



THE LIMITS OF THE INCOTERMS® RULE EX-WORKS



The delivery rule EXW (Ex-Works) represents the least onerous delivery rule for the seller with regard to the obligations related to the transport and customs clearance of the goods. Indeed, according to this Incoterms® rule, the seller fulfils his obligation to deliver the goods simply by placing the same, not cleared through customs, at the disposal of the buyer at the agreed place (usually the seller's premises), while the transport and the export customs clearance operations are carried out by the buyer, who must also bear the relevant costs and all the risks.

However, it must be considered that the use of the rule EXW, contrary to what appears at first sight, is not risk-free for the seller.

Indeed, the buyer is responsible for the transport and the customs operations and that the same handles the relevant documentation.

As a consequence, the seller can obtain the transport and customs documents, which attest the exit of the goods from Italy and which, therefore, are suitable to attest the non-taxable VAT nature of the sales invoice, only if they are provided by the buyer.

If, however, the buyer is not willing to provide such documents, the seller will bear the risk of being challenged for the non-application of VAT on the sale and of being subject to the recovery of VAT along with the relevant penalties.

Moreover, the adoption of the rule EXW (as well as of the rules FCA - FAS - FOB) is strongly not-recommended in all cases where the seller is required to produce documents attesting the shipment and/or the delivery of the goods in order to obtain payment for the goods: a situation which typically occurs when the parties agree the supplies of goods to pay by letter of credit.

Indeed, if the buyer (albeit unlawfully) decides not to collect the goods at the premises of the seller, the goods remain at the seller's premises and the seller cannot obtain the transport documents and, consequently, cannot present them for receiving payment on the basis of the letter of credit. This situation is particularly critical for the seller, especially if the goods supplied are subject to loss of marketability (e.g., because they are quickly perishable or subject to obsolescence), or even have no alternative marketability (e.g., in the case of goods manufactured to the buyer's specifications or customised with the buyer's trade mark).

In light of the above, especially in cases where payment is to be made by the foreign buyer by way of a letter of credit, it is preferable for the seller to take over the handling of the transport and of the customs clearance of the goods leaving Italy, so as to be able to handle the relevant documents. To this end, we suggest agreeing with the buyer an Incoterms® rule belonging to Group C (CFR, CIF, CPT, CIP) or Group D (DAP - DPU - DDP), as a valid alternative to EXW.