



Newsletter No. 55 (EN)

**Trade Terms in International Sale of Goods
and International Commercial Terms
(INCOTERMS)**

February 2020

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I. What are Trade Terms?

Every international sale of goods contract should include terms which govern key trade issues such as the time, place and manner of the transfer of such goods. These terms are called “trade terms”. In other words, trade terms set out the responsibilities of the buyer and seller with regards to the delivery of the goods in question, e.g. method of delivery, payment of shipping costs, insurance and customs. Over the years, standardised predefined trade terms have been developed in order to reduce the negotiation time for such transactions. The most popular of these predefined terms are the International Commercial Terms (INCOTERMS).

II. What are the International Commercial Terms (INCOTERMS)?

The INCOTERMS represent a set of predefined international trade terms (usually referred to by their abbreviated title), first introduced by the International Chamber of Commerce (ICC) in 1936. Since 1980 they are adapted to the changing legal, commercial and technological circumstances in a **decennial** rhythm.

The purpose of the INCOTERMS is to standardise the usage of trade terms in order to reduce uncertainty and avoid disputes. The most recent version of the INCOTERMS was published in 2020. However, older version can still be used if

the parties so wish. For this reason, it is always important to specifically state which version of the INCOTERMS is applicable, e.g. “INCOTERMS 2020”.

III. Applicability

INCOTERMS will only apply if two commercial parties expressly stated their application in the sale of goods contract itself or if they have been effectively included in the relevant offer/quotation, general purchase and sale conditions, order, order confirmation etc. The majority of the clauses are multimodal, which means they can be used for a variety of trade connections.

Besides the explicit **agreement** between the parties to apply the INCOTERMS, it is, as aforementioned, important to point out the **particular version** of the INCOTERMS which is to be applied. Due to the differences between the differing versions (e.g. *INCOTERMS 2010 and 2020*), a reference to just “*INCOTERMS*” can cause serious problems. Furthermore, it is crucial to point out the **destination point**. Without the latter, the INCOTERM is not useful as it is not clear where the goods shall be provided or be delivered. The destination point is to be distinguished from the **place of delivery**, which constitutes the place in which the risk of accidental loss skips from the seller to the buyer. The place of delivery results from the provision of the specific INCOTERMS clause.

Therefore, the INCOTERMS should be agreed on in the contract as follows:

1. Statement of the specific INCOTERM
2. Statement of the destination point
3. Reference to the particular version of the INCOTERMS

Template for a delivery clause: “*delivery shall be CIF BANGKOK- Pratunam storehouse hall 5 INCOTERMS 2020*”.

IV. What do the INCOTERMS cover?

The INCOTERMS define the rights and obligations of the parties with regards to:

- Delivery and transportation documentation (*or equivalent electronic notifications*);
- Allocation of costs for freight, taxes, duties, insurance etc.; and
- Transfer of risk.

INCOTERMS do not govern:

- The transfer of ownership and other rights arising from ownership;
- Breaches of contract and the consequences thereof;
- Description or quality of goods;
- The timing and method of payment;
- Choice of law; or
- Issues related to forwarders/carriers.

V. Categories of INCOTERMS

The INCOTERMS clauses can be broadly divided into four groups as follows:

- (1) The E-terms (EXW), under which the seller's only responsibility is to make the goods available to the buyer at the seller's premises;

- (2) The F-terms (FCA, FAS and FOB), under which the seller must deliver the goods to a carrier who is appointed by the buyer;
- (3) The C-terms (CFR, CIF, CPT and CIP), under which the seller must arrange the transportation of the goods but does not assume the risk of loss or damage to the goods or of any additional costs which arise due to events which occur after shipment/dispatch; and
- (4) The D-terms (DAT, DAP, and DDP), under which the seller bears all costs and risks of delivering the goods to their final destination.

VI. Most Frequently Used INCOTERMS

Please note that the terms FOB and CFR which are discussed below mainly apply to contracts which use maritime and inland waterway transport, however, they can also be agreed upon in case of air freight.

1. Ex Works (“EXW”)

EXW places the least obligations on the seller, as the buyer must bear all costs and risks involved in removing the goods from the seller's premises.

a) Delivery

The seller must pack the goods using appropriate packaging and then make the goods available at his premises for the buyer's collection at the agreed time. If no specific location within the seller's premises has been agreed, the seller may select the location which is most convenient for him. The risk of loss or damage to the goods passes to the buyer as soon as the

seller fulfils the delivery obligation, i.e. when the goods are placed at the buyer's disposal.

b) Transport and Insurance

The seller has no obligation in relation to transportation or insurance. The buyer is responsible for these matters.

c) Customs formalities

The buyer must obtain any requisite export and import documentation and complete all export and import customs formalities at his own expense.

2. Free On Board ("FOB")

The seller bears all costs and risks up to the point the goods are loaded on board to the vessel.

a) Delivery

The seller's delivery obligation extends to ensuring that the goods (properly packaged) are safely placed on board the buyer's appointed vessel in a manner which is customary for the port of shipment. As soon as the goods have passed over the ship's rail, the seller's obligation is fulfilled. Up until that point, the seller bears all risks for the goods.

b) Transport and Insurance

The vessel must be provided and contracted by the buyer at his own expense.

Equally, the buyer must arrange and bear the cost of any insurance coverage.

c) Customs formalities

The seller must obtain any requisite export documentation and complete all export customs formalities at his own expense. Equally, the buyer must obtain any requisite import documentation and complete all import customs formalities at his own expense.

Please keep in mind: As far as our experience goes, the clause FOB is often misused in terms of the containerized shipment of goods. In general, the containers are being received by the carriers at the container terminals of the port of loading, long before they have been shipped on board a named vessel. By accepting an FOB trade term in a containerised shipment, the seller has to bear extra risk for the time between the container being received by the carrier at the container terminal of the port of loading and being shipped on board of the container to the named vessel. Therefore, the ICC has explicitly indicated to use the clause FCA in such cases.¹

3. Cost and Freight ("CFR")

a) Delivery

The nature of delivery and the passing of the risk is the same as for FOB (*see above*).

¹ When using containerised shipment, we highly recommend thinking about the placement of the goods on the vessel, as this constitutes de facto two totally different loss risks of the

freight. Whereas a loss of containerised freight on upper deck is not unusual due to rough sea conditions, container in the lower deck are completely safe from this kind of danger.

b) Transport and Insurance

The seller must arrange and bear the cost of transporting the goods to the named port of destination. However, the seller is not obliged to take out an insurance policy for the goods.

c) Customs formalities

The nature of this obligation is identical as that for FOB (*see above*). Please note that many traders continue to use the traditional abbreviation “C&F” when they refer to the above obligations. However, any contract which says “C&F INCOTERMS” will be assumed to refer to the definition of C&F used in INCOTERMS 1980. This definition is substantially different from the INCOTERMS 2010 definition of CFR. Thus, it is strongly recommended that the parties use the correct abbreviation, i.e. CFR, in order to avoid any unexpected confusion or dispute.

4. Cost, Insurance and Freight (“CIF”)

a) Delivery

The nature of delivery and passing of risk for CIF is the same as that for FOB (*see above*).

b) Transport and Insurance

The seller is obligated to procure and bear the cost of transport and “minimum insurance cover of the Institute Cargo Clause” for the goods in question to the named port of destination. If the buyer requires additional insurance, he must bear the relating cost himself.

c) Customs formalities

The nature of this obligation is the same as that for CFR (*see above*).

5. Delivered at Place (“DAP”)

a) Delivery

With this term, the seller has the responsibility to deliver the goods to the buyer at a predetermined destination. As discussed in previous INCOTERMS, the seller must use appropriate packaging. As soon as the goods have been unloaded at the destination, the seller’s obligation is fulfilled. Up until that point, the seller bears all risks for the goods.

b) Transport and insurance

The seller carries all carriage expenses including any terminal expenses and insurances up to the defined destination.

c) Customs formalities

The seller must obtain any requisite export documentation and complete all export customs formalities at his own expense. Equally, the buyer must obtain any requisite import documentation and complete all import customs formalities at his own expense.

6. Delivery Duty Paid (“DDP”)

a) Delivery

The Seller is responsible. However, the seller is not responsible for unloading the goods. This term places the maximum obligations on the seller and no risk or responsibility is transferred to the buyer until

the specified goods arrive safely at the destination. The Seller carries all carriage expenses including any terminal expenses up to the defined destination

b) Transport and Insurance

The seller must arrange and bear the cost of transporting the goods to the named port of destination. In addition to that, the seller is obliged to take out an insurance policy for the goods.

c) Customs formalities

A unique aspect of this INCOTERM is, that the seller is solely responsible for clearing the goods through customs. He must obtain all necessary export and import documents and any necessary registration for the goods.

VII. Changes in INCOTERMS 2020

In 2020, the ICC released the INCOTERMS 2020. The total number of INCOTERMS (11) kept the same. Nevertheless, the new version brings the following changes:

- DAT (Delivered at Terminal) is renamed Delivered at Place Unloaded (DPU);
- FCA (Free Carrier) now allows for Bills of Lading to be issued after loading;
- CIF (Cost, Insurance and Freight) and CIP (Carriage and Insurance Paid To) set out new standard insurance arrangements, but the level of insurance continues to be negotiable between buyer and seller.
- Where listed, cost allocation between buyer and seller is stated

more precisely: one article lists all costs the seller and the buyer are responsible for.

- FCA (Free Carrier), DAP (Delivered at Place), DPU (Delivered at Place Unloaded) and DDP (Delivered Duty Paid) now take account of buyer and seller arranging their own transport rather than using a third party.
- Security-related obligations are now more prominent.
- “Explanatory Notes for Users” for each INCOTERM have replaced the 2010 edition’s Guidance Notes and are designed to be easier for users.
- CIP now requires as default insurance coverage ICC A or equivalent. It was ICC C under INCOTERM 2010. Required insurance coverage under CIF remains.

VIII. Conclusion

When negotiating an international sales contract, both parties need to pay close attention to the trade terms. Each party must be aware of the extent of their responsibilities, as agreeing to certain trade terms may result in additional responsibilities and costs.

The INCOTERMS can be very helpful in that they define each party’s exact responsibilities and risks and thus help to speed up the process of trade negotiations. However, INCOTERMS should be applied carefully. The parties should particularly ensure that the exact version of INCOTERMS used reflects their real intentions.

Figure 1: Overview over responsibility and risk allocation for INCOTERMS 2010

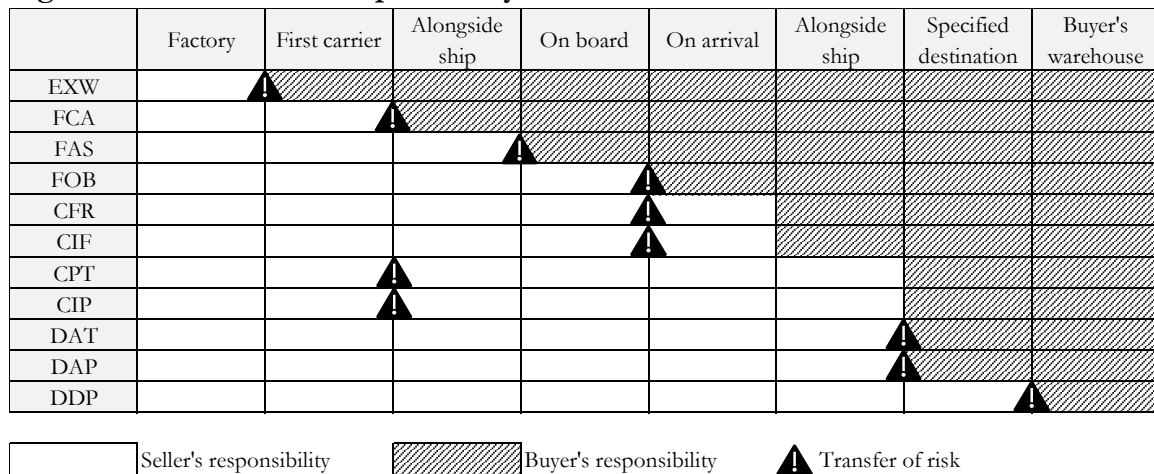


Figure 2: Responsibility allocation between seller and buyer for selected INCOTERMS

Responsibility for ...	EXW	FOB	CFR	CIF	DAP	DDP
Warehouse Storage	Seller	Seller	Seller	Seller	Seller	Seller
Export Packing	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller
Inland Freight	Buyer	Seller	Seller	Seller	Seller	Seller
Terminal Charges	Buyer	Seller	Seller	Seller	Seller	Seller
Forwarder's Fees	Buyer	Buyer	Seller	Seller	Seller	Seller
Loading Onto Vessel	Buyer	Seller	Seller	Seller	Seller	Seller
Ocean/Air Freight	Buyer	Buyer	Seller	Seller	Seller	Seller
Duty, Taxes & Customs Clearance for Export	Buyer	Seller	Seller	Seller	Seller	Seller
Charges On Arrival at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Seller
Duty, Taxes & Customs Clearance for Import	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

*We hope that the information provided in this brochure was helpful for you.
If you have any further questions, please do not hesitate to contact us.*

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