

Incoterms 2010:

ICC Rules for Use in Contracts for the Supply of Goods

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ON SEPTEMBER 16TH the International Chamber of Commerce (ICC) launched the latest revision of its internationally recognised trade terms, Incoterms 2010.

The Incoterms – short for “international commercial terms” – are a universally accepted set of trade terms which govern the practical arrangements for the delivery of goods from sellers to buyers (loading, export, import clearance, and so on), and allocate the costs and risks between the parties.

They are therefore relevant for all businesses involved in transactions for the supply of goods, and are an important tool in the negotiation of commercial contracts.

Incoterms 2010 comes into force on January 1st 2011. The new rules have been updated to reflect developments in international trade since the last version of the rules in 2000.

Principal Changes in Incoterms 2010

Changes to the “Delivered” Terms

Four of the rules in the previous version of Incoterms have been abolished: Delivered at Frontier (DAF), Delivered Ex Ship (DES), Delivered Ex Quay (DEQ), and Delivered Duty Unpaid (DDU). They have been replaced by two new rules: Delivered at Terminal (DAT), and Delivered at Place (DAP).

Under the new DAT rule, delivery takes place when the seller unloads the goods from the arriving vehicle and places them at the disposal of the buyer at the named terminal.

Under the new DAP rule, delivery takes place when the seller places the goods at the disposal of the buyer on the arriving vehicle ready for unloading (i.e. not unloaded) at the agreed place.

DAT can be used in cases where DEQ was used under the previous Incoterms, and DAP can be used wherever DAF, DES, and DDU were previously used. Both DAT and DAP can be used irrespective of the method of transport: they are not limited to maritime transport.

Classification of the Incoterms 2010

The Incoterms rules are now presented in two distinct classes.

The first class of rules are suitable for any mode of transport. These are Ex Works (EXW), Free

Carrier (FCA), Carriage Paid To (CPT), Carriage and Insurance Paid To (CIP), Delivered at Terminal (DAT), Delivered at Place (DAP), Delivered Duty Paid (DDP). These rules can be used where there is no maritime transport; however, they can also be used where a ship is used for part of the carriage.

The second class of rules are suitable for sea and inland waterway transport only. These rules are Free Alongside Ship (FAS), Free On Board (FOB), Cost and Freight (CFR), Cost Insurance and Freight (CIF).

Security Clearances

In light of heightened concern about security in the movement of goods, there are more stringent security requirements for the export and import of goods, for example the scanning of containers is now mandatory in many jurisdictions. As a result, it has become necessary for both sellers and buyers to provide more information to the relevant authorities in order to obtain export/import clearance.

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To take account of this, in addition to dealing with the obligations on the seller and/or buyer (as the case may be under the relevant rule) to obtain export/import and security related clearances, the various Incoterms rules also include a new obligation to render assistance to the other party in this respect.

Insurance

In Incoterms 2010, the CIF and CIP rules require the seller to obtain insurance. The requirements of these two rules have been updated to reflect recent changes to the Institute Cargo Clauses.

Note that Incoterms 2010 only require the seller to obtain the minimum level of cover provided by Clause (C) of the Institute Cargo Clauses, which is a relatively low level of cover. Buyers that require a higher level of cover should ensure that the contract expressly provides for this.

Terminal Handling Charges

Under Incoterms CPT, CIP, CFR, DAT, DAP, and DDP – each of which require the seller to make

arrangements for the carriage of goods to an agreed destination – the new rules state more clearly who is responsible for terminal handling charges.

Electronic Communication

Where the parties agree or it is customary trade practice, the new rules give electronic means of communication the same validity as paper communications.

How to Use Incoterms 2010

To use Incoterms 2010 properly:

- Choose the appropriate Incoterms 2010 rule. The chosen Incoterms rule should be appropriate to the goods being supplied, to the means of transport used, and to the obligations of the seller and buyer respectively to organise carriage and/or insurance.
- Once you have chosen the appropriate Incoterms 2010 rule, you should expressly incorporate this into the contract. For example, if you choose to use the FOB Incoterms rule, including the words “FOB Incoterms 2010” in the contract would be sufficient.
- Specify the place or port as precisely as possible.

For example, “FCA Atlantic House, Holborn Viaduct, London, EC1A 2FG”.

- Remember that the Incoterms 2010 are not a complete contract of sale. Supply contracts should (as appropriate) deal expressly with matters such as the price to be paid, the method of payment, transfer of title in the goods, the specifications of the goods, the consequences of breach of contract, and governing law and jurisdiction.

Earlier versions of the Incoterms rules that are incorporated into existing contracts will still apply in respect of those contracts. •

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