



**Newsletter No. 55 (EN)**

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

March 2019

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## I. What are Trade Terms?

Every 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)?

INCOTERMS were first introduced by the International Chamber of Commerce (ICC) in 1936. The INCOTERMS consist of a list of standard trade terms (*usually referred to by their abbreviated title*) **and** a set of international recognised rules on how such terms should be interpreted in practice.

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 2010. However, older version can still be used if

the parties so wish. The ICC began the planning and consultations in revising the INCOTERMS 2010 to the next version, to be called the INCOTERMS 2020.

## III. Validity

INCOTERMS will only apply if their application is expressly stated in the sale of goods contract itself or they have been effectively included in the relevant offer/quotation, general purchase and sale conditions, order, order confirmation etc. Moreover, it is crucial that the aforementioned reference specifically states which version of the INCOTERMS is applicable, e.g. “*INCOTERMS 2010*”. Due to the differences between the different versions (*e.g. between the INCOTERMS 2000 and 2010*), a reference to just “*INCOTERMS*” can cause serious problems.

Template delivery clause: “*delivery shall be CIF BANGKOK INCOTERMS 2010*”.

## 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 definitions are 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")

#### 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.

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.

### 2. Free On Board ("FOB")

#### a) **Delivery**

Under this term, 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.

**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*).

**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 of 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

As mentioned in the introduction, the ICC has begun to review the INCOTERMS

2010 to release a new version, the INCOTERMS 2020. Of course, there will be changes to the individual terms within the framework.

The INCOTERM 2020 changes include:

- The removal of EXW, DDP and FAS;
- The modification of FOB and CIF to only apply to goods travelling in a container;
- The creation of a the new INCOTERM CNI (Cost and Insurance)
- Two new INCOTERMS based in DDP, Delivered at Terminal Paid (DTP) and Delivered at Place Paid (DPP)

## 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

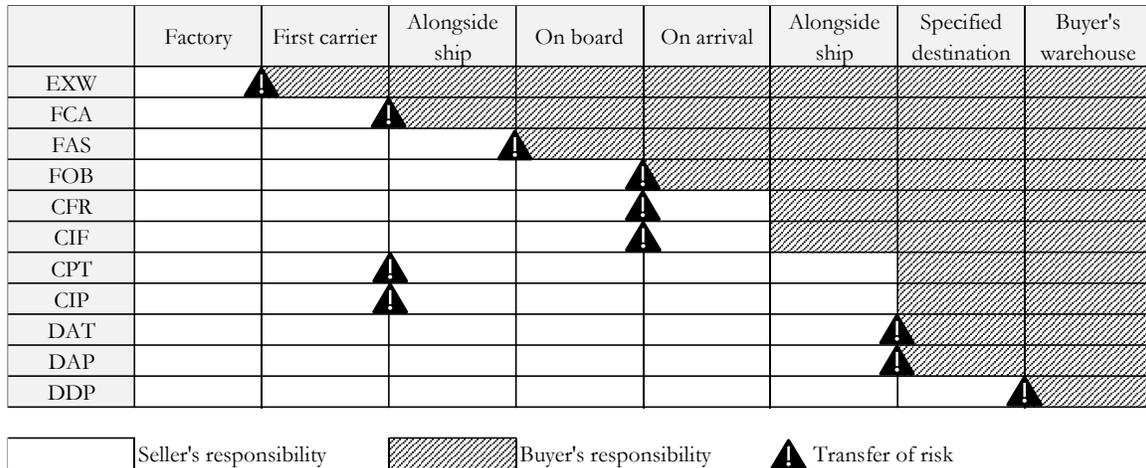


Figure 2: Responsibility allocation between seller and buyer for selected INCOTERMS

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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