

Newsletter No. 55 (EN)

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

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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 in regards to the delivery of the goods in question, e.g. method of delivery, payment of shipping costs, insurance and customs.

II. The Use of Trade Terms

As noted above, trade terms are used to govern various issues with regards to sales of goods transactions. 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).

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

INCOTERMS were first introduced by the International Chamber of Commerce 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.

IV. 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*”.

VI. 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.

VII. 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.

VIII. 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 has to 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*).

IX. **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 in particular ensure that the exact version of INCOTERMS used reflects their real intentions.

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

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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