Incoterms® 2020 Rules

Summary

Since their inception in 1936, the International Commercial Terms (Incoterms® rules) have been amended by the International Chamber of Commerce (ICC) eight times (1953, 1967, 1976, 1980, 1990, 2000, 2010 and 2020).

The amendments are generally to ensure that the terms keep up to date with trade developments and common practices. Since the last revision in 2010, much has changed in global trade and, for UK/EU companies especially, uncertainty about future trading agreements means contract terms must be resilient and effective to minimise disruption to trade. It was deemed necessary to up-date the 2010 terms to take into account the trend of closer alignment on trade within certain regions (e.g. ASEAN region, Eurasian Economic Union, etc), the increased use of electronic communications in business transactions and changes in transport practices. It is the changes in these areas, including greater supply chain security, that has made the 2020 set necessary.

The Incoterms® rules are translated into over 80 different languages.

The seller should (in agreement with their buyer) use one of the Incoterms® 2020 rules from the 11 suggested terms in all international contracts. By selecting an appropriate Incoterms® rule, both parties are then clear about their obligations in terms of:

- delivery — the point at which delivery of the goods is taken to have been legally achieved is clearly stated
- risk — it defines a specific point at which the risk of loss or damage of the goods and the actions pertaining to that risk transfers from the seller to the buyer
- costs — by having a clearly defined delivery point the seller knows what transport-related costs are their responsibility and can therefore build up a selling price accurately, and the buyer knows which costs they must pay directly to transport companies or customs authorities, etc
- obligations — each term states the seller's and buyer's obligations in respect to the delivery of goods, e.g. preparation of export documents
- transportation — some terms relate only to the movement of goods by sea (or inland waterways if applicable) and do not protect the seller if the goods are exported via another mode of transport
- who is responsible for supply chain security measures.

The Incoterms® rules cannot be supported in law unless the term is included and accepted in the contract of sale; therefore it is important to ensure that where the Incoterms® rules are incorporated into a contract a reference is always made to the date of the version applicable. This will avoid disputes.

It is also important that the Incoterms® rule is as specific as possible. For, say, export from the UK, it should be written similarly to the following.

- FCA London Heathrow Airport (Incoterms 2020 Rules).
- CIP New York Airport (Incoterms 2020 Rules).

Now, more than ever, making sure the right year is shown is vitally important.

Why so many options? There are many different types of international transactions in the world, from vessels of grain awaiting a buyer on the commodity market, to a jiffy bag containing an integrated circuit (IC); from a full power station to be dismantled and transported to a distant country, to a few boxes of consumer goods being sold to a distributor overseas.

It is unlikely that many exporters or buyers will use more than four of these terms on a regular basis in their international sales, and a company should have a policy that is clear to sales staff to avoid agreeing to terms that are inappropriate to their business.

The division into four groups has remained the same; these groups follow the movement of goods:

- Group E — to the exporter's premises
- Group F — to the export point (airport/seaport, etc)
- Group C — to the import point overseas (airport, seaport, etc)
- Group D — delivered into the overseas buyer's country at the exporter's cost and risk.

In Practice

Definition

Incoterms® rules are "International Commercial Terms", sometimes called "International Contract Terms". They are a shorthand way of legally defining delivery under international contracts and the responsibilities that go along with the delivery of goods.

A form of delivery term has historically been used in international contracts for hundreds of years — some of these ancient terms survive in the official set, e.g. CIF, FOB — but without being clearly defined in an internationally recognised legal sense. This international recognition is what the International Chamber of Commerce (ICC) sought to achieve when they created the Incoterms® rules in 1936.

Rules of Reference

It is important to note that one of the key changes introduced in the 2010 set still applies; "Incoterms" is a trademark registered to the ICC and so must always now be written with the ® after the word Incoterms, apart from in contracts where the ® is not required. Also, they have clearly expressed that the word must never be used without the "S" on the end and it is not a noun, so when discussing the set of terms in general or an individual term you must always call them "the Incoterms rule(s)".

The Delivery Point

The Incoterms® rules legally define the "delivery point" in sales both international and domestic: the new 2020 set allows for some of the rules to be used in domestic sales contracts as well.

The delivery point is important, especially in international transactions, because once the seller has delivered the goods they generally:

- can claim payment
- have no further shipment costs to pay
- have no further responsibility for the goods if they are lost or damaged after that specific point named.

Deciding on the delivery point is important; it must be a point that is acceptable to both the buyer and the seller. Only when a seller knows exactly where they have to deliver the goods can they accurately calculate a selling price. Only when the buyer knows where they have to take responsibility for the goods and any additional charges after that point can they accurately know the "cost of ownership".

For example, the delivery point might be at the seller's premises, in which case the buyer would be paying all shipment costs, and so the seller's export price would be only the selling price of the goods plus any extra for packing, but the buyer would have to organise transport, pay all costs to bring the goods to their door and take the maximum risk. If the seller has to deliver to the buyer's premises overseas then the costs of transportation, etc should be added to the price of the goods to get to a true selling price.

With something this important, buyers and sellers cannot leave the terms of delivery vague; this can lead to disputes and unexpected costs. Also, in international trade, because of language, culture and national differences between the buyer and seller (as well as the physical distance between the two parties), misunderstandings can arise. The seller might think they have made the delivery point clear but, when the contract is translated into the buyer's language and interpreted against their country's commercial practices, they might define the delivery point in a different way. This type of misunderstanding only comes to light if things go wrong: not a good time to find out the buyer actually expected the seller to pay all import clearance charges, for example.

Disputes like this will cost the seller time and money to resolve and, if the dispute is more serious, might even involve going to law to seek a resolution.

It is beneficial to all parties involved to have any vagueness, misunderstanding and confusion in international contracts removed. The Incoterms® rules have been written to do just that.

The introduction to the 2020 set stresses that the Incoterms® rules are a genuine set of working rules that can be used by export salesmen when negotiating contracts; they deal with matters relating to the rights and obligations of the parties in the contract of sale with respect to the delivery of the goods. The ICC also warns about the use of variants. The Incoterms® Rules are there to avoid inconsistencies of understanding, and so buyers and sellers are encouraged to use the terms as written by the lawyers. Any term that has been altered in a "do-it-yourself" fashion would not have the authenticity of the official version and in the event of a dispute may prove to be "unsound".

The Incoterms® 2020 Rules and Modes of Transport

Four of the Incoterms® 2020 rules should be used only if the seller knows that the goods are being carried on a conventional seagoing vessel: FAS, FOB, CFR and CIF. These terms are out of place for other modes of transport and may put sellers in the position of being unable to fulfil their contractual obligations, possibly incurring greater risk and cost than expected.

Even when goods are shipped by sea, FAS, FOB, CFR and CIF are only appropriate where the goods are intended to be delivered to a ship or when loaded onto the ship, and not where the goods are stowed in containers.

Where sellers are unsure of the mode of transport, Incoterms® rules that apply to any type of transport should be used in the contract, such as FCA, CPT, CIP or the newly named DPU term (replacing DAT) or DAP.

DAT (Delivered at Terminal) was introduced in the 2010 set with the intention that it would cover the movement of containers to inland terminals. The term has been adopted by a number of companies trading internationally as it is the only term whereby the seller delivers after the goods are unloaded at the named place rather than leaving the costs, obligations and risk of unloading to the buyer. With that in mind, the ICC have renamed the term Delivered at Place Unloaded (DPU) to best reflect the usage by industry. Where sellers are unsure of the mode of transport, terms that apply to any type of transport should be used in the contract. Because of the growth of customs-free zones (e.g. the EU, EEU), the words "where applicable" remain when customs formalities, duties, taxes, etc might not apply as they would in traditional import situations (FCA and DAP being the best examples).

Incoterms® 2020 Rules Groups in Brief

The four groups and the 11 Incoterms® 2020 rules are similar to the 2010 set but some delivery points, obligations and responsibilities for costs have been amended to make the new set less ambiguous and more relevant to the practice of international trade.

The Incoterms® rules are terms of the contract of sale and tell the parties what to do with respect of:

- carriage of the goods from seller to buyer
- export and import clearance.

They also explain the division of cost and risk between the parties.

- Group E — delivery is made at the seller's premises (said to be mainly appropriate for domestic not international transactions):
    - ExWorks named place (EXW).
- Group F — delivery made at a named point of export with the seller responsible for export customs formalities:
    - Free Carrier named point of export (FCA)
    - Free Alongside Ship named port of shipment (FAS)
    - Free on Board named port of shipment (FOB).
- Group C — delivery made at the place of export but the seller must contract for carriage and pay all costs up to the arrival point in the destination country:
    - Cost and Freight named port of destination (CFR)
    - Cost, Insurance and Freight named port of destination (CIF)
    - Carriage Paid To named place of destination (CPT)
    - Carriage and Insurance Paid to named place of destination (CIP).
- Group D — delivery, costs and risk are the seller's up to a named point in the country of destination:
    - Delivered At Place Unloaded named place of destination (DPU)
    - Delivered At Place named place of destination (DAP)
    - Delivered Duty Paid named place of destination (DDP).

Incoterms® 2020 Rules Groups in Detail

Group E — departure term

There is only one in this group: ExWorks (EXW).

Though it can be used for any type of transport, under the Incoterms® 2020 rules it is said to be more appropriate for domestic deliveries rather than international transactions.

- The seller's risk and responsibilities end when the goods are packed, ready for collection at a named place at the seller's premises or nominated place in the seller's country.
- The seller has no means of ensuring that the goods leave the UK; therefore, it must be treated as a domestic sale for VAT purposes.
- The buyer must arrange for the goods to be loaded at the seller's premises.
- In the UK/EU the buyer must have an UK/EU EORI (Economic Operators Registered Identification) number so the export customs declaration can be prepared in its name or have nominated an indirect representative to act on its behalf.
- The buyer of the goods organises the transport, pays all costs and bears the full transit risk. If the buyer intends to move the goods outside the UK, then it is the buyer's responsibility to comply with all export formalities in the seller's country (including licensing and supply chain security requirements).

Under ExWorks, the seller should not organise transport or arrange for the goods to be export customs-cleared (though they must provide a commercial invoice) as they are not protected by law if they do so and there is a dispute. Freight companies can legally claim freight charges from sellers under ExWorks contracts if the seller has booked the shipment and the buyer refuses to pay when the goods are delivered. If the seller does undertake these activities then FCA should be used instead.

Buyers should not use ExWorks unless they are able, directly or indirectly, to carry out all customs clearance formalities. They may ask the seller to assist in obtaining any export licence that may be required but export formalities are not the seller's responsibility.

Group F — main carriage unpaid by seller

There are three Incoterms® rules in Group F. These terms extend the sellers' responsibilities to the physical point of export from their country. Usually the seller delivers the goods, cleared for export, to a carrier named by the buyer, transport costs being for the buyer's account.

Free Carrier (FCA) Named Point of Export

This can be used for any mode of transport.

- Risk of loss or damage is the buyer's once the goods are in the hands of the first carrier at the agreed point in the seller's country.
- The seller must load the goods on to the buyer's transport and ensure that the goods are export customs cleared.
- The named point can be either the FCA seller's premises or the FCA named place of shipment (airport, etc).
- Ambiguity over who pays the export customs formality costs under "FCA seller's premises" contracts has been removed within the Incoterms® 2020 rules: these costs are the seller's responsibility.
- First carrier is defined as "any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport" by the appropriate method, so this could be a freight forwarder, a courier company, a road haulier or the air/shipping line .

FCA Seller's Premises

This use of FCA means that the seller delivers the goods and transfers risk once they have been loaded on to the buyer's transport at the seller's premises; similar to ExWorks except that loading is not the seller's responsibility.

In addition, it is the seller's obligation to clear the goods for export and, if the buyer does not give specific transport instructions, the seller is protected by being allowed to arrange transport on behalf of the buyer but at the buyer's risk and cost.

This use of FCA has been designed to replace the previous misuse of ExWorks.

Division of costs has become clearer in the new set and the costs for arranging the export presentation must be borne by the seller unless it is specifically covered within the contract of carriage arranged by the buyer, for example when using Fast Parcel Operators (FPOs) where the customs costs are rolled into a single delivery price.

If there is a delay in export clearance that incurs storage costs these must be borne by the seller, even if the clearance delay was due to an error by the buyer's nominated carrier.

FCA Named Place of Shipment

Under this use of FCA delivery takes place and risk passes to the buyer when the goods are placed at the disposal of the first carrier at the named place — though the seller does not bear the risk of offloading the goods at that place.

The seller's costs include delivery to that point and customs clearance. This makes the term a suitable replacement for FOB when the goods are not moving by conventional sea freight but being delivered to an inland container base. To facilitate the use of the FCA rule for sea freight the 2020 set has made it an obligation for the carrier to provide the seller with an onboard bill of lading even if delivery has been made away from the port of departure.

Again, if the buyer does not specify a carrier or delivery point, the seller can legally undertake to select the point at the place of delivery that best suits their purposes on behalf of the buyer and at the buyer's risk and cost.

Free Alongside Ship (FAS) Named Port of Shipment

- This should be used only where the goods are being moved by conventional sea freight.
- Risk of loss or damage and all further responsibilities are the buyer's once the goods are alongside the ship.
- Note that under the Incoterms® 2020 rules it is still the seller who is responsible for export customs formalities.

Free on Board (FOB) Named Port of Shipment

- This should be used only where the goods are being moved by conventional sea freight and is not suitable for when the goods are delivered to an inland container base prior to being loaded on board the ship.
- The place of delivery and point where responsibility for loss or damage transfers to the buyer was changed under the Incoterms® 2010 rules to when the goods have been loaded on the ship. This point remains within the Incoterms ® 2020 rules
- The seller legally delivers the goods once they are safely loaded on board the ship at the named port of shipment, cleared for export.

FOB should not be used if the goods are being exported by any other mode of transport; FCA named place is the alternative, because to use FOB when the goods will not be loaded on a ship means that the seller cannot legally fulfil the contract — leaving them open to disputes and possibly extra costs and risk.

Group C — Main carriage paid by seller

There are four Incoterms® rules in Group C. Under these, the seller is responsible for arranging and paying for carriage to a destination port or place in the buyer's country, but delivery takes place, and the risk of loss or damage transfers to the buyer, once the goods are on board the vessel or in the hands of the first carrier in the seller's country (as with Group F).

Therefore, the shipment risk is the buyer's.

Cost and Freight to (CFR) named port of destination

- This should be used only where the goods are being moved by conventional sea freight and is not suitable where freight has been delivered to an inland point, e.g. container base, prior to loading on board the ship. If this is not the case CPT should be used.
- Delivery is made and risk transferred once the goods are loaded on board the ship at loading. This includes export customs clearance.
- The seller must bear the cost of getting the goods to the named port of destination but is not responsible for offloading unless this was part of the contract of carriage agreed between the seller and the freight company.

Cost, Insurance and Freight (CIF) to Named Port of Destination

This should be used only where the goods are being moved by conventional sea freight and is not suitable where freight has been delivered to an inland point, e.g. container base, prior to loading on board the ship. If this is not the case CIP should be used.

This is the same as CFR except that sellers must take out transit insurance cover on behalf of the buyer.

The seller must pay for insurance on behalf of the buyer under the minimum cover of the Institute Cargo Clauses (Clause C) for 110% of the value of the shipment in the currency of the contract.

Usually this means that the seller raises an Insurance Certificate on their normal marine insurance policy rather than take out a new policy specifically for this movement (although if they do not have

an insurance policy or it does not cover their buyer's country, a specific policy would have to be obtained).

The Certificate is issued on behalf of the buyer and should be sent to them if a claim has to be made, because it is the buyer's risk once the goods have been loaded on board the ship. This is one of only two Incoterms® rules that specifically make insurance an obligation. In all other Incoterms® rules, insurance should be covered under a separate clause in the contract.

If the buyer wishes to have more protection than minimum cover allows, they may expressly instruct the seller to take out greater insurance cover, e.g. maximum cover with war risk.

Carriage Paid To (CPT) Named Place of Destination

This can be used for any mode of transport.

Delivery takes place and risk is transferred when the goods are placed at the carrier's disposal at the place of shipment from the UK, similarly to FCA named place. The difference is that under CPT the seller must pay all costs to get the goods to the named place of destination, which could be an airport, seaport, or road or rail terminal.

Carriage and Insurance Paid to (CIP) Named Place of Destination

Here delivery, risk and costs are the same as under CPT, but the seller must also arrange transit insurance of the goods on behalf of the buyer.

The obligations for transit insurance are the same as outlined under CIF.

The differences between CIP and CIF is that CIP can be used for any mode of transport, whereas CIF is specific to sea freight and the level of insurance risk to be covered is higher than the obligation under CIF. In Incoterms ® 2020 Rules the seller must take out insurance cover on behalf of the buyer under the maximum "all risks" cover of the Institute Cargo Clauses (Clause A) for 110% of the value of the shipment in the currency of the contract.

Examples of Expressing the Terms in a Contract under Group C Incoterms® 2020 Rules

- CPT Sydney Airport, Australia (Incoterms® 2020 rules), risk to transfer to buyer at seller's premises (AJ Components, Ardwick Works, Manchester, England).
- CIF Durban Harbour, South Africa (Incoterms® 2020 rules), risk to transfer to buyer when loaded on board the ship at Felixstowe port, England.

Group D — arrival term

There are five Incoterms® rules in Group D.

The seller's risk under this group does not transfer to the buyer until the goods have reached the named place in the destination country. This increase in the seller's risk is the main difference between Group C and Group D.

The place where delivery is legally made and where risk of loss or damage becomes the buyer's responsibility is different for each term; reference to the ICC book on the Incoterms® rules is recommended.

Delivered at Place Unloaded (DPU)

This is essentially a name change for Delivered at Terminal (DAT) but also means it is suitable for use for any means of transport to an inland place whether moved by road, rail or sea. The seller is responsible for all costs and risk until the goods have arrived at the named place and have been

offloaded. The buyer is responsible for customs clearance costs and the payment of duties and taxes and any further movement after this point.

Delivered at Place (DAP)

This term was introduced in the 2010 set as a new omni/multi-module term which can also be used for domestic shipments including intra-EU movements. It makes the seller responsible for all costs and risk to the place named — and the place named must be in the buyer's country.

Although it gives the option to name the buyer's premises it must be noted that the costs of customs clearance and the payment of duties and taxes remain the buyer's and should not be undertaken by the seller. For domestic and free zone business customs, duties and taxes are not considered applicable leaving this term suitable for use.

It is vitally important that a place be named after DAP as this can be anywhere in the buyer's country, from the arrival port or airport to the buyer's premises. Not specifying the correct delivery place can leave the seller open to additional costs and increased risks as the term is generally taken to mean that the seller is responsible up to the buyer's premises unless it is clear that the point is earlier.

Delivered Duty Paid (DDP) Named Point of Arrival

This is another omni-module term which is not suitable to domestic or intra-EU movements.

The named point can either be the port or airport of arrival or the buyer's premises. Contrary to DPU and DAP, all UK duties and taxes should be paid by the seller. The buyer has very few responsibilities. Though this may seem attractive to buyers, it is advisable that the buyer controls the import entry process and the payment of import taxes such as VAT as some taxes are reclaimable from the Government if the company is registered.

Sellers should be cautious when considering this option, as the calculation of overseas customs formality charges, duties and taxes can be difficult to identify and may not be stable during the lifetime of the order. Also, any delays overseas will be at the seller's expense and risk. DDP has become more difficult with the increased security and registration requirements being introduced by customs authorities around the world.

Note:

It is generally unwise for the seller to take responsibility for import duties and taxes in the destination country. Although the customer may find it attractive not to pay these charges the seller will be liable for charges that are sometimes difficult to identify accurately or at best guarantee the stability of. In addition, the buyer can offset their equivalent to VAT whereas the UK seller would not be able to reclaim this unless they were registered in that country.
One way this term is used is when trading consumer items over the Internet, as individuals would find the necessity to customs-clear goods too onerous. This term should not be used if the seller is unable directly or indirectly to obtain any necessary import licence or complete the import customs formalities.

Further Information

Publications

- *Incoterms® 2020*, International Chamber of Commerce, available to order from the ICC Books website

Organisations

- **International Chamber of Commerce (ICC)**

  http://www.iccwbo.org

  The ICC is “the voice of world business, championing the global economy as a force for economic growth, job creation and prosperity”.

How to Consider the Use of an Incoterms® Rule

- Take time working with all staff (especially sales and purchasing) to clarify the correct definitions of the Incoterms® rules and the ones that best suit the company's standard terms of delivery.
- Draw up a policy stating why which terms are best for the organisation. This will assist sales teams when discussing contract terms with buyers, and buyers when considering potential orders.
- Understand the potential problems for both buyers and sellers of moving goods internationally under ExWorks (Incoterms® rules) and consider using FCA seller’s premises as a more appropriate Incoterms® rule.
- Be confident in your use of the Incoterms® rules; there will be resistance to change from some shipping companies, freight forwarders and banks.
- Understand your insurance policy. Remember that only CIP and CIF say that the seller must insure the goods; under all other Incoterms® rules the point at which risk passes to the buyer is determined, but insurance must be undertaken as a separate contract term.
- Use a Group C term with caution: this group can be confusing as the division of costs is different from the point at which risk passes.
- Remember that under Group D Incoterms® rules the seller has the risk of loss or damage but does not have to insure the goods.
- Use DDP with caution. Whether for a buyer or a seller, DDP is not natural in international transactions where customs declarations are required at import using a registered number, or where supply chain security issues must be undertaken and the payment of duties and taxes correctly handled.