

Incoterms[®]

The Incoterms[®] rules lay down the duties of buyers and sellers when drafting terms of delivery in sales contracts. The various clauses stipulate how costs and risks should be distributed among the contracting parties. Incoterms[®] clauses are invariably included in contracts for the international sale of goods and are an integral part of day-to-day commercial dealings.

For over 80 years Incoterms[®] have been issued by the International Chamber of Commerce (ICC).

The most recent version of Incoterms[®] are Incoterms[®] 2020, in force since 1 January 2020.

Incoterms[®] 2020 are made up of 11 Incoterms[®] clauses and reflect current trade practices in an accessible and easy-to-use form.

EXW – Ex Works

The clause EXW (“Ex Works” ... named place of delivery) means that the seller is deemed to have complied with its obligation to deliver if it makes the goods available at the seller’s premises or at another named place of delivery (e.g. a factory, production site, warehouse etc.) without releasing the goods for export and after loading the goods onto a means of transport dispatched to collect them.

This clause in no way depends on the type or means of transport and may even be used in the context of multimodal transport. The clause is not bound with any requirement for cross-border trade; hence it may also be used for domestic trade.

The contracting parties should make every effort to define and designate the term “place of delivery” as precisely as possible because the named place of delivery is also the place where the transfer of costs and risks from the seller to the buyer takes place. If the seller has several production sites or distribution depots, the place of delivery should be defined as accurately as possible.

FCA – Free Carrier

FCA may:

- be selected for each form of transport
- and is therefore also suitable if different means of transport are used to transport goods (multimodal transport).

“Free Carrier” in the current version means that the seller must deliver the goods to the buyer using one of two different methods. If the named place of delivery is located on the seller’s premises the goods are deemed to have been delivered as soon as they have been loaded onto the means of transport provided by the buyer.

However, if the named place of delivery is located elsewhere, the goods are deemed to have been delivered:

- after having been loaded onto the transport vehicle provided by the seller
- once they arrive at the other named place and
- are ready to be unloaded from this transport vehicle provided by the seller and
- they have been placed at the disposal of the carrier or another person named by the buyer.

CPT – Carriage Paid To

If the clause “Carriage Paid To” is chosen the goods are delivered and the risk transfer from the seller to the buyer take place:

- when the goods are handed over to the carrier,
- engaged by the seller,
- or when the goods delivered in this manner are taken in charge.
- In addition, the seller can hand over the goods to the carrier in a manner suited to the means of transport employed and at a suitable location.

This clause is suitable for commercial dealings in which goods are transported at the buyer’s risk but at the seller’s expense to the named place of destination. The place of delivery is not specifically designated (e.g. a ship at a port of shipment) but coincides with the place where the transported goods are handed over to the (first) carrier.

CIP – Carriage and Insurance Paid To

If the clause “Carriage and Insurance Paid To” is chosen the goods are delivered and the risk transfer from the seller to the buyer take place:

- when the goods are handed over to the carrier,
- engaged by the seller,
- or when the goods delivered in this manner are taken in charge.
- In addition, the seller can hand over the goods to the carrier in a manner suited to the means of transport employed and at a suitable location.

For a part of the journey (for which the buyer bears the risk), the seller will contract a transport insurance in favour of the buyer. This insurance covers the purchase value plus 10% on basis of an "all risk" insurance according to the Institute Cargo Clauses (a) [ICC-A] (or equivalent cover).

DAP – Delivered at Place

If the clause “Delivered at Place” is chosen the goods are delivered and the risk transfer from the seller to the buyer take place:

- as soon as the goods are placed at the disposal of the buyer
- ready to be unloaded from the seller’s arriving means of transport
- at the named place of destination or
- at the agreed point at this location, provided such a point has been agreed upon.

The seller bears all the risks in relation to the transportation of the goods to the named place of destination or to the agreed point at this place of destination. Hence in this Incoterms clause, delivery and arrival at the place of destination are identical.

DPU – Delivery at Place Unloaded

If the clause “Delivery at Place Unloaded” is chosen the goods are delivered and the risk transfer from the seller to the buyer take place:

- once the goods,
- after having been unloaded from the arriving means of transport,
- are placed at the buyer’s disposal
- at the named place of destination or
- at the agreed point at this place, provided such a point has been agreed upon.

DDP – Delivery Duty Paid

If the clause “Delivery Duty Paid” is chosen the delivery of the goods and the risk transfer from the seller to the buyer take place:

- once the seller places the goods
- cleared for import
- ready for unloading
- from the arriving means of transport
- at the agreed place of destination or at the agreed point at this location, provided such a point has been agreed upon.

FAS – Free Alongside Ship

In the case of the FAS clause the seller must deliver the goods alongside a transport ship in the port of shipment, which

- from the perspective of the bank may take the form of delivery to the quay where the ship is lying,
- and from the perspective of the waterway may, for example, take the form of delivery from a feeder ship or another feeder vessel located alongside the transport ship.

FOB – Free on Board

If the clause “Free on Board” is chosen the seller delivers the goods to the buyer:

- on board the ship,
- named by the buyer
- and which is lying at berth at the port of shipment;
- or the seller makes available the goods delivered in this manner.

The risk of the loss of or damage to the goods is transferred to the buyer when the goods are on board the ship. From this point onwards the buyer bears all the costs.

CFR – Cost and Freight

“Cost and Freight” means that

- The seller delivers the goods on board the ship
- or procures the goods such that they are ready for shipment at the place of destination. Here, the Incoterms 2020 ‘C’ clauses (i.e. CPT, CIP, CFR, CIF) share the fact that the seller is deemed to have complied with its obligation to deliver when it hands over the goods to the carrier in the manner prescribed in the clause chosen and not when the goods reach the buyer at the place of destination.
- The risk of the loss of or damage to the goods is transferred when the goods have been placed on board the ship.
- The seller must conclude or supply a contract of carriage. The tasks of “seeing to it” that the goods are ready for shipment and supplying a contract of carriage are based on a string of consecutive sales in the course of multiple transactions (string sales), which occurs primarily in commodity trading,
- and the seller must bear the costs and the freight charges for transporting the goods to the named port of destination.

CIF – Cost, Insurance and Freight

If the CIF clause is chosen, i.e. “Cost, Insurance and Freight”, the seller delivers the goods to the buyer

- on board the ship,
- or it procures the goods delivered in this manner.

The risk of the loss of or damage to the goods is transferred as soon as the goods have been placed on board the ship, whereby the seller fulfils its obligation to deliver the goods, irrespective of whether the goods in question are in good order and condition, meet the specified quality standards or arrive at their place of destination.

The seller must conclude the contract of carriage and must bear the freight charges for transporting the goods to the named port of destination.

The seller must also conclude an insurance contract protecting the buyer from the loss of or damage to the goods during carriage. This insurance covers the purchase price plus 10%. However:

the route covered by the insurance cover only has to be the sea transport only. The arrival and departure to / from the port is not necessarily insured.

It should also pay attention to the fact, that the insurance cover may only include the minimum scope according to the Institute Cargo Clauses (C) [ICC-C] or an equivalent cover. In that case, only the named perils in the insurance policy are insured.