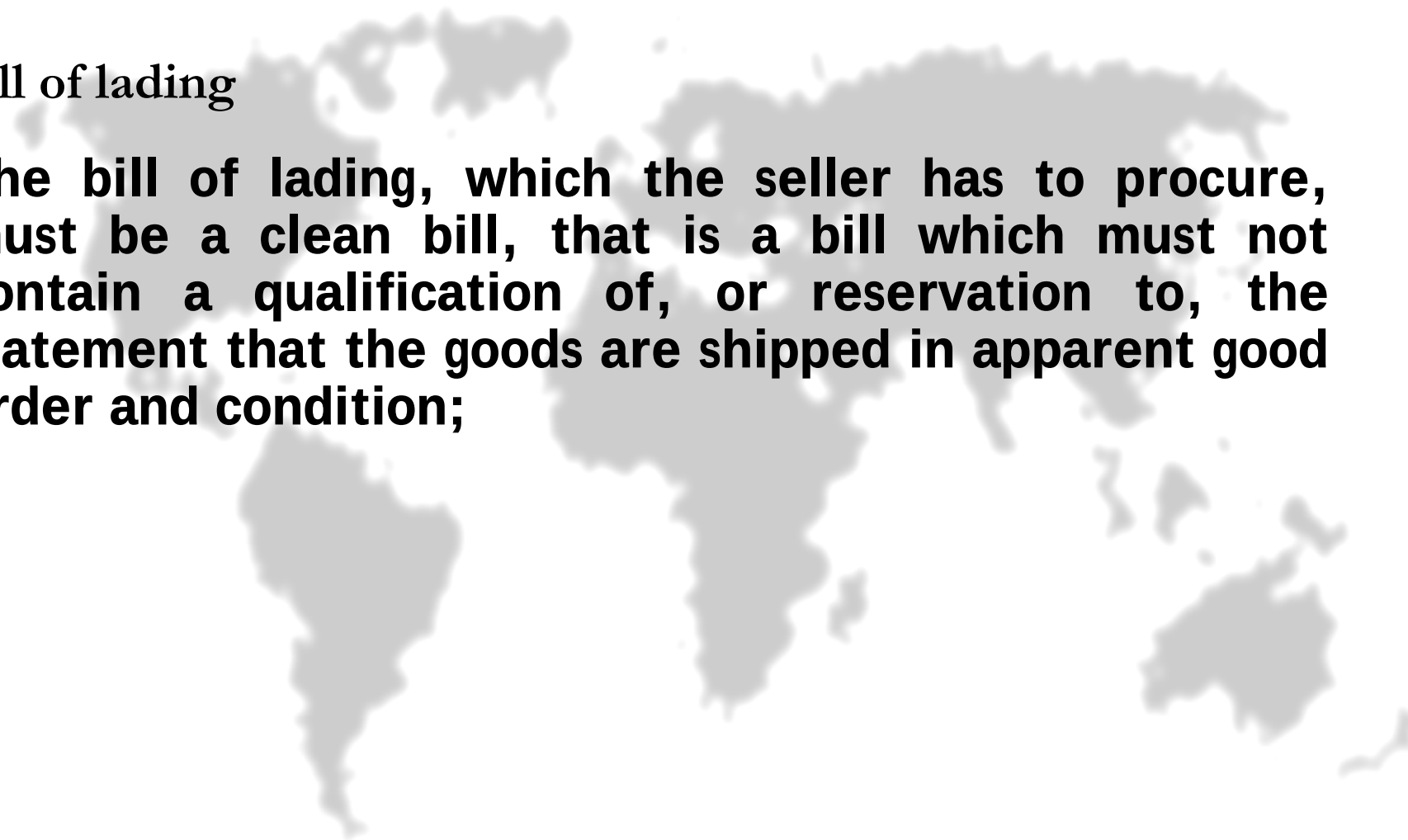
An examination of the shipping documents is central to any examination of the performance of CIF transaction.



The shipping documents

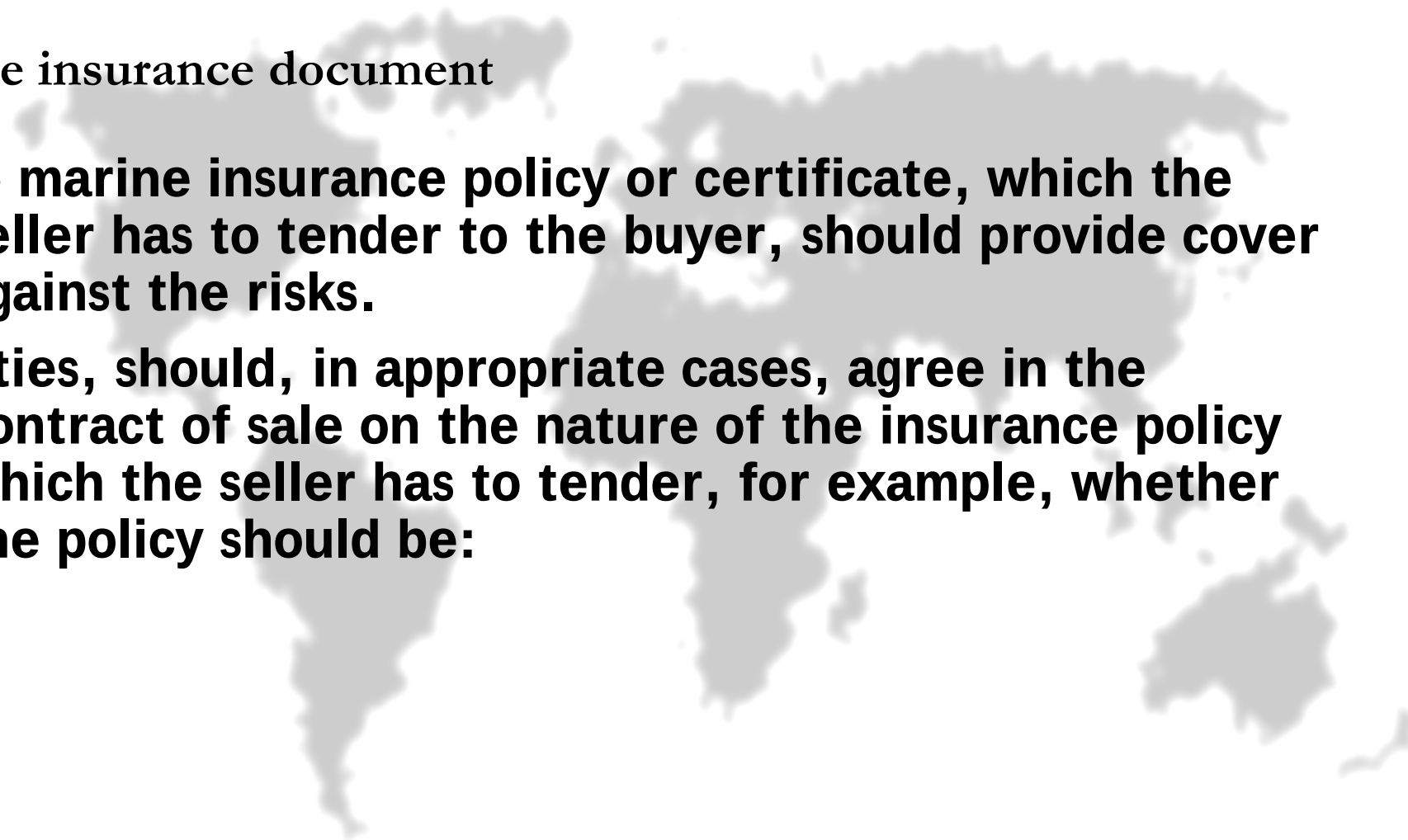
The shipping documents consist:

- **Of bill of lading evidencing a contract of carriage by sea providing continuous cover to the agreed place of destination;**
- **A marine insurance policy or certificate covering the usual marine risks and any agreed additional risks;**
- **An invoice in the stipulated form.**



Bill of lading

- **The bill of lading, which the seller has to procure, must be a clean bill, that is a bill which must not contain a qualification of, or reservation to, the statement that the goods are shipped in apparent good order and condition;**



The insurance document

The marine insurance policy or certificate, which the seller has to tender to the buyer, should provide cover against the risks.

Parties, should, in appropriate cases, agree in the contract of sale on the nature of the insurance policy which the seller has to tender, for example, whether the policy should be:



The insurance document

- **An all risks policy in the form of Institute Cargo Clauses A to Lloyd's Marine Policy**
- or**
- **Should cover war risks.**

Value of the insurance cover

The parties often agree on the calculation of that value. Their contract normally provides that insurable value shall be the invoice value of the goods plus incidental shipping and insurance charges plus a specified percentage of, say, 10 or 15 per cent, representing the buyer's anticipated profits.

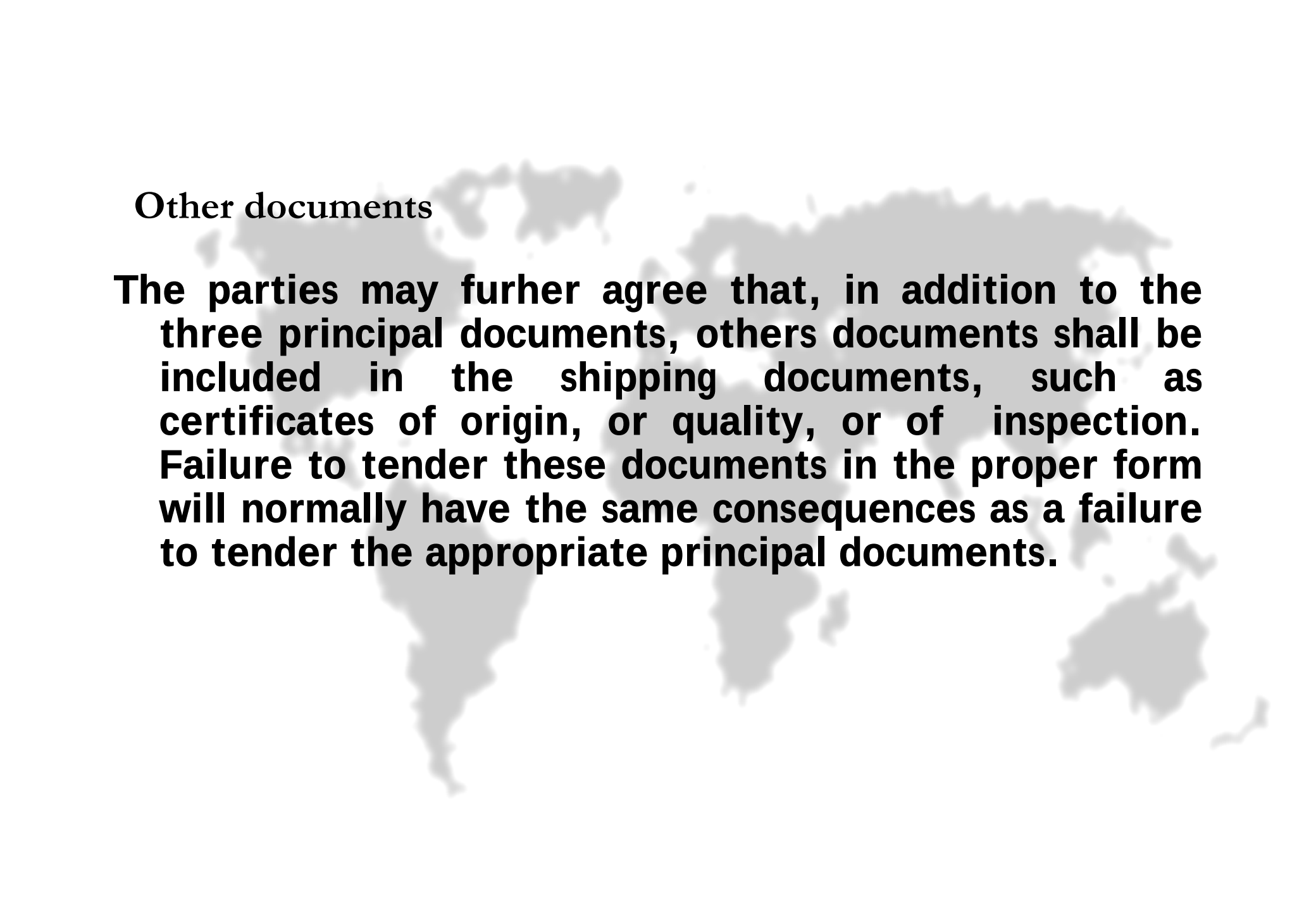
Value of the insurance cover

- **The seller may have arranged an open cover which covers an unspecified quantity of goods that are to be shipped within a fixed time, and describes the insurance in general terms only, and he will then effect the insurance of the ordered goods by sending the insurers a declaration relating to the details of the consignment in question.**



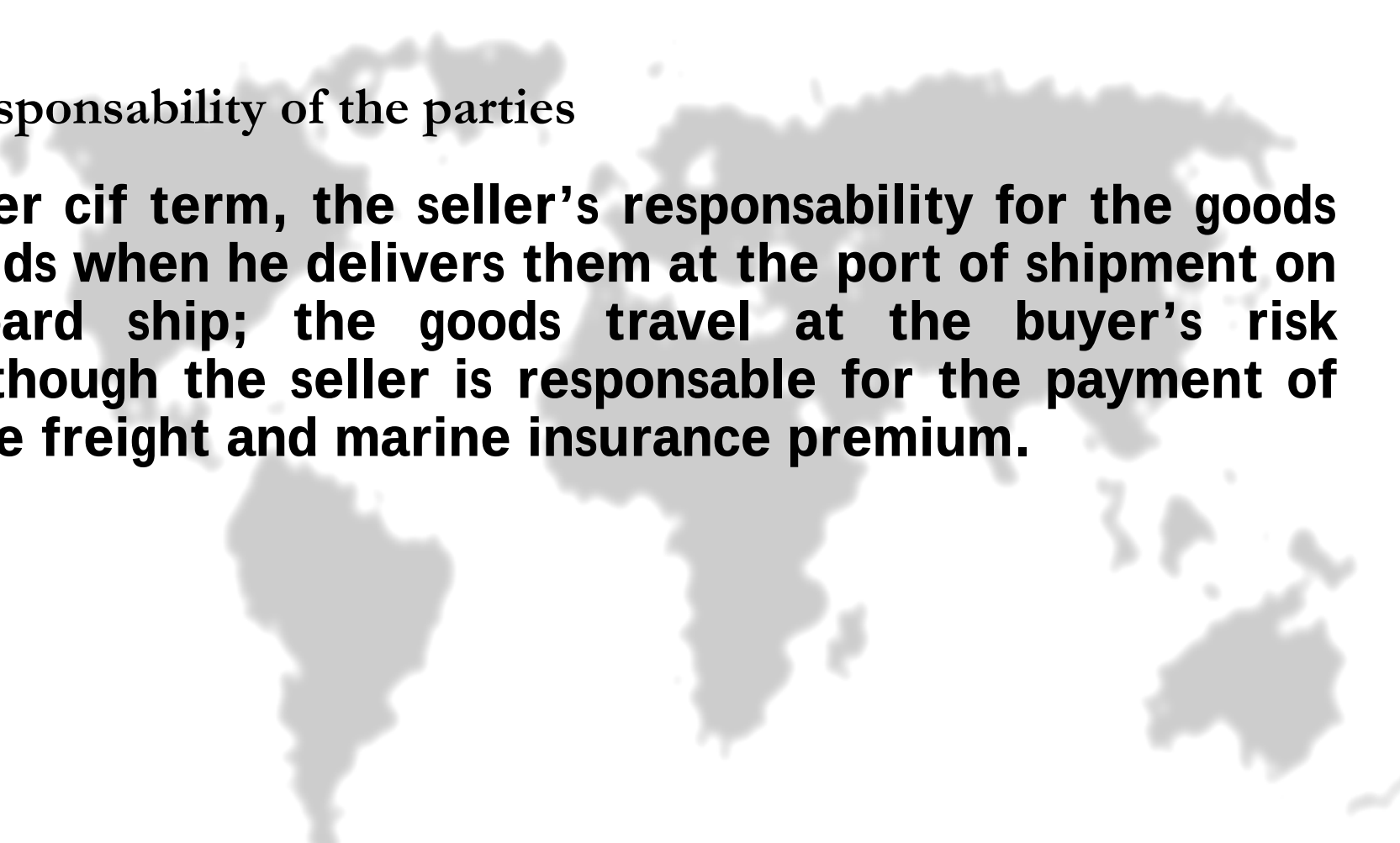
The invoice

The invoice must be completed in strict agreement with the terms of the contract.

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Other documents

The parties may further agree that, in addition to the three principal documents, others documents shall be included in the shipping documents, such as certificates of origin, or quality, or of inspection. Failure to tender these documents in the proper form will normally have the same consequences as a failure to tender the appropriate principal documents.

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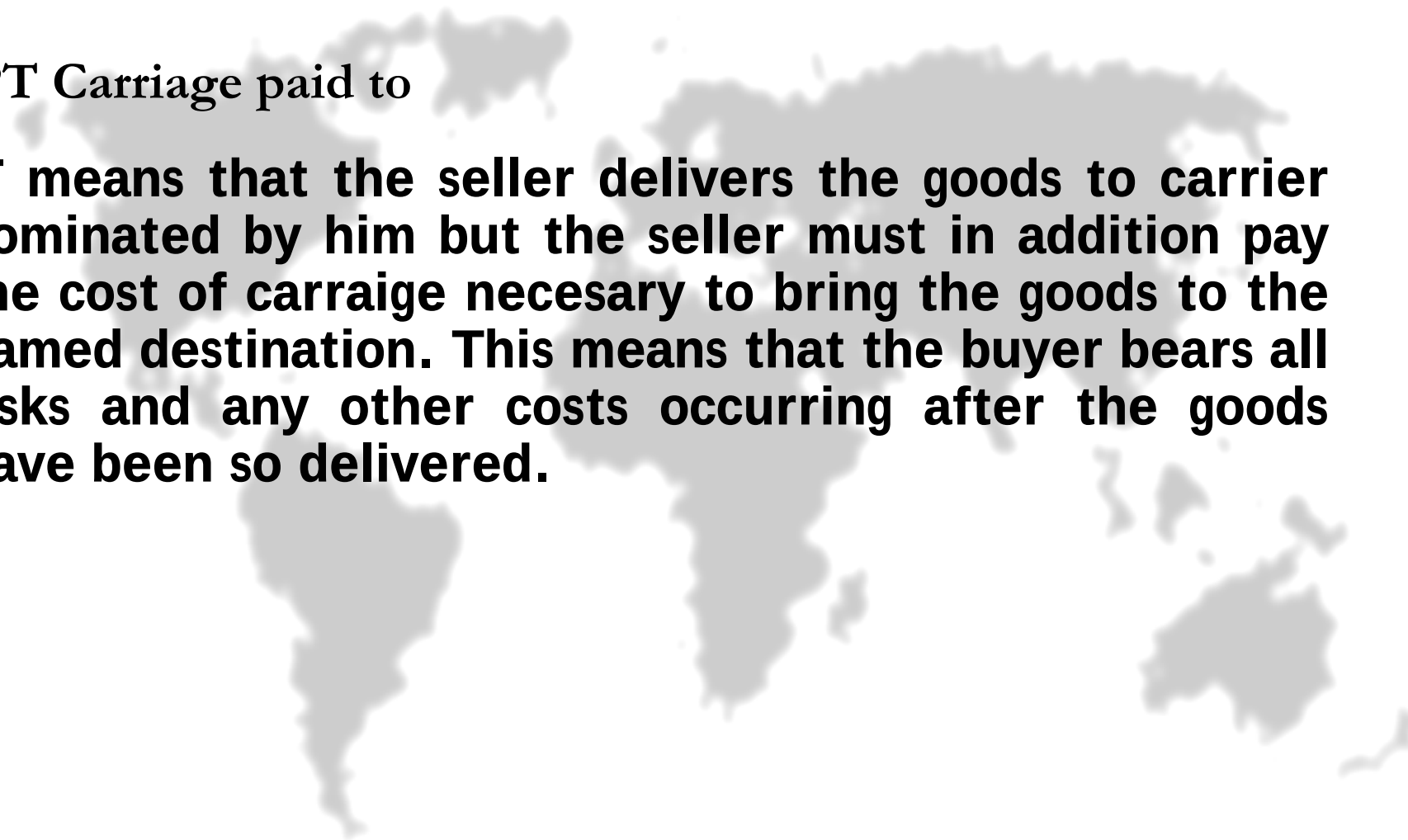
Responsability of the parties

Under cif term, the seller's responsibility for the goods ends when he delivers them at the port of shipment on board ship; the goods travel at the buyer's risk although the seller is responsible for the payment of the freight and marine insurance premium.

Responsability of the parties

If the goods are damaged or stolen during international transport, the buyer owns the goods and must file a claim based on insurance procured by the seller.

The buyer must clear customs in the country of import and pay for all other transport and insurance in the country of import.

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CPT Carriage paid to

CPT means that the seller delivers the goods to carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any other costs occurring after the goods have been so delivered.

CPT (Cont.)

If subsequent carriers are used for carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier.

The CPT term requires the seller to clear the goods for export.

This term may be used irrespective of the mode of transport including multimodal transport.

CPT

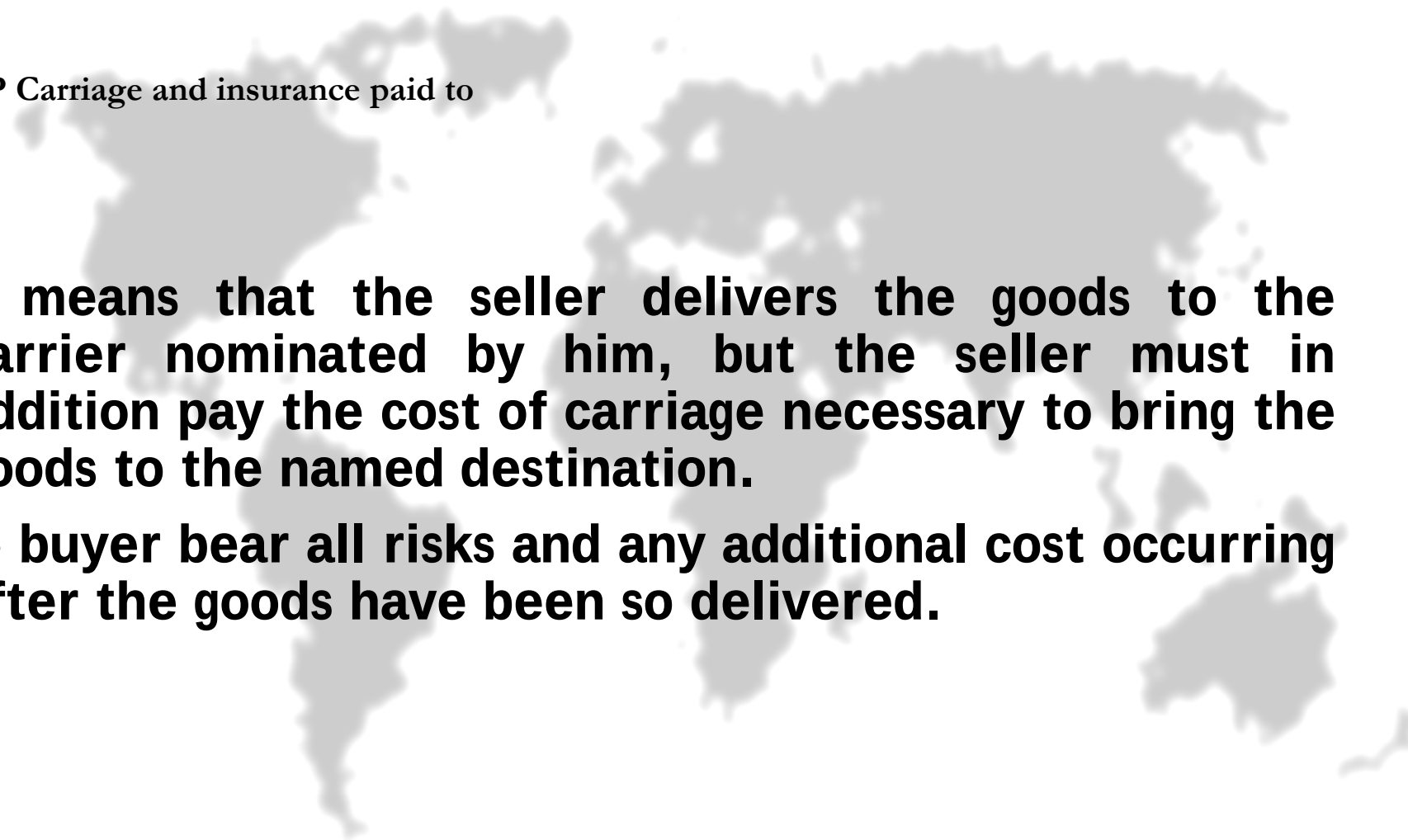
The seller's obligations:

- **Provision of goods in conformity with the contract;**
- **Obtain export licenses, authorization and formalities;**
- **Contract of carriage**
- **Delivery the goods to the carrier contracted**

CPT

The buyer's obligation:

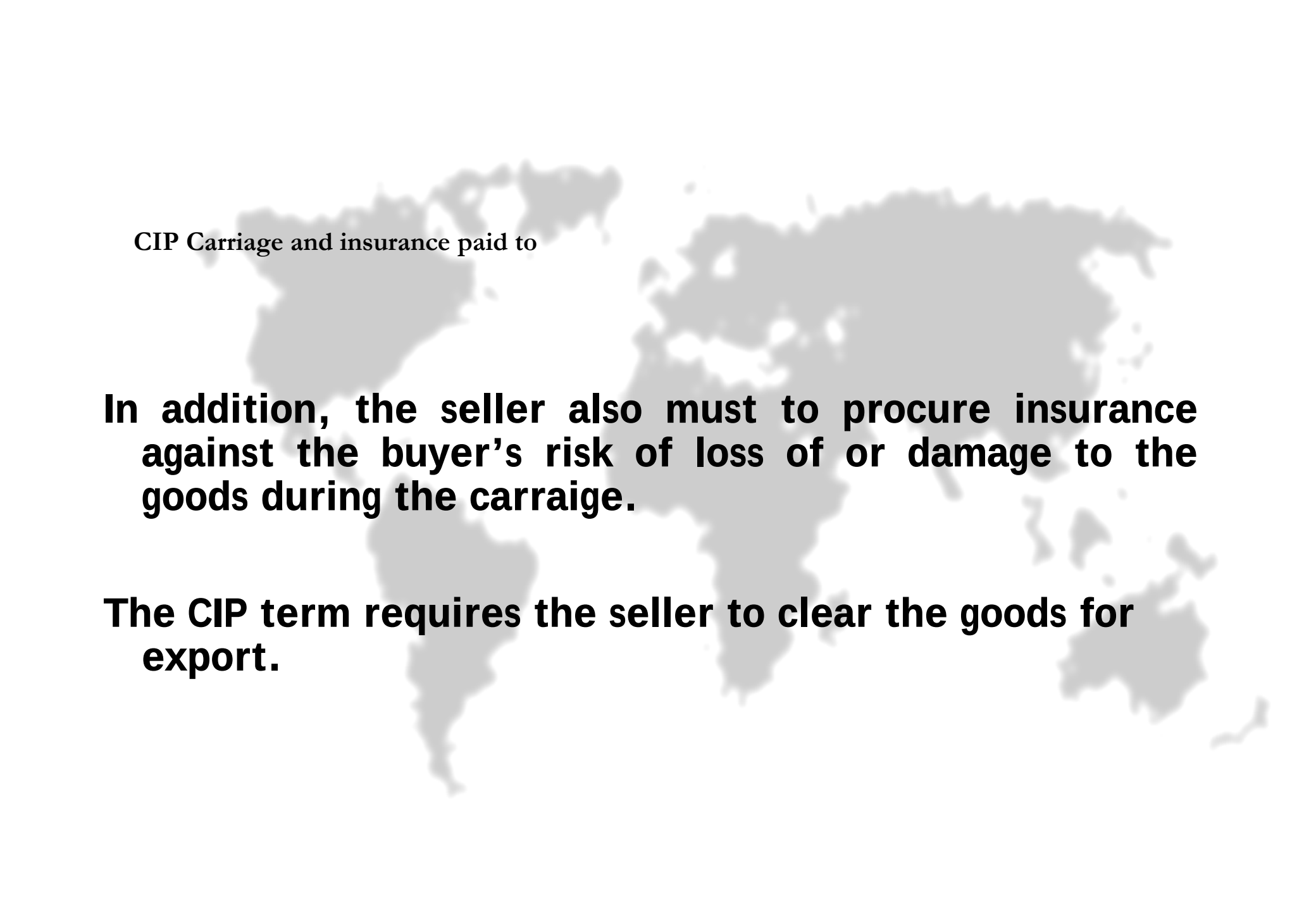
- **Pay the price as provided in the contract sale.**
- **Obtain at his own risk and expenses any import licence or other official authorisation.**
- **Accept delivery of the goods.**
- **Bear all risks of loss or damage to the goods from the time they have been delivered.**



CIP Carriage and insurance paid to

CIP means that the seller delivers the goods to the carrier nominated by him, but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination.

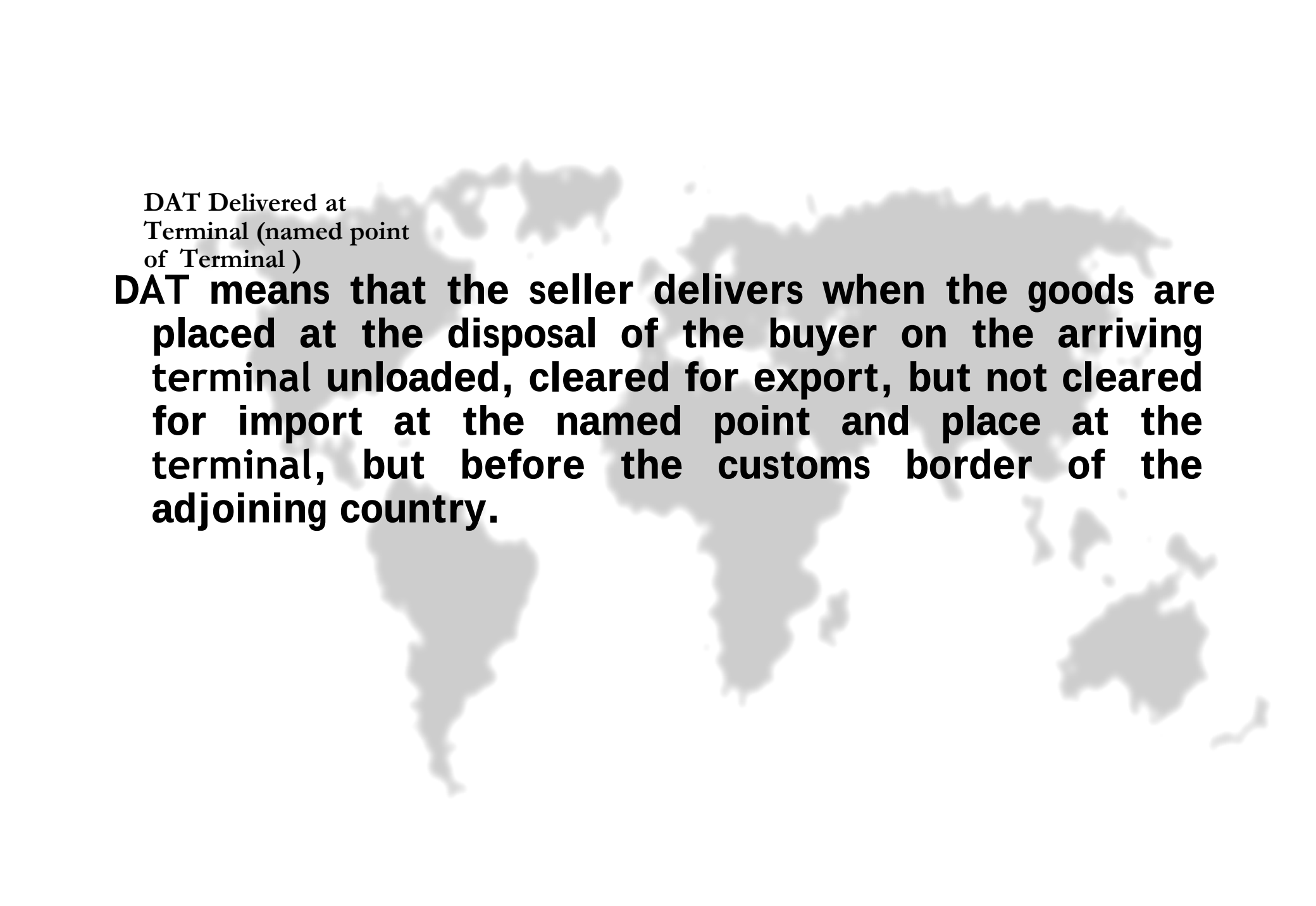
The buyer bear all risks and any additional cost occurring after the goods have been so delivered.

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CIP Carriage and insurance paid to

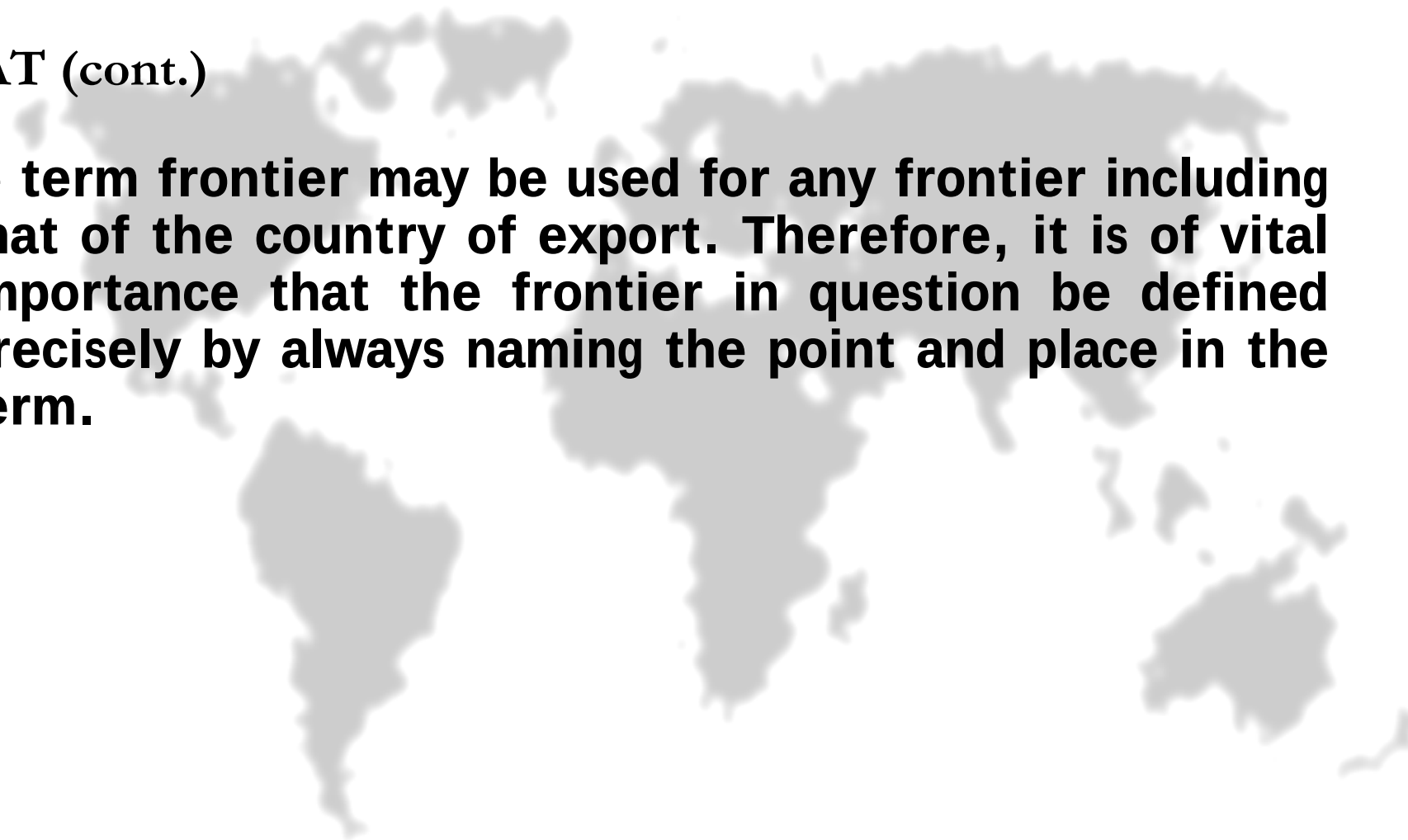
In addition, the seller also must to procure insurance against the buyer's risk of loss of or damage to the goods during the carriage.

The CIP term requires the seller to clear the goods for export.



DAT Delivered at
Terminal (named point
of Terminal)

DAT means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving terminal unloaded, cleared for export, but not cleared for import at the named point and place at the terminal, but before the customs border of the adjoining country.

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DAT (cont.)

The term frontier may be used for any frontier including that of the country of export. Therefore, it is of vital importance that the frontier in question be defined precisely by always naming the point and place in the term.

DAP Delivered at Place.....

DAP means that the seller delivers when the goods are placed at the disposal of the buyer on board the mean of transportation not cleared for import at the named place of destination. The seller has to bear all costs and risks involved in bringing the goods to the named port of destination before discharging. If the parties wish the seller to bear the costs and risks of discharging the goods, then the DAT term should be used.

DDP (DELIVERY DUTY PAID)

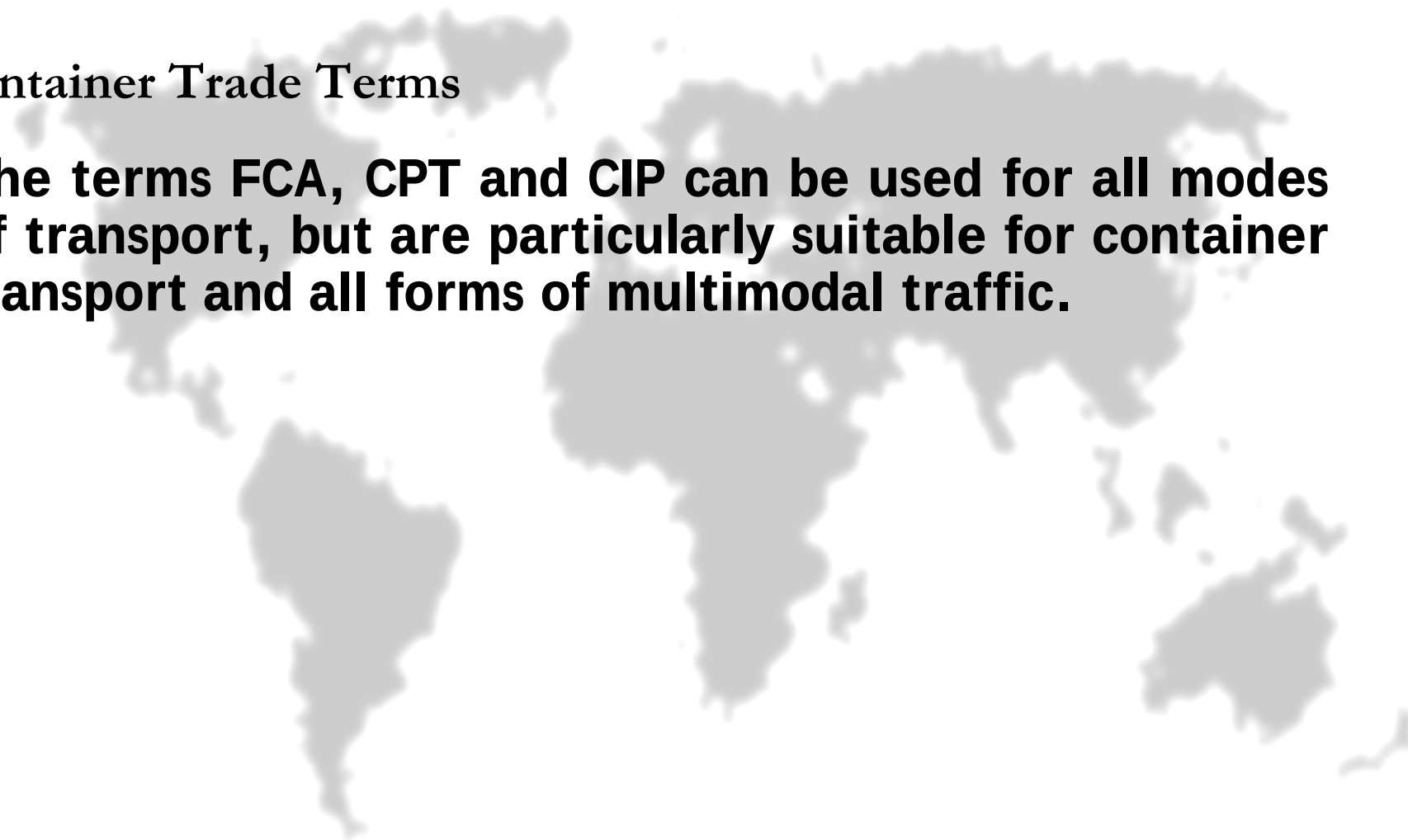
"Delivered duty paid" means that the seller fulfils his obligation to deliver when the goods have been made available at the named place in the country of importation. The seller has to bear the risks and costs, including duties, taxes and other charges of delivering the goods thereto, cleared for importation. Whilst the EXW term represents the minimum obligation for the seller, DDP represents the maximum obligation.

This term should not be used if the seller is unable directly or indirectly to obtain the import licence.

If the parties wish the buyer to clear the goods for importation and to pay the duty, the term DAT or DAP should be used.

If the parties wish to exclude from the seller's obligations some of the costs payable upon importation of the goods (such as value added tax(VAT)), this should be made clear by adding words to this effect: "Delivered duty paid, VAT unpaid ... (named place of destination)".

This term may be used irrespective of the mode of transport.

A faint, light gray world map is visible in the background of the slide, showing the continents of North America, South America, Europe, Africa, Asia, and Australia.

Container Trade Terms

- **The terms FCA, CPT and CIP can be used for all modes of transport, but are particularly suitable for container transport and all forms of multimodal traffic.**