

Incoterms[®] 2020

Choosing the Right Term

A guide highlighting the main reasons of what you need to consider when choosing an Incoterm.



Introduction

Incoterms®2020 is made up of eleven terms. From these eleven terms a buyer or seller has to choose the Incoterm that is most appropriate for their purposes.

One of the key issues in an international contract of sale is the Incoterm. It is not good business practice for an international sales contract not to include an Incoterm, because every contract of sale should include one.

An example of an Incoterm is Free On Board (FOB) that defines the delivery obligations for both the seller and buyer. The benefit is that buyer and seller do not have to include terms and conditions for the delivery obligations in their contracts. An understanding of the Incoterm will mean both parties know their own responsibility for the risks and costs of transport, insurance, documentation and other formalities.

Although this practice encouraged the harmonization and standardization of international trade practices, before 1936, differences in the interpretation of trade terms in various countries meant that there were still a lot of disputes over shipping responsibilities.

This is why the International Chamber of Commerce (ICC), proposed a set of what we know now as Incoterms. This enabled importers and exporters to refer to the interpretation provided by the Incoterms when inserting a trade term in their contract of sale. Now Incoterms are used all over the world and have become the international standard for defining the risk and responsibility in international shipping.

Because the Incoterms needed to be adapted to the evolving commercial and logistical practices, they were revised in 1953, 1967, 1976, 1980, 1990 and 2000. Throughout the past revisions, new terms had been introduced and other terms disappeared. Incoterms®2020 introduced Delivered At Place Unloaded (DPU) which replaced Delivered At Terminal (DAT).

It is important that companies apply a term that is appropriate for their transaction. Incoterms standardized shipping responsibilities but problems remain because companies do not understand the meaning of each term so incorrect ones are commonly used.

For smaller companies (SME's) the problem is significant as they misuse, do not apply or apply certain terms too much. This of course harms exportation and international trade as a whole, as disputes occur and business relationships are damaged.

Choosing the right Incoterm requires consideration of the following elements:

- The nature of the goods - containerized, manufactured goods, bulk goods or commodities.
- The mode of transport - any mode of transport or sea and inland waterway.
- The conditions of payment and the documentary requirements imposed by these conditions.
- The capabilities of and the efficiency with which the seller or the buyer can perform their obligations to deliver the contracted goods.

Overview of Incoterms® 2020

EXW (Ex Works) – Any Mode of Transport - where the seller delivers the goods when it places the goods at the disposal of the buyer at the seller's premises or another named place such as a specific warehouse. The seller does not need to load the goods onto the collecting transport and the seller doesn't need to clear the goods for export when applicable.

FCA (Free Carrier) – Any Mode of Transport - the seller delivers the goods to the transporter of the goods nominated by the buyer at the seller's premises or another named place in the country of supply.

FAS (Free Alongside Ship) – Sea and Inland Waterways Only - the seller delivers when the goods are placed alongside the vessel, (i.e. on a quay etc.) nominated by the buyer at the named port of shipment.

FOB (Free On Board) – Sea and Inland Waterways Only - the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment.

CPT (Carriage Paid To) – Any Mode of Transport – the seller delivers the goods to a carrier nominated by the seller at an agreed place and the seller must pay the costs of carriage necessary to bring the goods to the named place in the destination country.

CFR (Cost and Freight) – Sea and Inland Waterways Only - the seller delivers the goods on board the vessel but pays the cost of freight to the named place in the country of destination.

CIP (Carriage and Insurance Paid To) - Any Mode of Transport – the seller delivers the goods to a carrier nominated by the seller at an agreed place and the seller must pay the costs of carriage necessary to bring the goods to the named place in the country of destination. The seller must also contract for insurance against the buyer's risk.

CIF (Cost Freight and Insurance) - Sea and Inland Waterways Only – the seller delivers the goods on board the vessel. The risk passes to the buyer once the goods are on board the vessel. The seller must pay the cost and freight to the named port of destination and insurance.

DAP (Delivered At Place) – Any Mode of Transport - the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination.

DPU (Delivered At Place Unloaded) – Any Mode of Transport - the seller delivers the goods, once they have been unloaded from the arriving means of transport, are unloaded and placed at the disposal of the buyer at the named place of destination.

DDP (Delivered Duty Paid) – Any Mode of Transport - the seller delivers the goods when the goods are at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination.

Please note that these notes are to be used as reference only and for any clarification reference to the **Incoterms® 2020** Book Reference – ICC Publication No 723E should always be used.

Transport Modes

Information on the mode of transport used for the movement of goods is required in many documents used in connection with international trade. This information may be needed for contractual reasons, e.g. the sales contract may stipulate a particular mode or for operational reasons.

Also in many countries, information on mode of transport is required also for customs procedures.

The United Nations Economic Commission for Europe (UNECE or ECE) lists eight different transport modes for international trade as follows:

- Maritime - when transport covers sea as well as inland waterways.
- Inland water - this is transport relates solely to the movement of products on water other than by sea.
- Rail – This is transport by goods or passenger trains
- Road – goods moved by road
- Air – goods transported by all forms of air transport
- Fixed installations – this is product moved by pipelines, such as oil and gas plus electric cables and ropeways.
- Mail – mail is considered as a mode of transport by letter of parcel, however, in practice this would be the type of packaging for most companies.
- Multimodal - transport occurs when goods are carried by at least two different modes which explains why some Incoterms are classes as any mode of transport.

Mode of Transport Selection Considerations

Several factors have to be considered in order to choose the correct mode of transport:

- Product specifics – perishable goods, dangerous goods etc.
- Cost – when do the products need to be with the customer?
- Service – again when do the products need to be with the customer, for a business that relies on high service levels, then the quickest route may be the answer.
- Consignment factors - volume, weight, speed of delivery and distance.
- Legal - payment conditions such as the need for a 'title document' within Letters of Credit terms and conditions
- Transport mode characteristics - reliability and availability.

Most of these considerations are obvious ones, but the problem lies with the large number of various aspects that need to be taken into account. In these cases, the business responsible for organising the main carriage will sometimes defer these decisions to a freight forwarder.

There is nothing wrong with doing this, however, depending on the information the business provides, it could be that a lot of customs requirements are passed onto the freight forwarder to process, such as tariff codes, where the code used may not be the best one for your products. Plus, depending on the content of your products may in fact be incorrect, which can cause you many problems.

Who Should Organize International Transport?

The transport should be organized by the buyer or the seller, depending on the incoterm and any other shipping agreement.

The majority of international sales are under terms that divide the obligations of carriage between the buyer and seller. It is understandable that sellers would want to avoid the risks in the buyer's country and that buyer's do not wish to take upon them the risks in the seller's country.

On the other hand, if a buyer can deduct the VAT levied on the freight invoice for domestic carriage in the country of destination, it could be economical for the buyer to pay for this part of the transport. A seller might indeed face problems in some countries if he wants to obtain an import tax refund, as they will not be register for sales taxes.

Seller Advantages

Whether it has to be the buyer or the seller, who organizes transportation, this has to be evaluated according to their relative positions in each market. A seller with regular sales volumes is able to arrange better and cheaper transport than the occasional buyer of smaller quantities.

Small exporters often prefer Ex Works due to the lack of responsibility however those with an understanding would choose FCA, due to the many issues related to using Ex Works, which will be explained later. The only problem here with small exporters, is the fact that many do not understand the implications of Incoterms and Incoterms stated by a more experienced buyer can sometime cause problems and possible extra liabilities for the smaller exporter.

Frequently, the exporter is unable to estimate the cost of carriage prior to the completion of the contract they are negotiating. However, they may neglect an important opportunity as they could manage the transport and charge a commission to the buyer for the service rendered.

In an ideal situation, it will be the seller who is best placed to contract for the international carriage because:

- They can consolidate shipments and thus reduce transport costs, serving multiple clients in the country or region of destination.
- They can contract with a transporter of his choice, whom he knows and trusts to transport a certain type of goods based in their own country.
- The seller would be the exporter of record and thus be able to prove export is customs audits were to be carried out.

- To include the cost of carriage in his selling price in order to ascertain its payment to ensure full and accurate payment for “new” business before goods are shipped.
- They can align the pickup date with his production planning, whereby storage costs awaiting transport at his premises are avoided.
- They know how to package the goods for transport without the need of the buyer’s instructions.
- They can instruct the carrier to tender him the specific documents required for payment under a Letter of Credit.
- It will also be for the benefit of the buyer because it will often lead to lower freight costs as if the seller includes transport charges in his quoted selling price, it is easier for the buyer to compare offers internationally.

Combined with the general trend in international trade of ‘door-to-door’ shipments, exporters are using the D-terms more. This occurs especially in the trade of high value manufactured goods, where sellers are concerned with the preservation of the quality of their products until they have reached the country of destination.

A manufacturer who sells goods in a competitive foreign market also has more control over his goods. Also, from a buyer’s perspective, it may be much more convenient for them to request D Terms, if they are a small importer without the level of discounts a more regular exporter would have access to.

Seller Disadvantages

- If a seller quotes a price plus transport, they must consider that the transport price offered by the carrier at the time of the offer may be higher at the moment that the contract will be executed. Freight and insurance rates may be higher because fuel prices rise, because of currency risks and modes of transport available.
- Problems might arise when the seller has to pay for the transport but in fact does not pay on time or at all. The carrier then has a right of retention on the goods and the buyer, although they might already have paid for the goods direct to the seller, will have to pay the freight to the carrier if he wants to take delivery.
- Sometimes, the buyer has better opportunities to organize transport if he works on a larger scale than the seller.
- In some countries, the choice of a shipping line is restricted to national shipping lines. If that is the case, the seller can still organize transport, but the buyer should inform the seller of this and the recommended choice of carrier.

Incoterms® and Modes of Transport

In the ICC publication on the Incoterms® 2020, are divided in rules for any mode or modes of transport and rules only suitable for sea and inland waterway transport. The idea is that the ICC wants to change the habit of importers and exporters from using maritime terms when any mode of transport terms would be more appropriate.

The following Incoterms can be used for any mode of transport, including sea and waterway transport, whether or not combined: EXW, FCA, CPT, CIP, DAP, DPU and DDP. Conversely, the following Incoterms are considered only suitable for sea and inland waterway transport: FAS, FOB, CFR and CIF.

For air transport, a specific Incoterm FOB Airport was introduced by the ICC in 1976. The expression Free On Board was not appropriate though, because goods are handed over and the Air Waybill is often already delivered, instead of on board the airplane. In the Incoterms 1990 the term was replaced by FCA, mainly because the ICC did not wish to refer explicitly to a particular mode of transport, as the multimodal transport system became increasingly prevalent.

Ex Works

Besides FCA, CPT and CIP, there's also Ex Works (EXW), which can be used for any mode of transport. Though it is a very popular trade term, it is not in line with international trade practice.

The contract of carriage and the obligation of the buyer to load the goods with EXW, means the seller does not have to load the goods on the collecting vehicle sent by the buyer. However, in practice, it is often the seller who performs this obligation.

As the buyer is obliged to collect the goods at the seller's premises, the inland transport will mostly be done by road. In many countries, the international and even national contract of carriage by road is governed by the Convention on the Contract for the International Carriage of Goods by Road (CMR).

In this convention, the carrier is not liable for damage due to the loading of the goods by the shipper. This signifies that, unless agreed otherwise, the carrier does not load the goods and if he does so, he will load the goods as an 'agent' of the shipper, who in an EX Works contract, will be the buyer. However, in some cases, the carrier will receive instructions from the buyer to load the goods at his expense and risk, e.g. for exceptional transports of large, indivisible goods such as reactors, heaters, industrial machines, etc.

Furthermore, the seller's corporate liability insurance might not cover damages caused by "third" persons acting at the seller's premises on behalf of the buyer. Therefore, normally the seller is in the best position to load the goods on the collecting vehicle.

Although in this regard, the Incoterm EXW does not reflect the most common trade practice, it was thought desirable to retain the traditional principle of the seller's minimum obligation under EXW, so that it could be used for cases where the seller does not wish to assume any obligation whatsoever with respect to the loading of the goods.

If the seller however does load the goods, he will do this in principle at buyer's risks and costs, thus allowing him, under the contract of sale, to add a line on the invoice for 'loading at the buyer's request.' In practice, it is the seller who will pay the loading costs, unless the goods are stored in a warehouse not under supervision of the seller. In the latter case, the seller receives a separate invoice for the loading costs, which he can then forward or invoice the buyer direct.

Uninsured Risk

Another problem with EXW is that there is a risk that the goods are not covered by the usual transport insurance policy. The transport insurance of the buyer only covers damage from the moment the goods are handed over to the carrier, whereas the passing of risk with EXW occurs when the goods are placed at the disposal of the buyer. That means that the buyer's risk is not insured under the transport insurance policy until the goods are loaded onto the designated carrier at the seller's premises.

Exporter of Record - Buyer

Some countries require a registration and even a residence in the country of exportation to be authorized to export goods. This is certainly the case if an export license is required. The seller is not obliged to carry out the export clearance, or to obtain the export license. His obligations are limited to assistance at the request, expense and risk of the buyer.

When using EXW the buyer therefore should consider a relief clause in the contract of sale, postponing the delivery or giving him the right to dissolve the contract, should they not be able to obtain an export license or to conduct the export clearance in the country of supply.

A customs broker or a freight forwarder could perform these obligations on behalf of the buyer, but they will of course charge a commission to the buyer. It will economically be more advantageous if it were the seller who performs the export formalities. The seller usually can indeed carry out export formalities at a lower cost and with less effort than an overseas buyer.

Sales Tax/VAT Exemption

Most countries give a seller the possibility to exempt his invoice from VAT or other sales taxes if the goods sold are exported. In an EXW sale the seller however neither clears the goods for export or organizes carriage to a place outside the country or customs territory. Therefore, the seller has to rely on the buyer to provide him with the proof of shipment that the goods have actually been exported, as the point of sale is the seller's country of supply.

The buyer however is not obliged to export the goods under the Incoterms and even if he does export the goods, he does not have to provide proof of export to the seller. Hence, the seller can face administrative problems to prove any zero-rated supplies.

If the buyer wants to be invoiced without VAT or sales tax, the seller should impose a contractual obligation on the buyer to export the goods and to send the seller proof of export.

FCA Seller's Premises

Therefore what should be used instead of Ex Works? Both parties are advised to use FCA seller's premises. Usually, FCA is more appropriate for international trade, while EXW only works for domestic trade. Under FCA, the goods are loaded on the collecting vehicle at the expense and the risk of the seller. The seller equally conducts the export clearance and is recognised as the exporter of record.

When to Use Sea and Inland Waterways?

One could argue that if the above Incoterms are suitable for any mode of transport, then why do the Incoterms® 2020 still provide for sea and inland waterways?

Firstly, the Incoterms were conceived as a global harmonized system. These rules have been based upon the most common practice now current in international trade, in order to obtain the widest possible use of them.

As of 1967, until then non-existing terms were introduced, such as DAF, DDP, FOB Airport, FCA, CIP, etc.

As a result, the Incoterms were no longer only terms but also introducing new standards. It is nevertheless clear that the Incoterms are only applied worldwide because they align with international trade practices. As companies still frequently apply the sea and inland waterway terms, as they represent the largest volume of world trade, they cannot be ignored in the Incoterms.

Secondly, a buyer is often not prepared to accept costs and risks and execute payment from the moment they are ready to be shipped from an inland terminal in the seller's country. If a buyer only wishes to assume the risk of the goods from the moment they are loaded on board the ship and not from the moment they are delivered to the carrier at an inland point, the maritime terms still offer a valid alternative.

Only CFR and CIF require the seller to provide the buyer with an on-board bill of lading, as they organise the main carriage. If the buyer only wants to accept an on-board bill of lading as the delivery/payment document provided by the seller, he should contract under these terms. This will mostly occur in the trade of bulk goods or commodities, such as oil, iron, ore and grain. If not, then he will need to ship under FOB terms to receive the original on-board bill of lading.

Point of Delivery FOB, CFR and CIF

Until the Incoterms® 2020, the point of delivery under FOB, CFR and CIF was the passing of the ship's rail. The ship's rail traditionally represented an imaginary line from the side of the ship. In the Incoterms® 2020 this has been replaced by 'placing the goods on board the vessel'.

The Introduction to Incoterms® 2020 explains that the omission of the ship's rail as the point of delivery in preference for the goods being delivered when they are "on board" the vessel reflects more closely modern commercial reality and avoids the dated image of the risk swinging back and forth across an imaginary perpendicular line. Goods can also be placed on board by 'roll-on roll-off' (RORO) operations, which do not involve lifting the goods over the ship's rail. Instead, goods are driven on the ship, in effect, under the ship's rail.

In the first version of the Incoterms, published in 1936, RORO ships of course were not as common as they are now. Nevertheless, even when RORO ships became part of trade practice, the criterion of the ship's rail was retained because changing it would, jeopardise the international standing of the Incoterms and create confusion.

Although changing this criterion was already considered in the preparation of the 1980 version of Incoterms, it was only in 2020 that there were no objections anymore against an amendment.

Container Shipments

The problems with maritime terms were mainly because of the container revolution since the mid 1960's, that logistical practices dramatically changed. It became clear that the maritime terms were not suitable for container trade.

Containerization opened the door for multimodal transport because containers can easily be put from one means of transport to another, reducing the risks of damage. It enabled a single transport operator to take charge of a cargo throughout the entire voyage, thereby replacing the 'port-to-port' with a 'door to-door' thinking.

In container trade, the goods are received either at a container terminal, container yard or direct at the port of destination, for subsequent loading on board the ship. In other cases, the containers are loaded by the seller and then collected at the seller's premises often under FCA terms. The seller thus hands over the goods to the carrier at an inland point, instead of placing them on board the ship.

If sellers continue to use FOB, CFR or CIF, they have to assume the risk of loss of or damage to the goods during a period of time when goods are either stored in a container terminal or at a port, where they have absolutely no control. This means that if something goes wrong during that period, and before the goods have actually been placed on board the ship, the sellers have not fulfilled their obligation and are at risk.

Consequently, they could be called upon by the buyer to provide replacement goods or to pay damages or other compensation on account of delay or non-performance. Furthermore, it is difficult to determine where loss or damage, when discovered at the destination, actually occurred. This is a particular issue in container traffic, combined with FOB, CFR and CIF.

If the buyer's insurance policy contains a transit clause to the effect that the insurance protection lasts from warehouse to warehouse, the seller cannot benefit from this insurance, as they are responsible for this part of the shipment.

The costs under maritime terms pass to the buyer when the goods are placed on board, although freight forwarders will often include terminal handling charges (THC) incurred between the inland point and the placing of the goods on board the ship in the freight invoice, so another consideration for the allocation of risk and cost for a container shipment and the appropriate Incoterm to be used.

Introduction of FCA, CPT and CIP

Incoterms are not fixed in legislation and can easily be adapted to changes in trade practices. As a result, the 1980 version of Incoterms introduced the terms FCA (Free Carrier) and CIP (Carriage and Insurance Paid to) and revised CPT (Carriage Paid To).

These new Incoterms replaced the point of the passing of risks and costs from 'on board the ship' to the delivery of the goods into the custody of the carrier before shipment on board takes place. The documentary obligations were equally adapted, so that the seller was not required to tender an on-board bill of lading as a proof of delivery.

Buyers have to be aware that when they change from FOB, CFR or CIF to FCA, CPT or CIP, not only does the point of risk transfer, but also the point of cost might change. Therefore, the terminal handling charges (THC) at departure to be paid in the currency of the seller will be for the account of the buyer instead of the seller when switching from FOB to FCA.

In real life examples, when this change has been made, the buyer and seller can agree to split the terminal handling charges, as part of good business practice.

As has been mentioned, the maritime Incoterms are the oldest trade terms and companies are very familiar with them, hence why they are widely and incorrectly used by many. Since 1990, the ICC has tried to convince them not to use the maritime terms for multimodal or container transport. In the Incoterms® 2020, the whole layout was conceived in order to avoid companies applying the old maritime terms when they should actually apply any mode of transport terms.

Insurance

Carriage and Insurance Paid To

This any mode of transport term specifies insurance as part of the seller's obligation. The considerations are that the risk and cost transfer at two different points during the shipment process

This term keeps control of the shipment with the seller, whilst passing on the responsibility for the majority of the shipment process to the buyer and when Insurance is added the seller has to provide the insurance on behalf of the buyer in the buyer's name and in the currency of the contract of sale.

Depending on the mode of transport will depend on the type of insurance but Incoterms does specify the minimum cover for each type in particular marine insurance. One important point is to ensure the named place at the arrival point is specified and agreed

Although CIP can be used for any mode of transport for sea shipments only it is better to use CIF as this is a designated sea and inland waterway term and the rules for marine insurance differ.

Cost Insurance and Freight

For sea and inland waterways, with this term the Seller provides and pays for the transit insurance. Because this requires marine insurance, Incoterms make allowances in the obligations for this type of insurance.

The minimum cover must be to Institute Clause C which is sufficient unless Buyer specifies an alternate such as Clause B and Clause A which offers more cover.

Any contract where the shipper pays for the marine insurance, under CIP or CIF for example needs to consider what type of insurance cover they are paying for and to ensure it provides the cover that the contract requires. It is good business practice, when stating that insurance is included, to actually state the Institute Cargo Clauses that are being quoted.

Institute Cargo Clause C covers loss or damage due to:

Fire and Explosion, Stranding, Sinking, Capsizing, Overturning of a Lorry or train, collision, discharge at a port of distress, total loss of vehicle, general average sacrifice and jettison.

Institute Cargo Clause B covers loss or damage as per Cargo Clause C plus:

Washing Overboard, Sea, Lake, River, Water damage and Total Loss of package during loading/unloading

Institute Cargo Clause A covers loss or damage as per Cargo Clause B plus:

Rainwater damage, malicious damage, breakage, partial loss, shortage, pilferage and theft.

What is NOT covered by any of these Institute Cargo clauses is:

Wilful misconduct of the Assured, Ordinary leakage/loss in weight, unsuitable packing, inherent vice, delay, insolvency/financial default, unseaworthiness/unfitness of craft, vessel or container, war capture seizure and problems relating to strikes, riots and terrorism.

With the last two it is possible to cover these potential losses by taking out Institute War Clauses to cover war capture seizure and Institute Strikes Clauses for problems relating to strikes it is important to talk to the broker to see if this covers riots and terrorist attacks as well.

General Average

With this marine insurance you also need to be aware that the policy must be insured to 110% of the value to cover General Average rules.

General average losses arise whenever products are voluntarily sacrificed, or extra-ordinary expenditure is incurred to enable the vessel to complete its voyage. The adjusters will collect the general average contributions and then if this does come into play, the adjusters work out how much each party has to pay based on the total value of the property rescued and the values of the property sacrificed and any expenditure to save the rescued cargo and vessel.

It is important to remember that the bond covers whatever contribution is assessed and is in relation to the cargo saved and not the value of the cargo on board.

Finally, it is also important to understand the Insurance needs to be in the same currency as the contract of sale and that the Insurance certificate must be sent to the buyer if they need to make a claim, as it is their responsibility under both CIP and CIF.

Delivered Duty Paid (DDP)

DDP is often considered as the best Incoterm for the buyer as all the risk and responsibility, aside from the unloading of the products at the named place, is for the seller.

However, this term can cause confusion and does have a bearing on the landed cost of products.

It can and usually is used in free trade zones where duties do not apply and the rules of sales taxes cover's member countries. However, make sure the named place and specific unloading point is clearly defined for the benefit of both parties, as the risk and cost can spiral out of control if this is not defined correctly. Also, check the responsibility for unloading and ensure that professional facilities are available to be able to do this for the buyer's sake.

The other issue which is overlooked is that the landed cost can be affected by using this term due to not being able to claim back certain import taxes. Although the seller is responsible for paying import duty, they are also responsible for paying import taxes, such as VAT. These can be claimed back, but only if the importer of record is registered for sales tax in the destination country, which as the seller is the importer of record, is not usually the case.

If this cost is added to the price of the product, so the seller covers his costs, then the landed cost to the buyer is higher and they are also not in a position to claim these taxes back. So, although it states Delivered Duty Paid, it also means Delivered Import Taxes Paid.

The seller has no control over the variable import duty rates from country to country, so not a term that should be used for online sales as in a lot of cases, there would be no knowledge of the destination and thus difficult to forecast profitability

Although this term looks a good option for the buyer bear in mind the import costs and the ability to be able or not be able to claim these costs back, especially import taxes.

This is another term company's use without being fully aware of the implications and the commercial impact this term can have.

Conclusions

Companies do not sufficiently analyse the possible effects of choosing one or another Incoterm but rather, continue to use terms their predecessors have used without question. Often, the chosen Incoterm will not vary from transaction to transaction and is part of the business strategy.

Nevertheless, they should evaluate thoroughly which Incoterm to choose as it has a significant impact on cost, risks, liabilities, formalities and thus of the profitability of the transaction. In order to make a carefully choice, one of the considerations to be taken into account is the mode of transport.

It is not without reason that the Incoterms® 2020 put so much emphasis on the division between any mode of transport and sea and inland waterways. The former can be used for

goods shipped by all methods including containers and the latter may only be used when the goods are shipped by sea or inland waterway. The reasons for this division are:

- The maritime terminology does not apply to other modes of transport.
- The delivery in any mode of transport or container transport occurs at an inland point, instead of alongside or on board the ship.
- The documentary requirements differ.

Whereas the difference in terminology is obvious, the difference is not that obvious with respect to the point of delivery. The legal consequences are however important. If a seller wrongfully continues to contract under maritime terms, they have to assume the risk of loss of or damage to the goods during a period of time when they have lost control over the goods as the goods are already handed over for shipment, due to incorrect use and different points at which the risk transfers.

The risk during this period also might not be covered by the transport insurance policy. Moreover, it is often difficult to determine if loss or damage occurred before placing the goods on board the ship or after if this loss or damage is only discovered at the destination upon opening the container. It is not only the passing of risk that poses problems but also the costs division can lead to a time-consuming analysis of the freight forwarder's invoice which often includes the costs of bringing the goods on board the ship.

EXW is suitable for any mode of transport, seems to offer an easy and carefree solution for sellers. In reality, avoiding costs and risks at all costs comes at a high price, certainly if the seller depends on certain documents and formalities the buyer has to perform for tax and accounting purposes. EXW moreover is not in line with international trade practice. Parties are advised to use FCA seller's premises instead.

FCA, CPT and CIP place the point of delivery at the moment they are handed over to the carrier and impose less strict documentary obligations. In most cases, companies are advised to use these terms for container shipments by sea instead of the maritime terms.

Under CFR and CIF, the seller has to provide a negotiable on board bill of lading. Under FOB and FAS, this document would certainly suffice, but an express bill of lading or a sea waybill might equally be acceptable if they are regarded as the usual proof of delivery.

As for the question to which party should be in charge of carriage, the basic rule is that the transport obligation should be agreed by the seller and the buyer. Often, it will be more efficient and thus cheaper to have the seller organizing carriage, but sometimes buyers can consolidate at departure and are more accustomed to organizing international transport and therefore in a better market position to do so.

This leads to a general trend in international trade towards the D-terms. As all the D-terms can be used for any mode of transport, including multimodal, this also avoids that traders use the wrong term and international traders are well advised to take a specific look at the newly introduced terms DAP and DPU.

However, a note of caution is when using DDP as the seller is responsible for paying import duties, they are also pay import taxes. Many import sales taxes such as VAT, can be reclaimed by the importer of record. In many countries to be registered as an importer of record is means being resident in some cases, but more often than not the seller as the importer of record cannot claim these taxes back and so this adds to the commercial value and will affect profitability at some point in the sales transaction.

Incoterms are not just there for “lip service.” They play a key role in international trade. Understand them and their applications and you will be on the road to more profitable international business.

Please note that these notes are to be used as reference only and for any clarification reference to the **Incoterms**® 2020 Book Reference – ICC Publication No 723E, should always be used.

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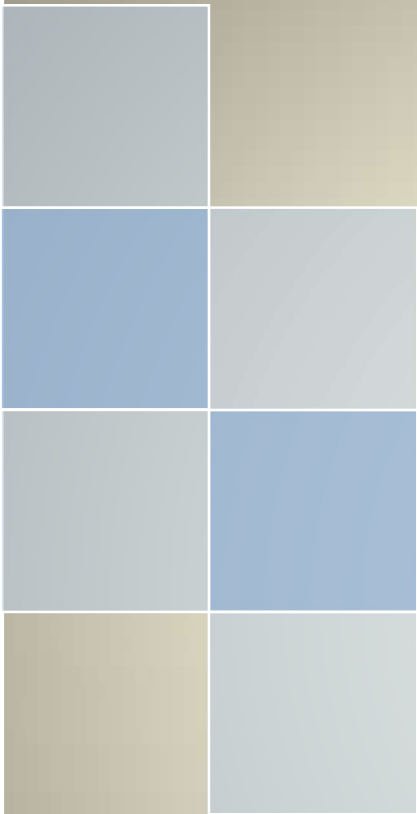
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