

INCOTERMS EXPLAINED

Aviation Suppliers Association

Modification and Replacement Parts Association

Aircraft Fleet Recycling Association

Introduction to Incoterms

- Incoterms are commercial terms designed to facilitate international trade
 - “Incoterms” is a portmanteau of “international commercial terms” and is a registered trademark of the International Chamber of Commerce
 - Commercial terms, not regulatory or statutory
 - No legal effect until you use them
 - Updated every ten years (Incoterms 2020 now in effect)
- Purpose is to provide consistency in international trade among diverse jurisdictions

Introduction to Incoterms

- What do Incoterms do?
 - Specify (some) legal obligations of seller and buyer
 - Specify when RISK OF LOSS passes from seller to buyer
- What do Incoterms NOT do?
 - DO NOT determine when TITLE passes
 - Do not establish all rights and remedies under contract
 - Most do not address insurance issues (and not completely)
 - Do not address terms of payment, delivery, other contract issues
- Incoterms are designed primarily to establish when risk of loss passes and the responsibilities of seller and buyer for goods in transit



Introduction to Incoterms

Any Transport Method

- Ex Works (EXW)
- Free Carrier (FCA)
- Carriage Paid To (CPT)
- Carriage and Insurance Paid To (CIP)
- Delivered at Place Unloaded (DPU)
- Delivered at Place (DAP)
- Delivered Duty Paid (DDP)

Sea and Inland Waterway Only

- Free Alongside Ship (FAS)
- Free on Board (FOB)
- Cost and Freight (CFR)
- Cost Insurance and Freight (CIF)

Ex Works (EXW)

- Seller responsibilities
 - Make goods available at specified location
- Buyer responsibilities
 - Loading goods (even at Seller's facility)
 - Export compliance (when applicable)
 - All transportation after loading
 - Any additional costs (e.g., insurance, import duties)
- Insurance: Seller is not obligated to insure goods



Free Carrier (FCA)

- Seller responsibilities
 - Make goods available at specified location
 - Arrange for transportation to specified location (if other than Seller location)
 - Load goods at Seller's risk
 - Export compliance
- Buyer responsibilities
 - Assumes risk after delivery to specified location
 - All transportation after delivery to specified location
 - Any additional costs (e.g., insurance, import duties)
- Insurance: Seller is not obligated to insure goods

Carriage Paid To (CPT)

- Seller responsibilities
 - Arranges transportation to specified location
 - Pays transportation to specified location (may or may not include certain fees)
 - Export compliance
- Buyer responsibilities
 - Assumes risk when goods delivered to carrier
 - Any additional costs (e.g., insurance, import duties)
- Insurance: Seller is not obligated to insure goods

Carriage and Insurance Paid To (CIP)

- Seller responsibilities
 - Arranges transportation to specified location
 - Pays transportation to specified location (may or may not include certain fees)
 - Export compliance
- Buyer responsibilities
 - Assumes risk when goods delivered to carrier (but covered by insurance)
 - Any additional costs (e.g., import duties)
 - Additional insurance if desired
- Insurance: Seller must also insure goods to specified location

Delivered at Place Unloaded (DPU)

- Seller responsibilities
 - Arrange carriage and delivery to specified location, including unloading
- Buyer responsibilities
 - Risk does not transfer until unloaded
 - Any additional costs (e.g., import duties)
- Insurance: Seller is not obligated to insure goods (although still responsible until unloaded)
- Note 1: This rule was called Delivered at Terminal (DAT) in Incoterms 2010
- Note 2: May require coordination if import clearance is required

Delivered at Place (DAP)

- Seller responsibilities
 - Arrange carriage and delivery to specified location
 - Make available for unloading
- Buyer responsibilities
 - Risk transfers when goods available for unloading (unloading is at Buyer's risk)
 - Any additional costs (e.g., import duties)
- Insurance: Seller is not obligated to insure goods
- Note 1: May require coordination if import clearance is required

Delivered Duty Paid (DDP)

- Seller responsibilities
 - Arrange carriage and delivery to specified location
 - Make available for unloading
 - Pay applicable import taxes and duties and ensure import clearance
- Buyer responsibilities
 - Risk transfers when goods available for unloading (unloading is at Buyer's risk)
- Insurance: Seller is not obligated to insure goods



Free Alongside Ship (FAS)

- Seller responsibilities
 - Deliver goods alongside vessel prepared for shipment
 - Clear goods for export
- Buyer responsibilities
 - Risk transfers when goods are laid alongside vessel
 - Loading vessel
 - All fees, duties, compliance
- Insurance: Seller is not obligated to insure goods

Free on Board (FOB)

- Seller responsibilities
 - Load goods on vessel
 - Clear goods for export
- Buyer responsibilities
 - Risk transfers when goods are loaded on vessel
 - All fees, duties, compliance
- Insurance: Seller is not obligated to insure goods



Cost and Freight (CFR)

- Seller responsibilities
 - Arranges and pays for transportation
 - Load goods on vessel
 - Clear goods for export
- Buyer responsibilities
 - Risk transfers when goods are loaded on vessel
 - Import fees and duties
- Insurance: Seller is not obligated to insure goods

Cost Insurance and Freight (CIF)

- Seller responsibilities
 - Arranges and pays for transportation
 - Load goods on vessel
 - Clear goods for export
- Buyer responsibilities
 - Risk transfers when goods are loaded on vessel
 - Import fees and duties
 - Additional insurance if required insurance inadequate
- Insurance: Seller must also insure goods

Incoterms 2010 vs. Incoterms 2020

- Some minor changes
 - Delivered at Terminal (DAT) changed to Delivered at Place Unloaded (DPU)
 - Practical rule is the same
 - Carriage and Insurance Paid (CIP) now requires insurance for fire/explosion, sinking, jettison, breakage/theft, washing overboard. Formerly only required fire/explosion, sinking, jettison. Cost Insurance and Freight requires only fire/explosion, sinking, jettison (unchanged).
- You can use whatever version you want but you must specify
 - E.g., EXW 2010; FCA 2020
 - Useful if you have standard terms you are already comfortable with and have procedures in place to address

Uniform Commercial Code (UCC)

- Incoterms can be used for purely domestic shipments as well because they are commercial
- The UCC is unique to the U.S. and is adopted at the state level
 - UCC terms may be cited in contracts but the UCC also has the force of law where it is adopted.
 - UCC is not federal law but uniformity results in consistency of interpretation
 - BEWARE OF SIMILAR TERMS: FOB has different meanings and uses under UCC and Incoterms.
 - Distinguish by always citing to Incoterms when they are to apply

Uniform Commercial Code (UCC)

- UCC F.O.B. can apply to vessel, car, or other vehicle (§ 2-319(1)(c))
- F.O.B. destination also requires Seller to deliver at destination
 - Manner, time, and place of delivery are specified by agreement
- In both uses of FOB the Seller is required to load at its own risk. FOB Incoterms is used only for vessels, so if using FOB be sure to distinguish

Be careful! It is easy to make mistakes here.

Uniform Commercial Code (UCC)

- UCC also includes Free Alongside Vessel (F.A.S.), Cost Insurance and Freight (C.I.F.), and Cost and Freight (C & F).
- These terms are similar to Incoterms but not identical
 - C.I.F. may require war risk insurance in addition to other coverages; Incoterms does not
 - Important to review and specify what the terms do and do not cover
- Remember, UCC will apply as applicable in the U.S. even if they are not included in the agreement unless otherwise specified

Considerations when Negotiating Terms

- For domestic transactions you can use Incoterms for convenience, but you are not required; UCC provisions will apply unless specifically addressed
- For international transactions you can use Incoterms, but you are not required
 - Has the benefit of (relatively) uniform interpretation
 - BUT many people still misuse
 - Discuss with Seller (or Buyer) what the risks are, how they are divided, at what costs
 - Include specific clauses detailing responsibilities under selected term

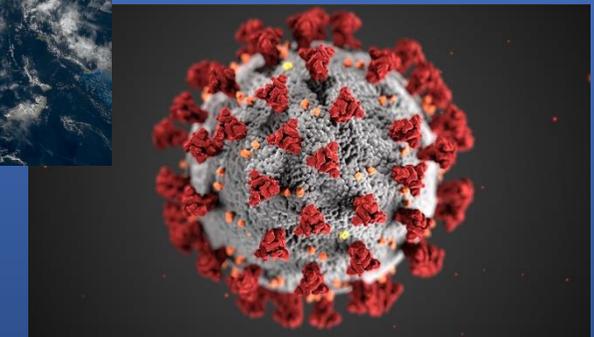
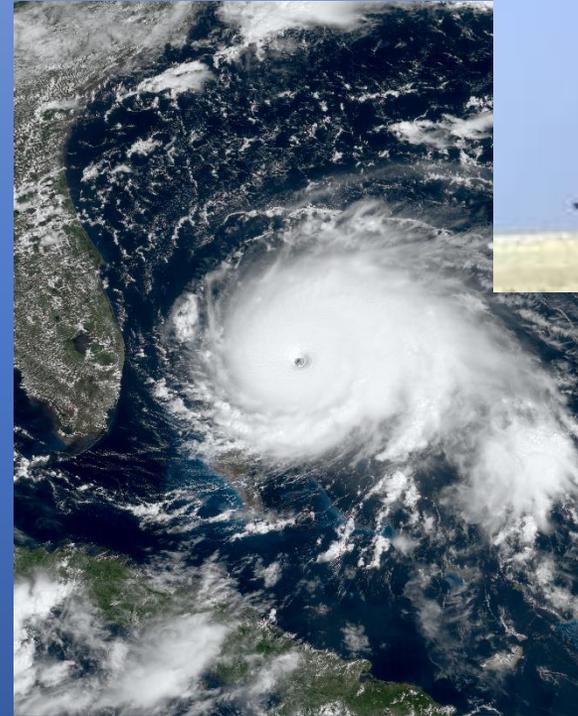
Considerations when Negotiating Terms

- Risk of Loss Transfer considerations
 - Where in the world?
 - History with/reputation of Seller
 - Your exposure
- Remember: Ex Works means you are at risk as soon as the goods hit the Seller's dock (or other pickup location)



Considerations when Negotiating Terms

- Insurance considerations
 - Only CIP and CIF require insurance (and CIF is a vessel-only provision)
 - Required insurance may not be adequate
- If risk of loss remains with Seller during main carriage insurance may be less important (or they cover)
 - But what if you face penalties for non-performance?
- What insurance does the carrier offer? Is it adequate?



Considerations when Negotiating Terms

- Incoterms provisions allocate responsibilities for compliance/clearance under other laws, including export, import, duties/tariffs, and taxes
 - Review the terms to make sure you understand your responsibilities
 - Take compliance and costs into account when negotiating price and responsibilities
- You are not limited to the structure of the selected term
 - Add or waive requirements, but make sure it is clear
 - Engage an attorney for assistance if revising or amending Incoterm requirements

Final Thoughts

- Be careful when using standard forms and boilerplate
 - Regularly review your standard terms & conditions and commercial documents to make sure they don't include unexpected provisions or terms that needlessly waive your rights
 - Build processes to review risk and need
 - Have different forms for different facts
 - Contracts don't matter until they matter
 - Consult with an attorney to cover details
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- If you are Buyer, EXW is bad and FOB is probably wrong



Thank You

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