



TRANSPORT OBLIGATIONS COSTS & RISKS

What are INCOTERMS?

Incoterms are a set of rules for the interpretation of the most commonly used trade terms in international trade - **International Commercial Terms**. They were first published by the International Chamber of Commerce (ICC) in 1936 and since then have been updated in 1953, 1967, 1976, 1980, 1990 and the current revision 2000.

Parties to a contract are often unaware that there are different trading practices in their respective countries, for example FOB for an American company may have a different meaning to FOB for a New Zealand trader. This can lead to misunderstanding and, in the worst scenario, costly litigation. Incoterms set out to avoid this problem by giving a set of standard rules that are recognised throughout the world. The basic purpose of each Incoterm is to clarify how functions, costs and risks are split between the buyer and seller in connection with the delivery of the goods as required by the sales contract. Delivery, risks and costs are known as the critical points. Each term clearly specifies the responsibilities of the seller and the buyer. The terms range from a situation in which everything is fundamentally the responsibility of the buyer to the other extreme where everything is fundamentally the responsibility of the seller.

THE OBLIGATIONS of the Seller and Buyer

The main purpose of Incoterms is to clearly set out the obligations of the seller and the buyer in relation to the delivery of the goods and the division of functions, costs and risks related to the delivery. The way this is presented in each Incoterm is under ten clauses each for the seller and the buyer, where each clause on the seller's side "mirrors" the position of the buyer with respect to the same subject matter. For example, clause A3 deals with the seller's obligations to contract for carriage and insurance and clause B3 deals with the buyer's obligations to contract for carriage and insurance.

Incorporating INCOTERMS

It is important to ensure that where the protection of Incoterms is intended to be incorporated into a contract of sale that an express reference to the current edition of Incoterms is always made. For example, it is not enough to quote just "FOB Auckland" but instead "FOB Auckland Incoterms 2000" should be used.

Alternatively, suitable wording can be included in the contract stating that the contract is subject to Incoterms 2000. However, if this is the case, you should be careful to ensure that standard contracts, and any other standard paperwork mentioning Incoterms, are updated to quote "Incoterms 2000" rather than Incoterms 1990.

Failure to incorporate the correct version of Incoterms could result in dispute as to which version is intended or indeed if Incoterms were intended to be incorporated at all.

The INCOTERMS

The thirteen Incoterms are split into four distinct groups:

- **Group E** - where the goods are made available to the buyer at the seller's premises;
- **Group F** - where the seller must deliver the goods to a carrier appointed by the buyer;
- **Group C** - where the seller must contract for the carriage of the goods without assuming risk of loss of, or damage to the goods or additional costs due to events occurring after shipment;
- **Group D** - where the seller has to bear all costs and risks required to bring the goods to the place of destination.

The following is a list of all of the Incoterms, the group to which they belong and a brief outline of responsibilities under that Incoterm. However, it should be remembered that this is just a brief outline and is not a substitute for reading and understanding Incoterms 2000 itself. Additionally it has been noted whether the term is suitable for any mode of transport or just conventional maritime and inland waterway transport.

GROUP E *Departure*

EXW - Ex Works (named place) (Any mode of transport)

The seller must place the goods at the disposal of the buyer at the seller's premises or another named place not cleared for export and not loaded on any collecting vehicle.

GROUP F *Main Carriage Unpaid*

FCA - Free Carrier (named place) (Any mode of transport)

The seller must deliver the goods, cleared for export, to the carrier nominated by the buyer at the named place.

FAS - Free Alongside Ship (named port of shipment) (Maritime and inland waterway transport only)

The seller must place the goods, cleared for export, alongside the vessel at the named port of shipment.

FOB - Free on Board (named port of shipment) (Maritime and inland waterway transport only)

The seller delivers the goods, cleared for export, when they pass the ship's rail at the named port of shipment.

GROUP C *Main Carriage Paid*

CFR - Cost and Freight (named port of destination) (Maritime and inland waterway transport only)

The seller delivers the goods when they pass the ship's rail in the port of shipment and must pay the costs and freight necessary to bring the goods to the named port of destination. The buyer bears all additional costs and risks after the goods have been delivered (over the ship's rail at the port of shipment).

CIF - Cost Insurance and Freight (named port of destination) (Maritime and inland waterway transport only)

The obligations are the same as under CFR with the addition that the seller must procure insurance against the buyer's risk of loss of, or damage to the goods during carriage.

CPT - Carriage Paid To (named place of destination) (Any mode of transport)

The seller delivers the goods to the nominated carrier and must also pay the cost of carriage necessary to bring the goods to the named destination. The buyer bears all additional costs and risks after the goods have been delivered to the nominated carrier.

CIP - Carriage and Insurance Paid To (named place of destination) (Any mode of transport)

The obligations are the same as under CPT with the addition that the seller must procure insurance against the buyer's risk of loss of, or damage to the goods during carriage.

GROUP D *Arrival*

DAF - Delivered at Frontier (named place) (Any mode of transport)

The seller must place the goods at the disposal of the buyer on the arriving means of transport not unloaded, cleared for export but not cleared for import, at the named point and place at the frontier.

DES - Delivered Ex Ship (named port of destination) (Maritime and inland waterway transport only)

The seller delivers when the goods are placed at the disposal of the buyer on board the ship, not cleared for import, at the named port of destination.

DEQ - Delivered Ex Quay (named port of destination) (Maritime and inland waterway transport only)

The seller delivers when the goods are placed at the disposal of the buyer, not cleared for import, on the quay at the named port of destination.

DDU - Delivered Duty Unpaid (named place of destination) (Any mode of transport)

The seller must deliver the goods to the buyer, not cleared for import, and not unloaded at the named place of destination.

DDP - Delivered Duty Paid (named place of destination) (Any mode of transport)

The seller must deliver the goods to the buyer, cleared for import, and not unloaded at the named place of destination.

As can be seen this list runs from the term where the buyer has most of the responsibility (EXW) through to that where the seller has the majority of the responsibility (DDP). It is worth noting that in Incoterms 2000 the only term that requires the buyer to clear the goods for export (including obtaining any export licence necessary) is EXW and the only term that requires the seller to clear the goods for import (including obtaining any import licence necessary) is DDP.