

INCOTERMS® 2010

International Commercial Terms, known as “Incoterms”, are internationally accepted terms defining the responsibilities of exporters and importers in the arrangement of shipments and the transfer of liability involved at various stages of the transaction. Incoterms *do not* cover ownership or the transfer of title of goods. It is crucial to agree on an Incoterm at the start of a negotiation/quotation of a sale, as it will affect the costs and responsibilities involved in shipping, insurance and tariffs. The new Incoterms 2010 rules were revised by the International Chamber of Commerce and became effective January 1, 2011. Three terms were eliminated (DAF, DEQ, DES) and one (DDU) was changed into: Delivered at Place (DAP) and Delivered at Terminal (DAT).

The modifications affect obligations, risk transfer, and cost sharing for the seller and buyer, resulting in better clarification and application of the eleven (11) Incoterms, and consistent with the way global trade is actually conducted since the last update in 2000.

In any sales transaction, it is important for the seller and buyer to agree on the terms of sale and know precisely *what is included in the sale price*. Exporters should choose the Incoterm that works best for their company, but also be prepared to quote on other terms, depending on the preference of the customer as Exporters may scare away inexperienced potential buyers.

When designating the Incoterm on a commercial invoice or a quotation to the buyer, the term should be followed by the city or port of loading/discharge, such as “EXW Richmond, VA” or “CIF Rotterdam”. Using the actual address is better to avoid any confusion or misinterpretation.

Communication throughout the entire process is crucial. For example, under Ex Works, the shipper should notify the importer when the goods are ready and after they have been picked up by the importer’s selected carrier. The exporter’s freight forwarder should provide shipping details, such as the vessel name and departure date, or airline used, and any ocean bill of lading (B/L) or airway bill (AWB) number to keep the parties informed of the arrangements and status of the shipment (even though technically under Ex Works the exporter’s responsibility ends at their loading dock).

INCOTERMS® 2010

Rules for Sea and Inland Waterway Transport:

FAS - Free Alongside Ship: Risk passes to buyer, including payment of all transportation and insurance costs, once delivered alongside the ship (realistically at named port terminal) by the seller. The export clearance obligation rests with the seller.

FOB - Free On Board: (also applicable for airfreight transportation) Risk passes to buyer, including payment of all transportation and insurance costs, once delivered *on board the ship* (not truck!) by the seller.

CFR - Cost and Freight: Seller delivers goods and risk passes to buyer when on board the vessel. Seller arranges and pays cost and freight to the named destination port.

A sale based on the Incoterm “CFR” requires the *exporter* to arrange and pay for the pre-carriage and shipping to a named port. In this case, the sale price (invoice) includes not only the (C)ost of goods, but also (Fr)eight costs that the importing buyer pays the exporting seller.

CIF - Cost, Insurance and Freight: Seller arranges and pays cost, freight and insurance to destination port. Risk passes to buyer when discharged at port of destination. Adds insurance costs to CFR.

A sale based on the Incoterm “CIF” requires the *exporter* to arrange and pay for the pre-carriage, shipping, and insurance to a named port. In this case, the sale price (invoice) includes not only the (C)ost of goods, but also (I)nsurance and (F)reight costs that the importing buyer pays the exporting seller.

INCOTERMS® 2010

Rules for Any Mode or Modes of Transportation

- **EXW** - Ex Works: Seller delivers (without loading) the goods at disposal of buyer at seller's premises. Long held as the most preferable term for those new-to-export because it represents the minimum liability to the seller. On these routed transactions, the buyer has limited obligation to provide export information to the seller. Inexperienced exporters may want to use the Incoterm "Ex Works" (EXW), because this term carries the least burden for them. Under EXW, an exporter's responsibility ends at their facility's loading dock, which includes making the goods available for pick up and providing any product information needed for filing the Electronic Export Information (EEI). The importer's agent (i.e. their designated U.S. freight forwarder) will arrange and pay for the pre-carriage, shipping, insurance and any additional costs from the exporter's door.

INCOTERMS® 2010

- **FCA** - Free Carrier: Seller delivers the goods to the carrier and may be responsible for clearing the goods for export (filing the EEI). More realistic than EXW because it includes loading at pick-up, which is commonly expected, and sellers are more concerned about export violations.

- **CPT** - Carriage Paid To: Seller delivers goods to the carrier at an agreed place, shifting risk to the buyer, but seller must pay cost of carriage to the named place of destination.

- **CIP** - Carriage and Insurance Paid To: Seller delivers goods to the carrier at an agreed place, shifting risk to the buyer, but seller pays carriage and insurance to the named place of destination.

- **DAT** - Delivered at Terminal: Seller bears cost, risk and responsibility until goods are unloaded (delivered) at named quay, warehouse, yard, or terminal at destination. Demurrage or detention charges may apply to seller. Seller clears goods for export, not import. DAT replaces DEQ, DES.

- **DAP** - Delivered at Place: Seller bears cost, risk and responsibility for goods until made available to buyer at named place of destination. Seller clears goods for export, not import. DAP replaces DAF, DDU.

INCOTERMS® 2010

INCOTERMS Do NOT...

- a) Determine ownership or transfer title to the goods, nor evoke payment terms.
- b) Apply to service contracts, nor define contractual rights or obligations (except for delivery) or breach of contract remedies.
- c) Protect parties from their own risk or loss, nor cover the goods before or after delivery.
- d) Specify details of the transfer, transport, and delivery of the goods. Container loading is NOT considered packaging, and must be addressed in the sales contract.

Remember, Incoterms are not law and there is NO default Incoterm!

INCOTERM DEFINITIONS/CHANGES

The 11 Incoterms consist of two groups and are listed below in order of increasing risk/liability to the exporter. Under the revised terms, buyers and sellers are being urged to contract precisely where delivery is made and what charges are covered. This should avoid for example double-billing of terminal handling charges (THC) at the port of discharge.

References to “ship’s rail” were taken out to clarify that delivery means “on-board” the vessel. Insurance, electronic documentation, and supply chain security are addressed in more detail, and gender-neutral language is now used.

INCOTERMS® 2010

ADDITIONAL RESOURCES

International Chamber of Commerce. Incoterms wall chart: www.iccwbo.org/incoterms/wallchart/wallchart.pdf

U.S. Department of Commerce: www.export.gov/logistics/eg_main_018114.asp

Wikipedia Online Dictionary. Incoterms: <http://en.wikipedia.org/wiki/Incoterm>

*Information provided by VEDP Fast Facts is intended as advice and guidance only. The information is in no way exhaustive and the VEDP is not a licensed broker, banker, shipper or customs agency. VEDP shall not be liable for any damages or costs of any type arising out of, or in any way connected with the use of, these Fast Facts.

WORKS CITED

Hinkelman, Edward. Dictionary of International Trade. 8th Edition. 2008.

International Chamber of Commerce. Incoterms® 2010. <<http://www.iccwbo.org/incoterms>>

Lexa, Carsten. "New Incoterms 2010". Commercial Law International.

Reynolds, Frank. "Incoterms Revised". Breakbulk Magazine. September-October 2010.

Last Revised: December 2010