

Sale and storage of goods in Italy: overview

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A Q&A guide to the sale and storage of goods in Italy.

This Q&A covers key matters relating to sale of goods contracts, including legislative framework, rules on formation, price and payment, delivery, passing of title and risk, enforcement and remedies, exclusion of liability, choice of law and jurisdiction, and arbitration. It also provides an overview of the rules governing storage of goods.

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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 Italian legal system is based on civil law.

Most commercial relations are regulated by the Italian Civil Code (*CC*), including contracts for the sale of goods (*Articles 1470 to 1547, CC*).

Additionally, sales of goods are subject to specific laws, the most important of which are:

- Law No. 218 of 1995 on the reform of the Italian system of private international law, and the applicable law on contracts.
- Law No. 70 of 2003 on certain legal aspects of information society services, in particular electronic commerce, in the internal market.
- Law No. 206 of 2005 on the sale of goods between businesses and consumers, which is aimed at ensuring a high level of protection for consumers.

International rules

Italy is a party to the following international conventions and is subject to the following European legislation relating to the sale of goods:

- UN Convention on Contracts for the International Sale of Goods 1980 (CISG).
- Customs Convention on the International Transport of Goods under Cover of TIR Carnets 1975.
- Convention for the Unification of Certain Rules for International Carriage by Air 1999.
- Convention on the law applicable to contractual obligations 1980 (Rome Convention). This establishes uniform rules on the applicable law to contractual obligations. Under the Italian system of private international law, the Rome Convention is applicable to contractual obligations that are not subject to the Rome I provisions.
- Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I). This sets out the rules on the applicable laws to contractual obligations within the EU.

Standard contractual terms

The Italian system recognises some standardised terms that can serve as guidelines for commercial transactions, to be incorporated into the terms of the contracts, such as the:

- International Chamber of Commerce (ICC) International Commercial Terms (Incoterms) 2010. Incoterms are official ICC rules that provide a set of international rules for the interpretation of the most commonly used terms in foreign trade.
- UNIDROIT Principles of International Commercial Contracts.

The use of other international standards is less frequent. Some of these include the:

- Uniform Customs and Practice for Documentary Credits.
- Uniform Rules for Demand Guarantees.

Formation

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

Substantive requirements

To create a legally enforceable contract under Italian domestic law, the following key elements must be satisfied:

- **Agreement between the parties (Article 1326, CC).** The offer must identify the subject matter of the contract (that is, the parties must be identifiable, and the goods, their quantity and the relevant price must be determined or at least determinable). The acceptance must match the offer (if the acceptance deviates from the offer, it amounts to a rejection of the initial offer and constitutes a counter-offer).
- **Cause.** The contract must be based on a lawful cause; otherwise the contract can be declared null and void (Article 1343, CC). Generally, the cause is defined as the objective function to be performed by the contract according to the intention of the parties.
- **Object.** The contract must have a possible, lawful, determined or determinable object (Article 1346, CC).

(Article 1325, CC.)

Formal requirements

Under Italian domestic law, freedom of form applies in principle. However, for some specific contracts, the law may require a written form either:

- For the purposes of giving evidence (*ad probationem*) (for example, for a settlement agreement).
- As a validity requirement (*ad substantiam*) (for example, in the case of a contract for the purchase of real estate).

(Article 1350, CC.)

Parties can introduce formal requirements into their contractual relationship (Article 1352, CC). In the case of a breach of the agreed requirements, the contract can be declared null.

There is no general language requirement for the validity of a contract, unless otherwise agreed by the parties.

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 is an essential element of a contract for the sale of goods. The price must be determined or at least determinable, otherwise the contract will be considered invalid. All written contracts usually specify the price as well as the method, currency, time and place of payment. However, the price can be determined through an act of evaluation, a deed of assessment or on the occurrence of future events.

If the price is not established in the contract, CC provides that:

- In a contract for the sale of goods, if there is no clear mechanism on how to determine the price, and the price has not been established by a public authority, it is assumed that the parties intended to refer to the price normally imposed by the seller.
- In relation to goods that have a stock market or market value, the price can be deduced from the price lists or the market where delivery takes place, or from the closest market value.

(Article 1474, CC.)

The price can be determined by an appointed third party failing the above options (Article 1473, CC).

The buyer must pay the price according to the terms and conditions established in the contract (Article 1498, CC). In the absence of a contractual provision to this effect, payment must be made on delivery of goods, at the place where the transaction was executed. If the price cannot be paid on delivery, the payment must be made at the seller's domicile.

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)?

The seller has a duty to deliver the goods (*Article 1474, CC*) and the buyer has a duty to pay the price (*Article 1498, CC*).

Generally, the time, place and method of delivery must be determined in accordance with the terms of the contract. The goods must be delivered in the state they were at the time of sale and, subject to the parties' agreement, they must be delivered together with any accessories and fixtures (*Article 1477, CC*).

Additionally, in a sale of movables, the delivery of the goods must be made at the place where they were at the time of sale, if the parties were aware of it (*Article 1510, CC*), or at the place where the seller had his or her domicile or registered office. The seller can deposit the goods in a public warehouse if the buyer does not attend for delivery. This applies not only for the sale of specific goods, but also for the sale of stock for which the seller is committed within the limits of available stocks.

Unless otherwise agreed, if the goods sold must be transported from a place to another, the seller is released from its obligation of delivery when remitting the goods to the carrier or freight forwarder.

Passing of title and risk

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

As a rule, title to the goods passes on conclusion of the agreement between the parties, expressed in the forms prescribed by the law, and regardless of the payment or delivery of the goods (*Article 1376, CC*).

Property in generic goods passes to the transferee only after they have been identified according to the contract. Where the goods are transported to the buyer by an independent carrier, identification usually takes place on delivery to the carrier (*Article 1378, CC*). Similar rules are applied for the transfer of property of future goods (*Article 1472, CC*).

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 title clauses are generally allowed under Italian law.

To be enforceable *vis-à-vis* third party creditors and on receivership of the buyer, retention of title must be documented (in writing) and bear a date certain at law (*data certa*), which is obtained, for example, by way of notarisation (*Article 1524, CC*). In the case of machines, retention of title must be registered at the office of the court's clerk in the jurisdiction where the machines are located, to be enforceable *vis-à-vis* third party subsequent buyers. For registered movable goods (such as cars, ships and airplanes), retention of title must be registered on the relevant register.

In addition, Article 11, paragraph 3, of Legislative Decree 231/2002 (which has implemented into Italian law Directive 2000/35/EC on combating late payment in commercial transactions (Late Payment Directive) and was amended to implement Directive 2011/7/EU on combating late payment in commercial transactions (Late Payment Directive recast)) provides that the retention of title previously agreed in writing by the seller and the buyer is effective against third party creditors of the buyer if:

- The retention of title is confirmed in the individual sale invoices relating to successive supplies of goods.
- These invoices bear a date certain at law (*data certa*) prior to any enforcement by third parties.
- These invoices have been regularly recorded in the accounting entries.

The relationship between the Late Payment Directive and Article 1524 of the CC is highly disputed. The prevailing view is that the mechanism provided in the Late Payment Directive replaces the mechanism prescribed by Article 1524. There is no relevant case law on this issue.

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

Risk of loss and damage passes together with the passing of title (*see Question 5*). Where generic goods are sold, risk passes when the goods have been identified according to the contract and handed over (*Article 1465, CC*).

For international sales of goods, where the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale (*Article 67, CISG*).

The parties can also rely on the rules provided by Incoterms to define the passing of risk, since these are commonly used as a guide when dealing with international contracts.

Enforcement and remedies

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

Italian law does not recognise the concepts of express and implied terms as in English common law.

As a general rule (*Article 1476, CC*), the seller must guarantee that the goods are free from third party rights (that is eviction (*evizione*) (*Article 1483, CC*)) and from defects that can render the goods unsuitable for their intended use, or considerably decrease their value (*Article 1490, CC*). Under certain conditions, parties can agree to limit or even exclude this guarantee.

For sales of generic goods, the seller must deliver goods of average quality (*Article 1178, CC*). Additionally, in sales of movables, the seller must guarantee the proper functioning of the goods (*Article 1512, CC*).

For sales to consumers, the Italian Consumer Code (*Law No. 206 of 2005*) applies and provides a higher protection to the buyer. In relation to the description and quality of the goods, the seller must deliver to the buyer goods that are fully consistent with the parties' sale agreement. This consistency is presumed in certain cases, including where the goods are suitable for their intended use or have their represented qualities.

The Consumer Code also provides for specific rules applicable to product liability. However, this only applies where the seller is also the manufacturer or the importer of the goods. In addition, product liability legislation only covers situations of personal injury and damage to property.

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

Damages for breach of contract are available under Italian Law (*Article 1453, CC*). Damages are seen as a form of compensation and are available jointly with the remedies of performance and termination. Damages can be classified as either:

- Actual damages suffered (*danno emergente*).
- Expectation loss (*lucro cessante*).

In awarding damages, the courts will assess whether the damage was foreseeable, immediate and a direct consequence of the breach (*Articles 1223 to 1225, CC*). However, damages can extend to unusual or exceptional losses where the breach was deliberate. If a loss cannot be precisely established, damages are subject to equitable compensation (*Article 1226, CC*).

For sales of defective goods, the seller must pay the buyer damages (including for damages deriving from the defects of the goods), unless the seller proves that he or she acted without fault (*Article 1494, CC*). Claim for damages can be made along with any other legal remedy selected by the buyer, subject to applicable time limits (*see Question 10*).

Damages are also due to the buyer in the case of third party rights over the goods sold (*Article 1483, CC*).

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

For sales of defective goods, the buyer can seek the following remedies (*Article 1492, CC*):

- Termination of the agreement (*actio redhibitoria*).
- Reduction of the purchase price (*actio estimatoria*). If termination of the agreement is excluded for certain kinds of defects, the buyer can ask only for a price reduction.
- Damages (*see Question 9*).

If the buyer seeks to terminate the agreement, the seller must also reimburse the purchase price to the buyer and all expenses lawfully incurred by the buyer in connection with the purchase of the goods. However, the buyer must return the purchased goods.

To enforce these remedies, the buyer, under penalty of forfeiture, must make a claim within eight days of the discovery of any defects, unless the law or the parties provide for a different term. In any case, the remedies are subject to a time limitation of one year, beginning on the date of delivery of the goods (*Article 1495, CC*).

Additionally, in a sale of movables, where the seller is in breach and the goods consist of fungible items with a current price, the buyer can without delay buy them elsewhere through a court official at the seller's expense. The buyer can then claim the difference between the original purchase price and the sum paid for replacement goods, in addition to any other damages (*Article 1516, CC*).

For sales of defective goods to consumers, the consumer can request the repair or replacement of the product, unless one of these remedies is objectively impossible or too expensive (*Italian Consumer Code (Law No. 206/2005)*). In addition, the consumer can request a price reduction or the termination of the contract where:

- The repair or replacement is impossible or too expensive.
- The seller did not provide the repair or replacement within an appropriate period.
- The replacement or repair made previously has caused significant inconvenience to the consumer.

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

Where a buyer has, in breach of contract, either not paid or only partly paid for goods, the seller has the right to make a claim for the contract price. In the case of late payment for goods under a contract between two businesses, the seller can also claim penalties and interest equal to the interest rate applied by the European Central Bank to its most recent main refinancing increased by eight points. As of 31 December 2019, the applicable rate is 8%. The rate is reviewed every six months (*Law No. 231/2002 implementing the Late Payment Directives*).

Additionally, in a sale of movables, if the buyer fails to pay the purchase price, the seller can without delay auction the goods on the buyer's account and at his or her expense. The seller has the right to claim the difference between the purchase price and the sum realised at the auction, in addition to any other damages (*Article 1515, CC*).

The seller can also suspend the performance of his or her contractual obligations, claiming the default of the buyer (*exceptio inadimpleti contractus*) (*Article 1460, CC*).

Exclusion of liability

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

Clauses establishing an exclusion of contractual liability are lawful and enforceable, unless they concern liability for gross negligence, wilful misconduct or are contrary to public order provisions (*Article 1229, CC*).

For general standard conditions or standard form contracts prepared by one of the contracting parties, exclusion clauses are not binding on the other party, unless specifically approved in writing by that party (*Articles 1341 and 1342, CC*). However, these provisions are generally considered inapplicable in international contracts.

In contracts with consumers, clauses excluding contractual liability are generally invalid (*Article 33, Italian Consumer Code*).

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?

Choice of law clauses are generally admitted and enforceable both under Italian law (*Article 57, Law No. 218 of 1995*) and EU law (*Article 3, Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I)*).

However, the application of any law chosen by the parties can be refused if such application is incompatible with Italian public policy (*Article 16, Law No. 218 of 1995; Article 21, Rome I*).

Despite the law chosen in the contract, in certain consumer contracts, a choice of law cannot deprive a consumer of the protection afforded to him or her by provisions that must not be derogated by agreement when, in the absence of a choice, the law of the country in which the consumer has his or her habitual residence would be applied.

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 choose the applicable law, a contract for the sale of goods will be governed as follows:

- Within the EU, by Rome I. The applicable law will be that of the country where the seller has his or her habitual residence (*Article 4, Rome I*). For companies and associations, the habitual residence is the place where they have their central administration. For an individual who is acting in the exercise of his or her business activity, the habitual residence is his or her principal place of business (*Article 19, Rome I*). If the habitual residence of the seller cannot be determined, the contract must be governed by the law of the country with which the seller is most closely connected. However, if from the circumstances of the case, it is clear that the contract is manifestly more closely connected with a different country from that of the law chosen in the contract, the law of that other country will be applied (*Article 4(3), Rome I*).
- Outside the EU, the applicable law will be that of the country with which the transaction is most closely connected (*Article 57, Law No. 218 of 1995 implementing the Rome Convention on the law applicable to contractual obligations*). It is presumed that the contract is most closely connected with the country where the party who is to effect the performance that is characteristic to the contract has, at the time of conclusion of the contract:
 - his or her habitual residence; or
 - in the case of a body corporate or unincorporate, its central administration.

As a general rule, in a contract of sale, the seller effects the characteristic performance, and therefore its domestic law will apply.

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?

Choice of forum clauses are generally admitted and enforceable both under Italian law (*Article 4, Law No. 218 of 1995*) and EU law (*Article 25, Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation)*).

The jurisdiction chosen is exclusive, unless otherwise agreed by the parties (*Article 25, Recast Brussels Regulation*). A valid jurisdiction agreement must satisfy any of the following conditions:

- Concluded in writing or evidenced in writing.
- In a form which accords with practices that the parties have established between themselves.
- In international trade, in a form according to a usage of which the parties are or should have been aware and which, in this context, is widely known and regularly observed by parties to contracts of the type involved in the trade concerned.

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 choose a jurisdiction, a contract for the sale of goods will be governed as follows:

- Within the EU, unless agreed otherwise, a person domiciled in a member state can be sued or sue in another member state in matters relating to a breach of contract, if the place of performance of the relevant obligation under the contract is located in another member state (*Article 7(1), Recast Brussels Regulation*). Article 7 provides that the place of performance in sales of goods is the place where goods were delivered, or should have been delivered.
- Outside the EU, the jurisdiction of the Italian courts will prevail in the following cases:

- when the defendant is resident in Italy or has a representative in Italy, or in other cases provided by law; or
- according to the criteria set out in the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968.

(Articles 3 to 4, Law No. 218 of 218.)

Arbitration

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

Arbitration clauses are sometimes included in sale of goods contracts and are, subject to their drafting, generally recognised by the Italian courts.

Italy is a party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

Storage of goods

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

Temporary storage of goods and custom warehouses matters are regulated by Regulation (EU) 952/2013 laying down the Union Customs Code, which has replaced Regulation (EEC) 2913/92 from 1 May 2016. In addition, the storage of goods is regulated on a national level by Presidential Decree 43/1973, as subsequently amended and supplemented.

A warehouse receipt under Italian law is a document issued by the warehouse where the goods are stored, which describes the goods and identifies the person that has the right of possession of the goods. Warehouse receipts are not recognised as documents of title, and are therefore non-negotiable.

A warehouse receipt cannot be used to transfer ownership of the goods, and the only person allowed to dispose of the goods is the person specifically identified by the receipt.

Italian law recognises other kinds of documents of title, which give to the bearer the possession of the goods in the warehouse and which can be used to transfer ownership, such as:

- *Fede di deposito* warrant: a document issued by a warehouse on request of the depositor (*Article 1790, CC*).
- Bill of lading: a typical negotiable document that evidences the contract of carriage and confers ownership of the goods to the bearer of the bill.

(*Articles 1992 to 2000, CC*.)

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

See [Question 18](#).

Under Article 460 of the Code of Maritime Law (Regal Decree of 30 March 1942 No. 327), a bill of lading must include the:

- Ocean vessel and voyage number.
- Place and date of loading.
- Subscription of the issuer.
- Name, surname, name of the company and domicile of the carrier.
- Name, surname, name of the company and domicile of the shipper.
- Place of destination.
- Nature and quantity of the goods.
- Condition of the goods and the packaging.

A *Fede di deposito* warrant must include the following information:

- The name, surname, name of the company and domicile of the declarant.
- The place of deposit.
- The nature and quantity of the goods, indicating other details able to identify them.
- If the customs duties were paid for the goods and if these were insured.

(*Article 1790, CC*.)

20. Are other interests over goods in storage recognised?

Article 2761 of the CC establishes a general privilege, which is a right of priority, in favour of the depository on the goods stored in the warehouse.

A creditor has a general right to hold the goods as a bailee and the debtor can store the good(s) until the credit has been paid up (*Article 2756, CC*). In addition, if the credit is not paid up, the creditor can sell the goods under the rules governing pledges.

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?

There are no impending developments or proposals for reform of national legislation affecting international trade and commercial transactions.

It is currently impossible to foresee the exact consequences of Brexit. However, it is certain that it will have an impact on trade relations between the EU (including Italy) and third countries.

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