

PAMPHLET

09

2020 INCOTERMS®

également
disponible
en Français

ANY INTERNATIONAL EXCHANGE OF GOODS IS NECESSARILY ASSOCIATED WITH A LEVEL OF SERVICE NEGOTIATED BY THE TRADING PARTNERS. THE ESSENTIAL ROLE OF **INCOTERMS®** IS TO STIPULATE HOW THE RELATED OBLIGATIONS AND RESULTING COSTS, AND THE RISKS, ARE SPLIT BETWEEN EXPORTERS AND IMPORTERS.

1. DEFINITION

Incoterms®, short for “International Commercial Terms”, are the codified set of standard contractual provisions relating to the carriage of goods.

Defined by the International Chamber of Commerce (ICC)¹, Incoterms® are revised every 10 years to reflect changes in international trade practices.

These customary rules define in code form the conditions for the delivery of goods under a sales contract.

More specifically, Incoterms® identify the reciprocal obligations of the seller and the buyer, the allocation of transport costs, and the place of delivery, which represents the point at which the risks are transferred from the seller to the buyer.

2. METHODS OF IMPLEMENTATION

- Incoterms®, or contractual delivery terms, govern almost 95% of international transactions.
- They relate only to the flow of goods, and concern only the exporter, who is not necessarily the seller, and the importer, who is not necessarily the buyer.
- They determine the delivery obligations of the exporter (who may be the seller), the point of transfer of risk to the importer, the services that may be included in the invoice and the documents and/or information that the exporter is required to provide for the proper execution of the international transaction.
- They are used for transactions with third countries and for trade within the European Union.
- Under no circumstances do they determine the transfer of ownership, which must be specified in the contract binding the commercial partners.
- Incoterms® are not a law but an ICC recommendation; it is therefore important to specify to which version the transaction refers. The latest version, which came into effect in 2020 in ICC Publication No. 723 EF, is the most appropriate for today's world.
- There are 11 Incoterms® in the latest version, eight of which provide only for shipping obligations for the exporter.

1. International Chamber of Commerce

3. RECOMMENDATIONS FOR THE APPLICATION OF INCOTERMS®

- Before making any decisions, it is essential to analyse precisely the physical flow, which may differ from the financial flow.
- Incoterms® only apply to physical flows.
- It is important to understand that the customs authorities only recognise the 2010 and 2020 versions.
- As customs clearance has become increasingly important, a separate article has been devoted to it.
- All Incoterm® acronyms must be associated with a geographical location.
- It is important that the transport agreement is consistent with the conditions of delivery.
- The main risk today is not the failure to use Incoterms®, but that they are used improperly. In the event of a dispute, the exporter's commitments will be taken into account, even if the obligations set out in the chosen Incoterm® have been exceeded.

4. CHARACTERISTICS OF INCOTERMS®

• Selection criteria

- Destination, type of customer, nature of the contract, deadlines, value of the order, payment terms, mode of transport, exporter's financial capacity, etc.

• Families of Incoterms®

- F = the importer is responsible for international transport and pays for it directly
- C = the exporter pays for international transport, which is carried out under the importer's responsibility
- D = the exporter is responsible for international transport and pays for it directly

• Mode of transport

- All modes of transport: EXW, FCA, CPT, CIP, DAP, DPU, DDP
- Sea and river transport: FAS, FOB, CFR, CIF
- Transport organised with own resources: FCA, DAP, DPU, DDP

5. RECOMMENDED INCOTERMS® FOR ALL MODES OF TRANSPORT

• **EXW - EX Works:** the shipper makes the goods available to the customer in the customs territory of the country of export, either at their own premises or at those of a subcontractor, supplier or packer. Officially, the shipper does not take care of anything.

Comments: *This Incoterm® should be avoided at all costs, because if it is complied with, the shipper is not the exporter in the customs sense of the term and, if they are the seller, they immediately lose the right to invoice exclusive of VAT. Additionally, although the shipper has no action to*

take, they are responsible for providing packaging suited to the mode of transport, preliminary information for compliance with the safety and security measures in force, etc. Certain consequences may have a "boomerang" effect on the shipper.

• **FCA - Free Carrier:** the exporter hands over the goods cleared for export and loaded onto the mode of transport to the service provider representing the importer somewhere in the customs territory of export.

Comments: *The place associated with the Incoterm® may be before the goods leave (premises of the exporter, subcontractor or packing company) or any other place (storage area, consolidation area, port or airport) in the customs territory of export. This Incoterm® may be used for all modes of transport, leaving the importer in control of transport costs and risks.*

• **CPT - Carriage Paid To...**: the exporter pays the costs, including international carriage to the destination (airport, port or any other place in the destination territory); on the other hand, the importer assumes the risks associated with international carriage, which may be by any mode.

Comments: *The place indicated after the code is important. Never forget that in all countries except the EU, import customs clearance formalities and payment of the resulting costs take effect on arrival in the country. Indicating an inland location may prove dangerous in the event of unscheduled storage of the goods on arrival. Additional costs will be billed to the exporter. One recommendation, especially in these times, is to indicate a location on arrival in the country, i.e. before customs clearance.*

• **CIP - Carriage and Insurance Paid To...**: the exporter pays the costs, including international carriage and the transport insurance premium taken out for the benefit of the importer, who assumes the risks associated with international carriage.

Comments: *Same comments as for CPT; in addition, check that the importing country does not require the insurance to be taken out on its territory and that the cover corresponds to the risks incurred.*

• **DAP - Delivered At Place:** the exporter pays for and is responsible for international transport to the destination indicated after the code. Responsibility is transferred to the importer before unloading at the destination.

Comments: *The place of destination can be anywhere in the destination territory (from the point of entry to the final destination). However, it should be remembered that in the vast majority*

of countries (but not in the EU), import customs clearance is compulsory on entry into the territory, implying payment of the duties and taxes due. In the event of a problem (non-compliant documents, importer not taking the necessary steps, etc.), all storage costs will be charged to the exporter who cannot refuse to pay them (see service providers' terms and conditions). It is therefore highly advisable to check the risks associated with entering the importing territory.

• **DPU - Delivered at Place Unloaded:** the exporter pays for and is responsible for international transport to the destination indicated after the code. Responsibility is transferred to the importer after unloading at the destination.

Comments: *Recent Incoterm®, almost identical to the previous one, with the exception that the exporter is responsible for unloading at the agreed place of delivery. Suitable for oversized cargo requiring very special handling equipment.*

• **DDP - Delivered Duty Paid:** the exporter pays for and is responsible for all distribution operations up to the destination following the code, not necessarily the importer's premises. Unloading at this point is the importer's responsibility. In addition, the exporter manages import customs clearance and pays any duties and taxes due.

Comments: *The opposite of EXW – but just as dangerous. In effect, the exporter's selling price is inflated to cover customs duties and taxes in the importing country. Customs duties are liable to change at any time in certain countries, but above all, the exporter must pay the importing country's own taxes but cannot reclaim them, not being established in that country for tax purposes. To avoid these significant risks, the ICC recommends DAP or DPU. The Customs authority issues the same recommendation, stating that exports start at FCA and should stop at DAP.*

Note: **Incoterms® FOR and FOT (Free On Rail and Free On Truck) are still occasionally used, although they no longer appear in the 2000, 2010 or 2020 versions of Incoterms® and are therefore not accepted by Customs, who only recognise the 2010 and 2020 versions.**

6. RECOMMENDED INCOTERMS® FOR CONVENTIONAL SEA AND RIVER TRANSPORT

• **FAS - Free Alongside Ship:** the exporter delivers the goods, cleared for export, alongside the loading dock. The importer manages all transport and import formalities.

Comments: *Incoterm® mainly used to make liquid or solid bulk immediately available for future re-export by the importer.*

• **FOB - Free On Board:** the exporter delivers the goods, cleared for export, to the vessel designated for transport and pays all the costs of loading the goods into this vessel. The exporter is responsible until such delivery. The choice of vessel is normally the importer's responsibility, but usually the choice is left to the exporter in agreement with the TLO².

Comments: *Incoterm® which has changed with each revision; the exporter must now systematically pay the loading charges, irrespective of the liner term³ provided by the shipping line. The danger lies essentially in the docking of the ship being delayed, which will result in storage costs being charged to the exporter. **Important reminder: Incoterm® not to be used for container transport as, in this mode of transport, the apparent condition of the goods or packaging cannot be checked after loading onto the ship.***

• **CFR - Cost and Freight:** the exporter pays for the sea freight; the place of delivery and the transfer of risk are as for FOB.

Comments: *The two trading partners must check which of them is responsible for paying the costs of unloading the ship at its destination. These costs depend on the choice of liner term imposed by the shipping line.*

• **CIF - Cost Insurance and Freight:** Incoterm® almost identical to CFR; in addition, the exporter takes out transport insurance for the benefit of the importer with a minimum cover of "FPA except..."⁴ for the contract price plus 10%.

Comments: *French marine cargo insurance policies apply a 20% increase on the quoted price without any particular justification.*

2. Transport and/or Logistics Operator

3. The Liner Terms specify the shipping line's tariff offer, mainly setting out the distribution of embarkation and disembarkation costs between the shipper/consignee and the shipping line. They therefore qualify the contract of carriage (Bill of Lading), specifying the charges that are included or excluded.

4. "FPA except..." cover (Free of Particular Average except that resulting from a listed event) is an insurance formula that corresponds to restricted insurance generally covering damage to goods during loading and unloading operations, as well as damage affecting the cargo and the means of transport. Unlike "all risks" cover, it is limited to loss or damage caused to goods by one of the events listed in the policy wording: collision, grounding, explosion, etc.

CONCLUSION

The choice of Incoterm® is of vital importance in any international contract, as it affects all aspects of product distribution: transport, customs, sundry costs, etc.

Summary table of Incoterms® (© Magali Lajoinie)

Fil Export

Synthetic chart

ICC publication 723EF

INCOTERMS 2020 : obligation of delivery (exporter, seller) / transfer of risks and costs

INCOTERM	loading at departure(1)	export customs	inland carriage	unloading	storage if any	loading on board	main carriage	cargo insurance	discharge	terminal unloading	import customs	final delivery	unloading at destination	INCOTERM
EXW	🚚													EXW
FCA		🚚 or 🚚												FCA
FAS	🚚			🚚										FAS
FOB						🚚								FOB
CFR						🚚								CFR
CPT		🚚 if any	🚚 if any											CPT
CIF						🚚								CIF
CIP		🚚 if any	🚚 if any											CIP
DAP									🚚 or 🚚			***	🚚	DAP
DPU										🚚 or 🚚		***	***	DPU
DDP													🚚	DDP

caption

- 🚚 point of delivery
- 🟤 costs exporter / seller
- 🟡 cost importer / buyer
- 🚚 transfer of risks

details of costs :

- 🟤 importer if the name place is the exporter's premises, exporter if any other cases
- 🟡 risks and costs for exporter until goods have been delivered
- 🟤 costs for the exporter's account under the contract of carriage
- 🟤 risks and costs for exporter until goods have been delivered

Main modes of transportation

- 🚚 Incoterms to be used only for conventional or bulk cargoes and inland waterway transport
- 🚚 the other incoterms can be used irrespective of the mode of transport selected

(1) the exporter bears always all risks and costs of packaging and inspection and to provide information prior to security-safety measures

Warning : at an EXW sale, the seller is not considered exporter and, as a result, loss his right to bill HT, without exception

lajoinie.magali@bbox.fr

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