



## **MJ HAYWARD ASSOCIATES LIMITED**

Export and Import Risk Training

### **INCOTERMS 2000**

Incoterms 2000 are rules published by the International Chamber of Commerce (ICC) for the interpretation of the most commonly used trade terms in international trade - **International Commercial Terms**.

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 as required by the sales contract.

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.

### **Use of 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

**"FCA Birmingham"** but instead

**"FCA Birmingham, Incoterms 2000"** should be used.

Alternatively, suitable wording can be included in the contract stating that the contract is subject to Incoterms 2000. 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.

Also, Incoterms are not "laws." In case of a dispute, courts and arbitrators will look at:

- 1) the sales contract
- 2) who has possession of the goods, and
- 3) what payment, if any, has been made.

## **Incoterms are . . .**

Incoterms 2000 may be included in a sales contract if the parties desire the following:

- To complete a sale of goods.
- To indicate each contracting party's costs, risks, and obligations with regard to delivery of the goods as follows:
  - When is the delivery completed?
  - How does a party ensure that the other party has met that standard of conduct?
  - Which party must comply with requisite licenses and government-imposed formalities?
  - What are the mode and terms of carriage?
  - What are the delivery terms and what is required as proof of delivery?
  - When is the risk of loss transferred from the seller to the buyer?
  - How will transport costs be divided between the parties?
  - What notices are the parties required to give to each other regarding the transport and transfer of the goods?
- To establish basic terms of transport and delivery in a short format.

## **Incoterms are not . . .**

*Incoterms 2000* are not sufficient on their own to express the full intent of the parties. They will not:

- Apply to contracts for services.
- Define contractual rights and obligations other than for delivery.
- Specify details of the transfer, transport, and delivery of the goods.
- Determine how title to the goods will be transferred.
- Protect a party from his/her own risk of loss.
- Cover the goods before or after delivery.
- Define the remedies for breach of contract.

**Note:** Incoterms can be quite useful, but their use has limitations. If you use them incorrectly, your contract may be ambiguous, if not impossible to perform. It is therefore important to understand the scope and purpose of Incoterms—when and why you might use them—before you rely on them to define such important terms as mode of delivery, customs clearance, passage of title, and transfer of risk.

## Organization of Incoterms

There are four categories into which Incoterms are grouped:

1. **The "E" term (EXW)** - The only term where the seller/exporter makes the goods available at his or her own premises to the buyer/importer.
2. **The "F" terms (FCA, FAS and FOB)** - Terms where the seller/exporter is responsible to deliver the goods to a carrier named by the buyer.
3. **The "C" terms (CFR, CIF, CPT and CIP)** - Terms where the seller/exporter/manufacturer is responsible for contracting and paying for carriage of the goods, but not responsible for additional costs or risk of loss or damage to the goods once they have been shipped.  
**C terms evidence "shipment" (as opposed to "arrival") contracts.**
4. **The "D" terms (DAF, DES, DEQ, DDU and DDP)** - Terms where the seller/exporter/manufacturer is responsible for all costs and risks associated with bringing the goods to the place of destination.  
**D terms evidence "arrival" contracts.**

<b>Incoterms 2000</b>		
<b>Group E</b> Departure	<b>EXW</b>	Ex Works (...named place)
<b>Group F</b> MainCarriage Unpaid	<b>FCA</b>	Free Carrier (...named place)
	<b>FAS</b>	Free Alongside Ship (...named port of shipment)
	<b>FOB</b>	Free On Board (...named port of shipment)
<b>Group C</b> MainCarriage Paid	<b>CFR</b>	Cost and Freight (...named port of destination)
	<b>CIF</b>	Cost, Insurance and Freight (...named port of destination)
	<b>CPT</b>	Carriage Paid To (...named place)
	<b>CIP</b>	Carriage and Insurance Paid To (...named place)
<b>Group D</b> Arrival	<b>DAF</b>	Delivered at Frontier (a named place)
	<b>DES</b>	Delivered Ex Ship (...named port of destination)
	<b>DEQ</b>	Delivered Ex Quay (...named port of destination)
	<b>DDU</b>	Delivered Duty Unpaid (...named place)
	<b>DDP</b>	Delivered Duty Paid (...named place)

## **Mode of Transport**

Not all Incoterms are appropriate for all modes of transport. Some terms were designed with sea vessels in mind while others were designed to be applicable to all modes. The following table sets out which terms are appropriate for each mode of transport.

<b><u>Incoterms 2000 – Modes of Transport</u></b>		
All modes of transport including multimodal	EXW	Ex Works (...named place)
	FCA	Free Carrier (...named place)
	CPT	Carriage Paid To (...named place)
	CIP	Carriage and Insurance Paid To (...named place)
	DAF	Delivered at Frontier (...named place)
	DDU	Delivered Duty Unpaid
	DDP	Delivered Duty Paid
Sea and inland waterway transport	FAS	Free Alongside Ship (...named port of shipment)
	FOB	Free On Board (...named port of shipment)
	CFR	Cost and Freight (...named port of destination)
	CIF	Cost, Insurance and Freight (...named port of destination)
	DES	Delivered Ex Ship (...named port of destination)
	DEQ	Delivered Ex Quay (...named port of destination)

## Helpful Definitions

**Pre-carriage**-The initial transport of goods from the seller's premises to the main port of shipment. Usually by truck, rail or on inland waterways.

**Main carriage**-The primary transport of goods, generally for the longest part of the journey and generally from one country to another. Usually by sea vessel or by airplane, but can be by truck or rail as well.

**On-carriage**-Transport from the port of arrival in the country of destination to the buyer's premises. Usually by truck, rail or on inland waterways.

## Notes on Incoterms

1. **Underlying Contract** — Incoterms were designed to be used within the context of a written contract for the sale of goods. Incoterms, therefore, refer to the contract of sale, rather than the contract of carriage of the goods. Buyers and sellers should specify that their contract be governed by Incoterms 2000.
2. **EXW and FCA** — If you buy Ex Works or Free Carrier you will need to arrange for the contract of carriage. Also, since the shipper will not automatically receive a bill of lading, using a letter of credit requiring a bill of lading will prove difficult. Furthermore, whilst **EXW** provides for the goods to be made available at the seller's premises, this term **does not** include loading of the goods, a point often misunderstood by sellers who often agree to do so, ignorant of the underlying issues relating to risk of damage to the goods during the course of loading. In this case, the **FCA** term is more appropriate and should be used.
3. **Insurable Interest** — Note that in many cases either the buyer or the seller is not *obligated* to provide insurance. In a number of cases neither party is obligated to provide insurance. However, both the seller and buyer should be aware that they may have insurable interest in the goods and prudence dictates purchase of insurance coverage.
4. **Customs of the Port or Trade** — Incoterms are an attempt to standardize trade terms for all nations and all trades. However, different ports and different trades have their own customs and practices. It is best if specific customs and practices are specified in the sales contract.
5. **Precise Point of Delivery** — In some cases it may not be possible for the buyer to name the precise point of delivery at contract. However, if the buyer does not do so in a timely manner, it may give the seller the option to make delivery within a range of places that is within the terms of the contract. For example, the original terms of sale may state CFR Port of Rotterdam. The Port of Rotterdam is huge and the buyer may find that a particular point within the port is best and should so state in the sales contract and in the trade term. Also, since the buyer becomes liable for the goods once they arrive, he or she may be responsible for unloading, storage and other charges once the goods have been made available at the place named.
6. **Export and Import Customs Clearance** — It is usually desirable that export customs formalities be handled by the seller and import customs formalities be handled by the buyer. However, some trade terms require that the buyer handle export formalities and others require that the seller handle import formalities. In each case the buyer and seller will have to

- assume risk from export and import restrictions and prohibitions. In some cases foreign exporters may not be able to obtain import licenses in the country of import. This should be researched before accepting final terms.
7. **Added Wording** — It is possible, and in many cases desirable, that the seller and buyer agree to additional wording to an Incoterm. For example, if the seller agrees to DDP terms, agreeing to pay for customs formalities and import duties, but not for VAT (Value Added Taxes) the term “DDP VAT Unpaid” may be used.
  8. **Packing** — It is the responsibility of the seller to provide packaging unless the goods shipped are customarily shipped in bulk (usually commodities such as oil or grain). In most situations it is best if the buyer and seller agree in the sales contract on the type and extent of packing required. However, it may not be possible to know beforehand the type or duration of transport. As a result, it is the responsibility of the seller to provide for safe and appropriate packaging, but only to the extent that the buyer has made the circumstances of the transport known to the seller beforehand. If the seller is responsible for packing goods in an ocean or air freight container it is also his responsibility to pack the container properly to withstand shipment.
  9. **Inspection** — These are several issues related to inspections: a) the seller is responsible for costs of inspection to make certain the quantity and quality of the shipment is in conformity with the sales contract, b) pre-shipment inspections as required by the export authority are the responsibility of the party responsible for export formalities, c) import inspections as required by the import authority are the responsibility of the party responsible for import formalities, and d) third-party inspections for independent verification of quality and quantity (if required) are generally the responsibility of the buyer. The buyer may require such an inspection and inspection document as a condition of payment.
  10. **Passing of Risks and Costs** — The general rule is that risks and costs pass from the seller to the buyer once the buyer has delivered the goods to the point and place named in the trade term, **however** in the case of ‘**C**’ **terms**, it must be noted that **risk transfers at the point / port of loading** (this is often misunderstood by buyers).

*This guide has been produced by MJ Hayward Associates Ltd and is not intended as a substitute for Incoterms 2000 itself. It is strongly recommended that traders familiarise themselves with the full Incoterms 2000 available from [www.iccbookshop.com](http://www.iccbookshop.com).*

**Incoterms 2000 is one of many topics covered in MJ Hayward Associates Ltd’s range of export and import risk training courses.**

For information regarding our courses and how we can help you to reduce risks and costs and improve skills in your key business areas, please call us on: **0800 043 4052**

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