

Incoterms 2010 (valid from 1st January 2011)

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1. The meaning of Incoterms

The International Chamber of Commerce (ICC) published the International Commercial Terms, known as the Incoterms, for the first time in 1936. Since that they have been periodically updated and been aligned with changing commercial practices. The Incoterms are consistent contract and delivery terms, which are globally admitted and enable both contract parties to process their commercial businesses in a standardised manner, both national and international. The Incoterms determine cost distribution, distribution of risk and duty of care between contracting parties. The importance of the Incoterms lies in the clarity they give to bilateral obligations. Using the Incoterms can prevent disagreements and costly arguments and hence the risk of legal complications for both parties.

Issues such as contract formation, transfer of ownership, payment or the consequences of breach of agreements are not handled by the Incoterms. This is where the terms of contracts come into effect.

2. Summary of eleven rules

Incoterms 2010 match Incoterms 2000 in their structure and arrangement, but have been decreased from 13 to 11 terms.

EXW - Ex Works
FCA - Free Carrier
FAS - Free Alongside Ship
FOB - Free On Board
CFR - Cost and Freight
CIF - Cost, Insurance and Freight
CPT - Carriage Paid To
CIP - Carriage, Insurance Paid To
DAP - Delivered At Place
DAT - Delivered At Terminal
DDP - Delivered Duty Paid

3. Classification of Incoterms

You can classify Incoterms in two regards

3.1 Grading of transports

- Terms which are valid for all kind of transports are: EXW, FCA, CPT, CIP, DAP, DAT, DDP.
- Vesselterms, which are only valid vessel transports and/or inland shipping are: FAS, FOB, CFR, CIF.

3.2 Grading of the way of processing in 4 groups

- category E – Pickup terms (EXW)
- category F – Pickup terms without takeover of costs through seller for main transport (FCA, FAS, FOB)
- category C – Dispatch terms with takeover of costs through seller for main transport (CFR, CIF, CPT, CIP)
- category D – Arrival terms (DAP, DAT, DDP)

4. Main- and minor functions of Incoterms

The delivery channels of goods from place of sending to place of destination are divided by the agreed place of handover. Incoterms determine which commitments each party has for its part of the delivery channel.

4.1 Main function of Incoterms

Primarily Incoterms regulate:

- Which commitments each contract party has for its own part of the delivery channel
- Which costs each party has to accept for its own part of the delivery channel
- Who covers which risks

4.2 Minor function of Incoterms

Besides above mentioned Incoterms regulate

- Who has to take care of purchasing the documents of the goods, who has to take over the costs for that and who eventually has to pay customs
- Who has to take care of purchasing the documents of the transport and who has to take over the costs for that
- Who has to insure the goods and for whose account the costs are
- Who has to inform the opposite party about which issues and when
- How the goods have to be packed and who has to pay for the packaging

5. Detailed rules

5.1 E-category

Costs and risk are given to the buyer with the appropriation of goods at the given place

EXW - Ex Works/... named place

It gives minimum obligations to the seller. He only has to appropriate the goods at the given place, no transport charges will occur for him, the goods do not need to be loaded or customs freed, they only have to be packed and labelled.

EXW term has to be used deliberately for following reasons:

When the seller loads the goods it happens to risk and cost of the buyer. If it is more practical to have the goods loaded by the seller it is better to use the FCA term instead. In case it is allegation in the export country that only exporters are allowed to apply for export permit the EXW term is absolutely unsuitable.

EXW gives the buyer only limited obligations to provide the seller with necessary information about the export.

5.2 F-category

Within the F-category the buyer takes over the costs for the main transport. The transfer of risk is passed over to the buyer with handover of the goods to the carrier of the main transport.

FCA – Free Carrier ... named place of handover

The seller must take the goods to the place of delivery named by the buyer. The seller has to take care of and take over the cost of package, examination of the goods and free the goods for export. Depending on the place of delivery he also has to do the loading.

The seller is responsible for the main transport, transit and import.

FCA is suitable for all kinds of transports, especially for container transports.

FAS - Free Alongside Ship ... named port of shipment

The seller has to pack the goods on own account, take them to the port of shipment given by the buyer and free them for export. The delivery is completed when the goods have been taken to the given port alongside the vessel. This term is only to be used for ocean and inland shipping.

FOB - Free On Board ... named port of shipment

Free on board means that the seller fulfils his obligations to deliver when he takes the goods on board at the given port of shipment. The seller has to pack the goods on own account and free them for export. Like FAS this term is only to be used for ocean and inland shipping. It is not suitable if the goods have already been handed over to the carrier before it is loaded on board.

5.3 C-category

CFR - Cost and Freight ... named port of destination

The seller delivers when the goods are on board of the vessel. The costs for freight which occur for taking the goods to the named port of destination go on his own account. Furthermore he has to pack the goods on own account and free them for export. This term is only to be used for ocean or inland shipping. It is not suitable for container transports, for which the handover of the goods to the carrier takes place before the goods are loaded onto the vessel. In this case CPT should be used.

CIF - Cost, Insurance and Freight ... named port of destination

The seller delivers when the goods are on board of the vessel. The costs for freight which occur for taking the goods to the named port of destination go on his own account. The contract for transport insurance (minimum coverage) has to be concluded at his own expense. Furthermore he has to pack the goods on own account and free them for export. This term is only to be used for ocean or inland shipping. It is not suitable for container transports. In this case CIP should be used.

CPT - Carriage Paid To ... named place of destination

The seller has to take the goods to the carrier he has named. Additionally the costs for freight which occur for taking the goods to the named port of destination go on his own

account. The contract for transport insurance (minimum coverage) has to be concluded at his own expense. The CIP term obliges the seller to pack the goods on own account and free them for export. The term is suitable for all kinds of transport.

5.4 D-category

The seller takes over all costs which occur until the goods arrive at the named place of destination.

DAP - Delivered At Point ... named place

The seller has to prepare the goods on arriving transportation ready for discharging at the place of destination. He also has to free the goods for export, but not for import. This term is usable for all kinds of transports and especially when several transportations are used within the goods transport.

DAT - Delivered At Terminal ... named terminal at port of destination or place of destination

Delivered at terminal means that the seller delivers when the goods, once unloaded from the arrived transportations, are placed at the proposal of the buyer at the named terminal at port of destination or place of destination. He has to free the goods for export, but not for import. He has to bear all costs and risk of the transportation to the named terminal at port of destination or place of destination including the costs for unloading. This term can be used for all kinds of transports and is suitable when several transportations are used within the goods transport.

DDP - Delivered Duty Paid ... named place of delivery

DDP contains maximum obligations for the seller. He has to free the goods for export and unload the arrived transportation at the place of destination. The seller bears all costs and risk until the goods have arrived at the place of destination.

6. Most important improvements due to new version 2010

- Terms have been reduced from 13 to 11
- DAF, DES, DEQ and DDU do no longer exist. They have been replaced by DAP and DAT
- According to the new DAP term the seller has fulfilled his obligations when the goods are provided to the seller ready to unload on the arrived transportations at the place of destination. DAP can be used for any kind of transportation
- According to the new DAT term the seller has fulfilled his obligations when the goods are provided to the seller ready to unload at the terminal of the port of destination. DAT can be used for any kind of transportation
- transfer of risk has been renewed with the terms FOB, CFR and CIF. The risk is now passed to the seller when the goods are on board of the vessel.
- Electronical and hard copy communication are now treated as equal
- It is formally acknowledged and straightened out that the terms are adaptable for international and national contracts