

Are you still using FOB, CFR and CIF for your shipments on containers?

Understand What are your risks, responsibilities & Liabilities?

NEW 2016 INCOTERMS 2010 RULES + TRANSPORT
PRESENTATION MADE AT THE GLOBAL SHIPPERS' FORUM 2016

Presented by CEO Shippers' Academy Colombo Rohan Masakorala –
Member ICC (Paris) incoterms +transport working group



NEW

Invaluable tool for everyone
using Incoterms in relation
to transportation of goods.

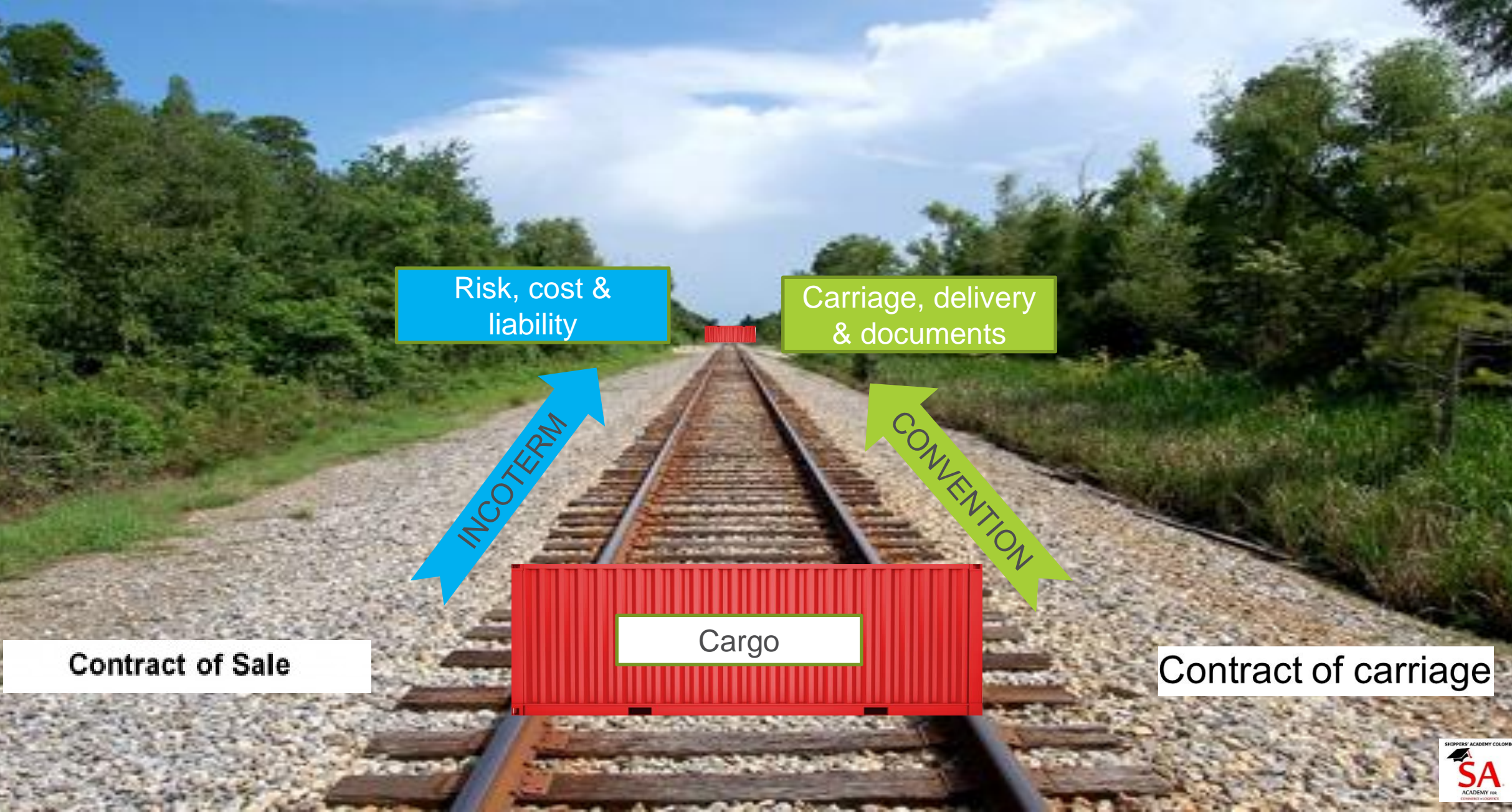


ICC INTERNATIONAL
CHAMBER
OF COMMERCE
The world business organization

Presentation by Rohan Masakorala

SHIPPERS' ACADEMY COLOMBO





New Incoterms + plus transport book explanatory forum

International sales contracts are governed by terms known as E, F, C, D.
Wrongly used, the 11 Incoterms will cost your trade more, incur greater risk & liability.

Are you using terms loosely without knowing the repercussions?

What are the terms most applicable to Sri Lankan exports and imports?

As a service provider/banker are you advising your clients of the proper usage?

Did you know there is a new guideline book published in 2016?



OVERVIEW ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

Contracts for the international sale of goods is the agreement between parties whose places of business are in different countries or separate customs areas, according to which the Seller (the Exporter) is obliged to deliver goods, and transfer the ownership thereof to the Buyer (the Importer); the Buyer is obliged to receive of the goods and the ownership thereof, and arrange payment.





INTERNATIONAL COMMERCIAL TERMS

INCREASED OBLIGATIONS OF THE SELLER



E

F

C

D

DECREASED OBLIGATIONS OF THE BUYER





Incoterms® - International Commercial Terms

The Incoterms® rules are an internationally recognized standard and are used worldwide in international and domestic contracts for the sale of goods. First published in 1936, Incoterms® rules provide internationally accepted definitions and rules of interpretation for most common commercial terms.

The rules have been developed and maintained by experts and practitioners brought together by ICC and have become the standard in international business rules setting. Launched in mid-September 2010, Incoterms® 2010 came into effect on 1 January 2011. They help traders avoid costly misunderstandings by clarifying the tasks, costs and risks involved in the delivery of goods from sellers to buyers. Incoterms® rules are recognized by UNCITRAL as the global standard for the interpretation of the most common terms in foreign trade.

Please note that all contracts made under INCOTERMS® 2000 remain valid even after 2011. Moreover, although we recommend using Incoterms® 2010 after 2011, parties to a contract for the sale of goods can agree to choose any version of the Incoterms rules after 2011. It is important however to clearly specify the chosen version INCOTERMS® 2010, INCOTERMS® 2000 or any earlier version.

NEW! ICC GUIDE ON TRANSPORT + INCOTERMS 2010 RULES



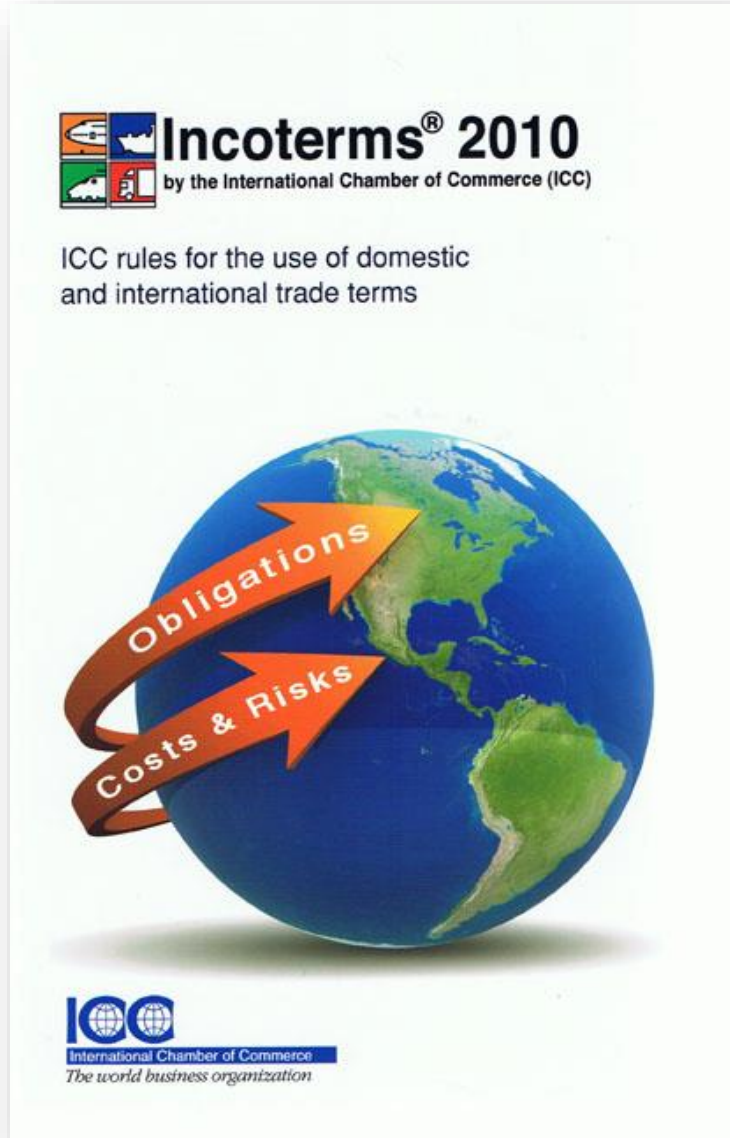
ICC rules for the use of domestic
and international trade terms



Standard solution for buyers and sellers to
divide costs, and risks when goods are
TRANSPORTED from seller to buyer

"Bad things happen when contracts do not
align, and the parties to one do not
necessarily understand the obligations set
forth in the other."

2011



2016



NEW! ICC GUIDE ON TRANSPORT + INCOTERMS 2010 RULES



Contracts of sale and transport can be tricky even for the most experienced professionals. The slightest of errors may cause substantial repercussions such as detained shipments, spoiled supply chain planning and unwanted costs and delayed payments. Here to bridge the gap between expectations and execution is the new ICC Guide on Transport and the Incoterms® 2010 Rules.

This guide is to illustrate some of the issues between the incoterms and the contract of carriage

NEW! ICC GUIDE ON TRANSPORT + INCOTERMS 2010 RULES

2016

- **For transporters**

1. To guide on the best practices
2. To avoid confusion on cost, risk and liability
3. To obtain the proper documents for transportation
4. To establish transparency and accountability
5. Standardization and reduce cost
6. Ensure market driven pricing and competition



NEW! ICC GUIDE ON TRANSPORT + INCOTERMS 2010 RULES

The contract :inclusion of carrier's obligation

(17) Regardless of whether it is the seller or the buyer that contracts with the carrier, it is crucial to understand the full scope of the carrier's obligation when entering into a contract

NEW! ICC GUIDE ON TRANSPORT + INCOTERMS 2010 RULES

2016 Book: What does it mean for shippers?

- *For shippers (global buyers and sellers) these guidelines will help get cost effective, risk managed and transparent transportation solutions and to use the best commercial term.*
- *The importance is that depending on the bargaining power of the buyer or the seller to obtain best cost of transportation they can increase trade and access new markets. In this connection the responsibility of contracting parties including the transporter has been brought into define the incoterms in relation to the contract of carriage.*

NEW! ICC INCOTERMS 2010 RULES VS TRANSPORT GUIDE CONT....

NEW! ICC GUIDE ON TRANSPORT + INCOTERMS 2010 RULES

2016

- Carriers must understand the total voyage, delivery points acceptance points and customs clearances
- The carrier charges have to be directed to the **contracting party for carriage** as per the services rendered and the liability, cost and risk taken on behalf of their contracting party at delivery or receiving points.
- The contracting party of sales of goods, may decide to divide carriers cost accordingly irrespective of the Incoterm

NEW! ICC GUIDE ON TRANSPORT + INCOTERMS 2010 RULES

Sales contract vs Transport contract

One important difference between sales of goods law and transportation law is that sales of goods is covered by only Vienna convention on contract called International sale of goods (CISG)

The situation is different for the carriage of goods as it is covered by many conventions and regional and national laws. (7,8)

Today it can involve multimodal transport



The 10 questions and answers that the seller and buyer should know on Incoterm

Seller A

- A1.** General obligations of the seller
- A2.** Licence, authorisations, security, clearance and other formalities
- A3.** Contract of carriage and insurance
- A4.** Delivery
- A5.** Transfer of risk
- A6.** Allocation of cost
- A7.** Notice to the buyer
- A8.** Proof of delivery
- A9.** Inspection of goods
- A10.** Assistance with information and related cost

Buyer B

- B1.** General obligations of the buyer
- B2.** Licence, authorisations, security, clearance and other formalities
- B3.** Contract of carriage and insurance
- B4.** Taking delivery
- B5.** Transfer of risk
- B6.** Allocation of cost
- B7.** Notice to the seller
- B8.** Proof of delivery
- B9.** Inspection of goods
- B10.** Assistance with information and related cost

NEW! ICC GUIDE ON TRANSPORT + INCOTERMS 2010 RULES

The 10 questions and answers that the transporter should know against each Incoterm

- 1. How are goods handed over to the carrier?**
- 2. When and how are goods made available to the consignee?**
- 3. Who shall pay the price of transport?**
- 4. What additional price can be added to the transport?**
- 5. Is there a variable part to the price for transport (i.e. 'adjustment factor')?**
- 6. When is the price for transport payable?**
- 7. How are the goods to be packed?**
- 8. Is the seller or the buyer responsible for customs clearance?**
- 9. Who is responsible for stowage and cargo security?**
- 10. What sort of transport document should be issued by the carrier?**

SUMMARY



Main changes on the Incoterms® 2010

Number of Incoterms was reduced from 13 to 11.

~~EXW~~
~~FAS~~
~~FOB~~
~~FCA~~
~~CFR~~
~~CIF~~
~~CPT~~
~~CIP~~
~~DAF~~
~~DES~~
~~DEQ~~
~~DDU~~
DDP



EXW
FAS
FOB
FCA
CFR
CIF
CPT
CIP
DAF
DAT
DDP



The logic of the Incoterms 2010 rules

The eleven rules are divided into two main groups

Rules for any transport mode

- Ex Works EXW
- Free Carrier FCA
- Carriage Paid To CPT
- Carriage & Insurance Paid to CIP
- Delivered At Terminal DAT
- Delivered At Place DAP
- Delivered Duty Paid DDP Rules for sea & inland

waterway only

- Free Alongside Ship FAS
- Free On Board FOB
- Cost and Freight CFR
- Cost Insurance and Freight CIF

In general the “transport by sea or inland waterway only” rules should only be used for bulk cargoes (e.g. oil, coal etc) and non-containerised goods, where the exporter can load the goods directly onto the vessel. Where the goods are containerised, the “any transport mode” rules are more appropriate.

A critical difference between the rules in these two groups is the point at which risk transfers from seller to buyer. For example, the “Free on Board” (FOB) rule specifies that risk transfers when the goods have been loaded on board the vessel. However the “Free Carrier” (FCA) rule specifies that risk transfers when the goods have been taken in charge by the carrier.

FREIGHT PAYMENT

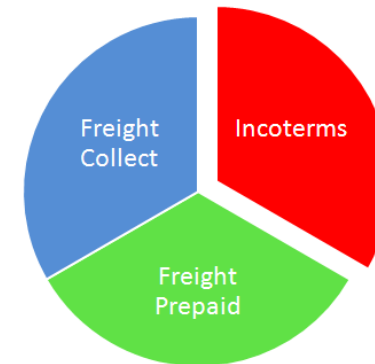
NEW! ICC GUIDE ON TRANSPORT + INCOTERMS 2010 RULES

Freight under incoterms

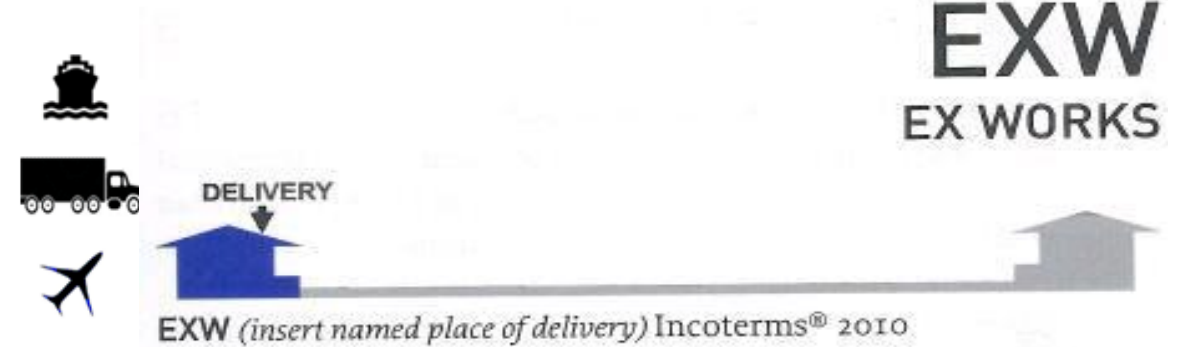
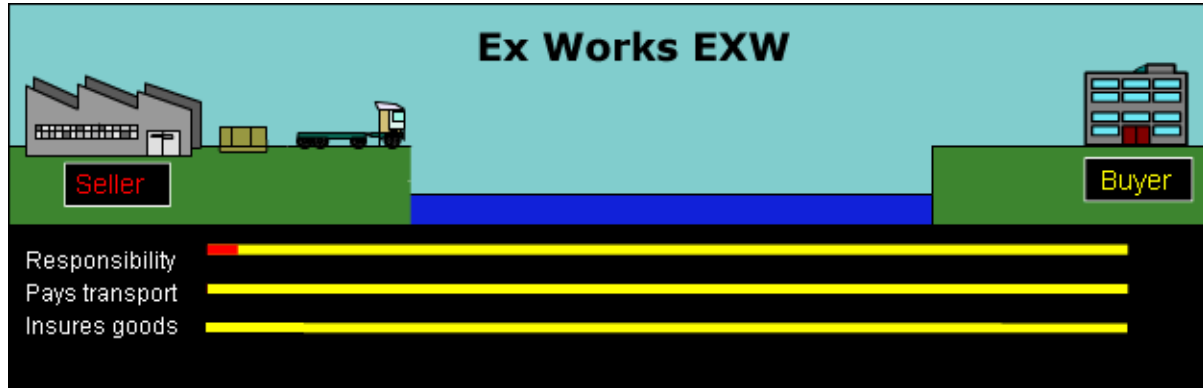
3-F Terms -
7- C & D Terms-
1-E Term -

Collect
Prepaid
Either

Any mode
EXW,FCA,CPT,CIP,DAT,DAP,DDP



Sea and inland waterways
FAS,FOB, CFR,CIF



3-F Terms - Collect
7- C & D Terms- Prepaid
1-E Term - Either

Ex Works (EXW)

Can be used for any transport mode, or where there is more than one transport mode

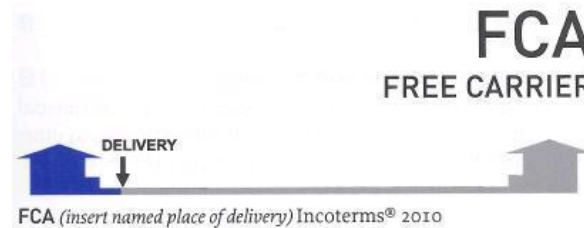
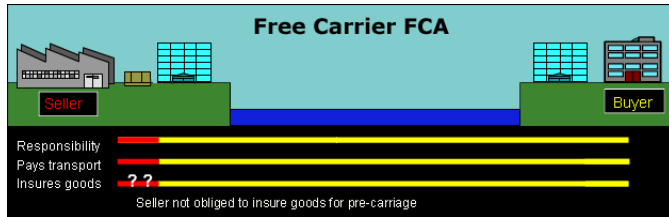
This rule places minimum responsibility on the seller, who merely has to make the goods available, suitably packaged, at the specified place, usually the seller's factory or depot.

The buyer is responsible for loading the goods onto a vehicle (even though the seller may be better placed to do this); for all export procedures; for onward transport and for all costs arising after collection of the goods.

In many cross-border transactions, this rule can present practical difficulties.

Specifically, the exporter may still need to be involved in export reporting and clearance processes, and cannot realistically leave these to the buyer. Consider Free Carrier (seller's premises) instead.

Other things to watch for. Although the seller is not obliged to load the goods, if the seller does so, this is at the buyer's risk!



3-F Terms - Collect
7- C & D Terms- Prepaid
1-E Term - Either

Free Carrier (FCA)

Can be used for any transport mode, or where there is more than one transport mode.

A very flexible rule that is suitable for all situations where the buyer arranges the main carriage

For example:

Seller arranges pre-carriage from seller's depot to the named place, which can be a terminal or transport hub, forwarder's warehouse etc. Delivery and transfer of risk takes place when the truck or other vehicle arrives at this place, ready for unloading – in other words, the carrier is responsible for unloading the goods. (If there is more than one carrier, then risk transfers on delivery to the first carrier.)

Where the named place is the seller's premises, then the seller is responsible for loading the goods onto the truck etc.

NB this is an important difference from Ex Works EXW

In all cases, the seller is responsible for export clearance; the buyer assumes all risks and costs after the goods have been delivered at the named place.

FCA is the rule of choice for containerised goods where the buyer arranges for the main carriage.



3-F Terms - Collect
7- C & D Terms- Prepaid
1-E Term - Either

Free Alongside Ship (FAS)

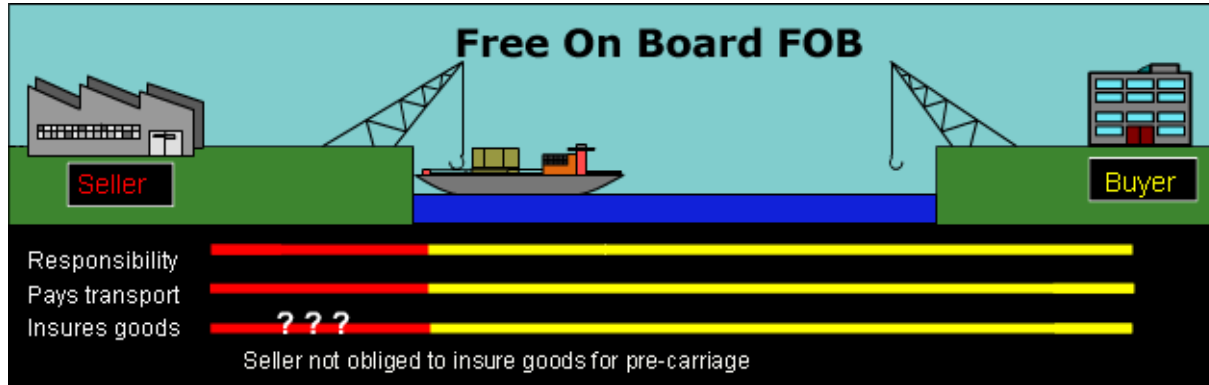
Use of this rule is restricted to goods transported by sea or inland waterway.

In practice it should be used for situations where the seller has direct access to the vessel for loading, e.g. bulk cargos or non-containerised goods.

For containerised goods, consider “Free Carrier FCA” instead.

Seller delivers goods, cleared for export, alongside the vessel at a named port, at which point risk transfers to the buyer.

The buyer is responsible for loading the goods and all costs thereafter.



SEA OR INLAND WATERWAY



3-F Terms - Collect
7- C & D Terms- Prepaid
1-E Term - Either

Free On Board (FOB)

Use of this rule is restricted to goods transported by sea or inland waterway.

In practice it should be used for situations where the seller has direct access to the vessel for loading, e.g. bulk cargos or non-containerised goods.

For containerised goods, consider “Free Carrier FCA” instead.

Seller delivers goods, cleared for export, loaded on board the vessel at the named port.

Once the goods have been loaded on board, risk transfers to the buyer, who bears all costs thereafter.

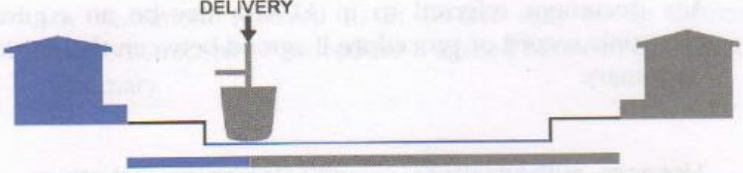
FOB is now only appropriate for ro/ro (cars), over-sized cargo, and bulk items where the shipper must physically arrange for the goods to be loaded onto a vessel – i.e. drive it, or hire the cranes to load it.

Evolution of FOB

1990: Free on board means that the seller fulfils his obligation to deliver when the goods have passed Over the ship's rail at the name port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point

2000: Free on board means that the seller to **delivers** when the goods pass the ship's rail at the name port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point. **The FOB tern requires the seller to clear the goods for Export. This term can be used only for sea or inland waterway transport. If the parties do not intend to deliverThe goods across the ship's rail FCA term should be used**

FOB
FREE ON BOARD
FOB (insert named port of shipment) Incoterms® 2010



GUIDANCE NOTE

This rule is to be used only for sea or inland waterway transport.

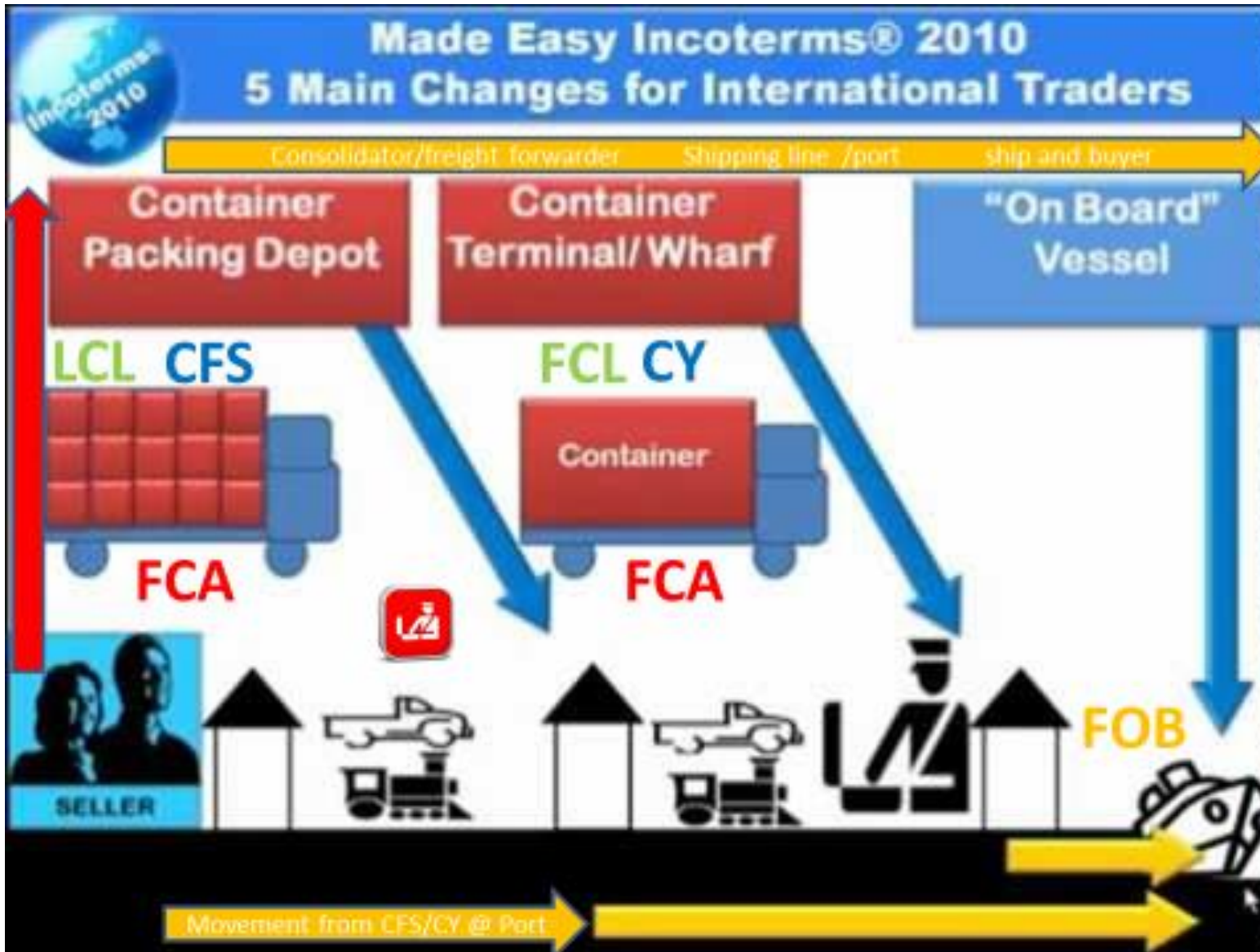
“Free on Board” means that the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel, and the buyer bears all costs from that moment onwards.

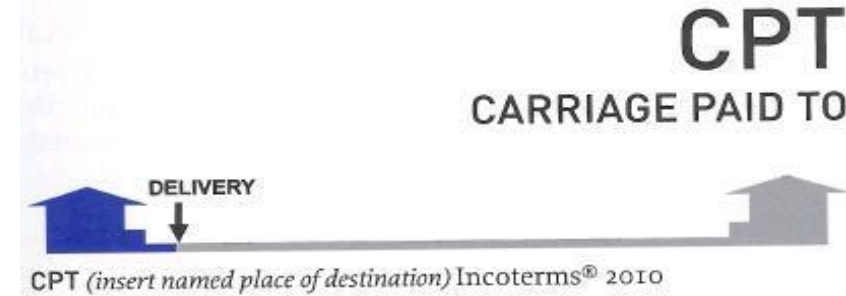
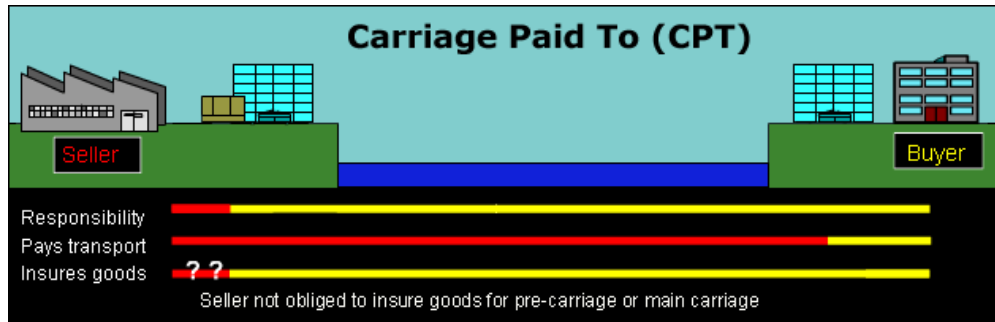
The seller is required either to deliver the goods on board the vessel or to procure goods already so delivered for shipment. The reference to “procure” here caters for multiple sales down a chain (‘string sales’), particularly common in the commodity trades.

FOB may not be appropriate where goods are handed over to the carrier before they are on board the vessel, for example goods in containers, which are typically delivered at a terminal. In such situations, the FCA rule should be used.

FOB requires the seller to clear the goods for export, where applicable. However, the seller has no obligation to clear the goods for import, pay any import duty or carry out any import customs formalities.

SA
ACADEMY OF
COMMERCE & LOGISTICS





3-F Terms - Collect
7-C & D Terms- Prepaid
1-E Term - Either

Carriage Paid To (CPT)

Can be used for any transport mode, or where there is more than one transport mode.

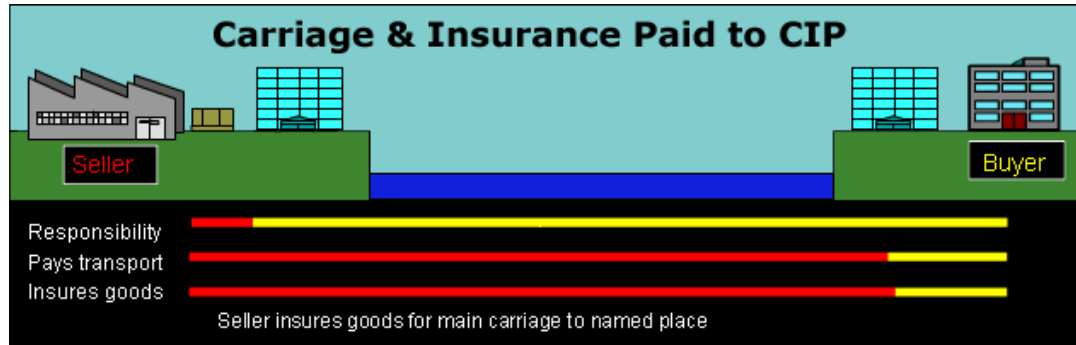
The seller is responsible for arranging carriage to the named place, but not for insuring the goods to the named place. However delivery of the goods takes place, and risk transfers from seller to buyer, at the point where the goods are taken in charge by a carrier – see delivery.

Things to watch for.

Transport Handling Charges (THC) are charges made by the terminal operator. These charges may or may not be included by the carrier in their freight rates – the buyer should enquire whether the CPT price includes THC, so as to avoid surprises.

The buyer may wish to arrange insurance cover for the main carriage, starting from the point where the goods are taken in charge by the carrier – NB this will not be the place referred to in the Incoterms rule, but will be specified elsewhere within the commercial agreement

See also “Carriage and Insurance Paid To CIP”



Carriage and Insurance Paid To (CIP)

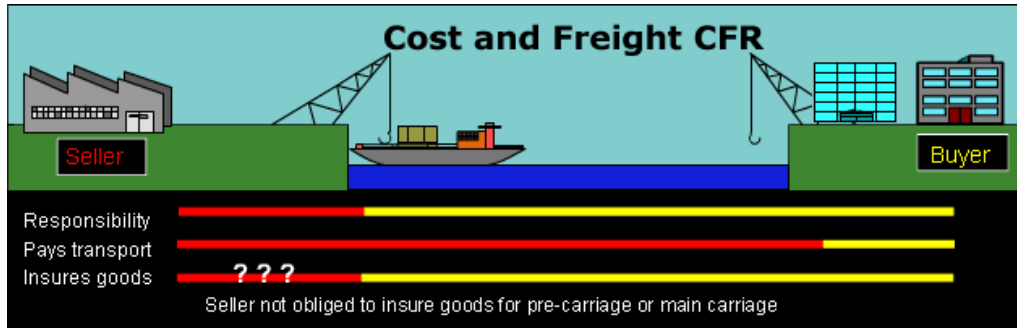
Can be used for any transport mode, or where there is more than one transport mode. The seller is responsible for arranging carriage to the named place, and also for insuring the goods.

As with CPT, delivery of the goods takes place, and risk transfers from seller to buyer, at the point where the goods are taken in charge by a carrier

Things to watch for. Transport Handling Charges (THC) are charges made by the terminal operator. These charges may or may not be included by the carrier in their freight rates – the buyer should enquire whether the CIP price includes THC, so as to avoid surprises.

Although the seller is obliged to arrange for insurance for the journey, the rule only requires a minimum level of cover, which may be commercially unrealistic. Therefore the level of cover may need to be addressed elsewhere in the commercial agreement

See also “Carriage Paid To CPT”



3-F Terms - Collect
7- C & D Terms- Prepaid
1-E Term - Either

Cost and Freight (CFR)

Use of this rule is restricted to goods transported by sea or inland waterway.

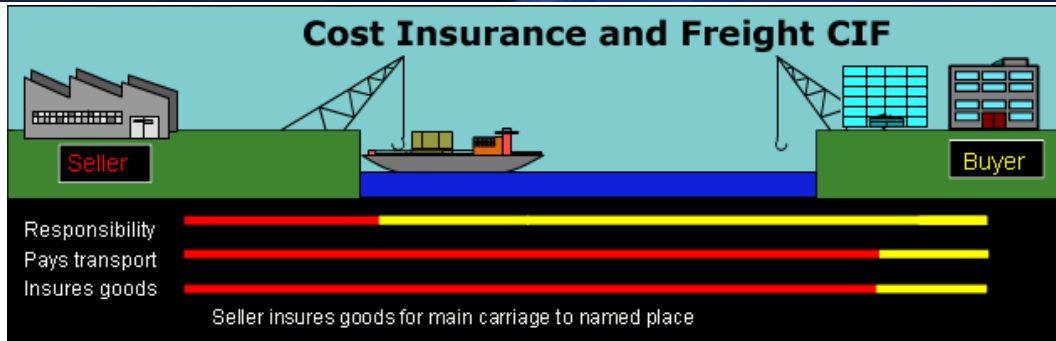
In practice it should be used for situations where the seller has direct access to the vessel for loading, e.g. bulk cargos or non-containerised goods.

For containerised goods, consider ‘Carriage Paid To CPT’ instead.

Seller arranges and pays for transport to named port. Seller delivers goods, cleared for export, loaded on board the vessel.

However risk transfers from seller to buyer once the goods have been loaded on board, i.e. before the main carriage takes place.

NB seller is not responsible for insuring the goods for the main carriage.
See also “Cost Insurance and Freight CIF”



SEA OR INLAND WATERWAY ONLY



Cost Insurance and Freight (CIF)

Use of this rule is restricted to goods transported by sea or inland waterway.

3-F Terms - Collect
7-C & D Terms- Prepaid
1-E Term - Either

In practice it should be used for situations where the seller has direct access to the vessel for loading, e.g. bulk cargos or non-containerised goods.

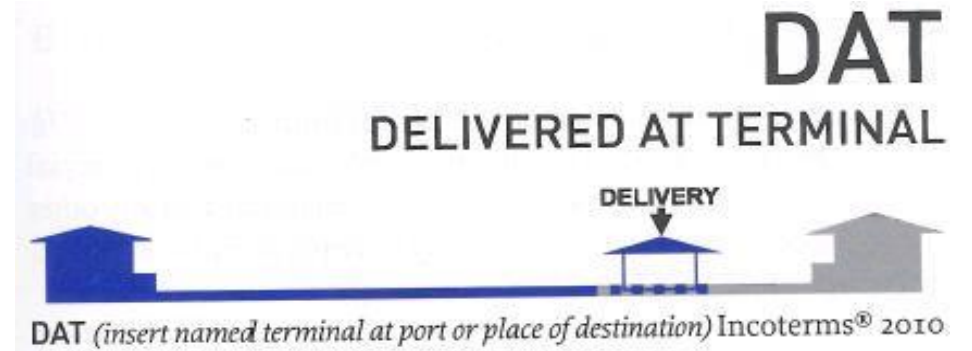
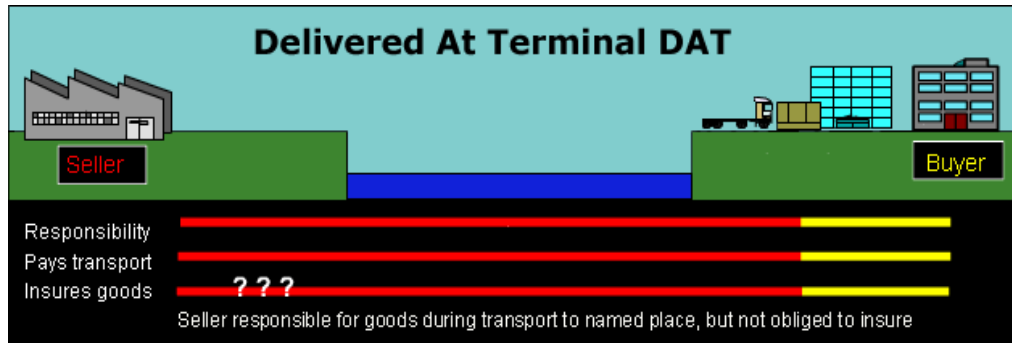
For containerised goods, consider 'Carriage and Insurance Paid CIP' instead.

Seller arranges and pays for transport to named port. Seller delivers goods, cleared for export, loaded on board the vessel.

However risk transfers from seller to buyer once the goods have been loaded on board, i.e. before the main carriage takes place.

Seller also arranges and pays for insurance for the goods for carriage to the named port.

However as with "Carriage and Insurance Paid To", the rule only require a minimum level of cover, which may be commercially unrealistic. Therefore the level of cover may need to be addressed elsewhere in the commercial agreement.



3-F Terms - Collect
7-C & D Terms- Prepaid
1-E Terms - Either

Delivered at Terminal (DAT)

Can be used for any transport mode, or where there is more than one transport mode. The seller is responsible for arranging carriage and for delivering the goods, unloaded from the arriving conveyance, at the named place.

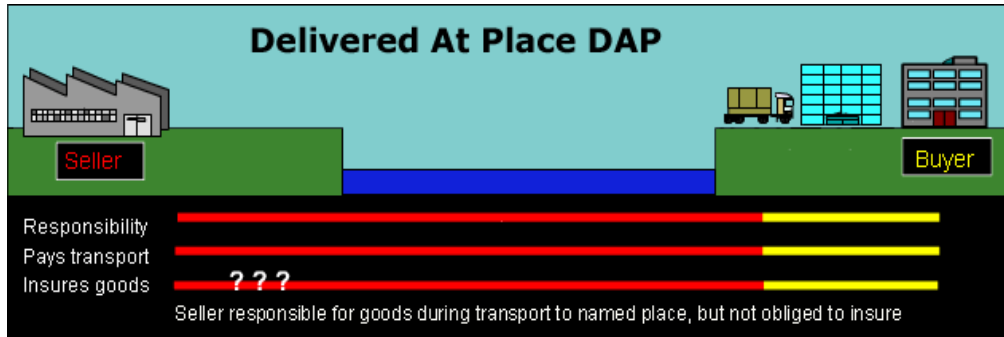
Risk transfers from seller to buyer when the goods have been unloaded.

‘Terminal’ can be any place – a quay, container yard, warehouse or transport hub.

The buyer is responsible for import clearance and any applicable local taxes or import duties.

Things to watch for:

The place for delivery should be specified as precisely as possible, as many ports and transport hubs are very large. A useful rule, well suited to container operations where the seller bears responsibility for the main carriage.



3-F Terms - Collect
7- C & D Terms- Prepaid
1-E Term - Either

Delivered at Place (DAP)

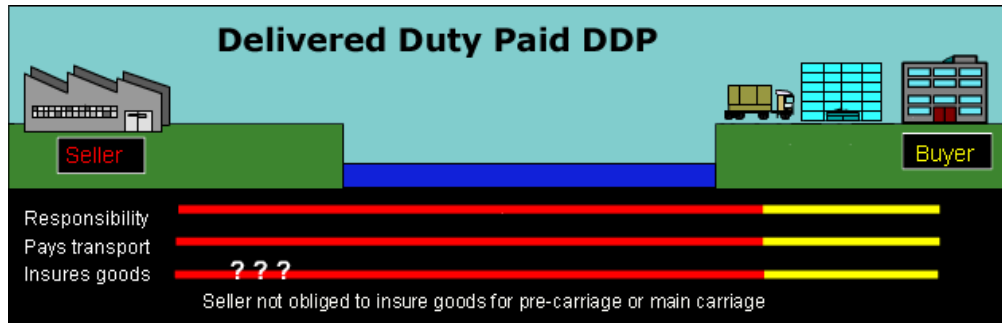
Can be used for any transport mode, or where there is more than one transport mode.

The seller is responsible for arranging carriage and for delivering the goods, ready for unloading from the arriving conveyance, at the named place. (An important difference from Delivered At Terminal DAT, where the seller is responsible for unloading.)

Risk transfers from seller to buyer when the goods are available for unloading; so unloading is at the buyer's risk.

The buyer is responsible for import clearance and any applicable local taxes or import duties.

This rule can often be used to replace the Incoterms 2000 rules Delivered At Frontier (DAF), Delivered Ex Ship (DEQ) and Delivered Duty Unpaid (DDU)



3-F Terms - Collect
7- C & D Terms- Prepaid
1-E Term - Either

Delivered Duty Paid (DDP)

Can be used for any transport mode, or where there is more than one transport mode.

The seller is responsible for arranging carriage and delivering the goods at the named place, cleared for import and all applicable taxes and duties paid (e.g. VAT, GST)

Risk transfers from seller to buyer when the goods are made available to the buyer, ready for unloading from the arriving conveyance

This rule places the maximum obligation on the seller, and is the only rule that requires the seller to take responsibility for import clearance and payment of taxes and/or import duty.

These last requirements can be highly problematical for the seller. In some countries, import clearance procedures are complex and bureaucratic, and so best left to the buyer who has local knowledge.

NEW! ICC GUIDE ON TRANSPORT + INCOTERMS 2010 RULES

What about insurance?

There is a special note on insurance except for CIP.CIF

In all other terms insurance has to be agreed upon by buyer and seller

Depending on the mode of transport as per applicable convention (86)



Transfer of Title

ICC: Delivery point on B/L very important according to Customary manner in each country the ports operate

Door, CY, CFS

Ten common mistakes in using the Incoterms rules

Here are some of the most common mistakes made by importers and exporters:

- *Use of a traditional “sea and inland waterway only” rule such as FOB or CIF for containerised goods, instead of the “all transport modes” rule e.g. FCA or CIP. This exposes the exporter to unnecessary risks.*
- *Making assumptions about passing of title to the goods, based on the Incoterms rule in use. The Incoterms rules are silent on when title passes from seller to buyer; this needs to be defined separately in the sales contract*
- *Failure to specify the port/place with sufficient precision, e.g. “FCA Chicago”, which could refer to many places within a wide area*
- *Attempting to use DDP without thinking through whether the seller can undertake all the necessary formalities in the buyer’s country, e.g. paying GST or VAT*
- *Attempting to use EXW without thinking through the implications of the buyer being required to complete export procedures – in many countries it will be necessary for the exporter to communicate with the authorities in a number of different ways*

- *Use of CIP or CIF without checking whether the level of insurance in force matches the requirements of the commercial contract – these Incoterms rules only require a minimal level of cover, which may be inadequate.*
- *Where there is more than one carrier, failure to think through the implications of the risk transferring on taking in charge by the first carrier – from the buyer’s perspective, this may turn out to be a small haulage company in another country, so redress may be difficult in the event of loss or damage*
- *Failure to establish how terminal handling charges (THC) are going to be treated at the point of arrival. Carriers’ practices vary a good deal here. Some carriers absorb THC’s and include them in their freight charges; however others do not.*
- *Where payment is with a letter of credit or a documentary collection, failure to align the Incoterms rule with the security requirements or the requirements of the banks.*
- *When DAT or DAP is used with a “post-clearance” delivery point, failure to think through the liaison required between the carrier and the customs authorities – can lead to delays and extra costs*

Frequently asked questions

Q: Can we add qualifications or variations to a rule?

Yes

It is possible to add extra words to an Incoterms rule, so as to cater for special situations and/or to achieve more precise definition of obligations

Example 1:

For some types of cargo, costs arise from stowing the cargo on the vessel. So the Incoterms rule “FOB stowed” will make it clear that the seller is responsible not only for loading the cargo on board, but also for stowing it.

Example 2:

The rule “DDP, VAT unpaid” – seller is responsible for paying import duty, but not for paying VAT

Example 3:

The rule “EXW, loaded” – seller loads goods onto vehicle

Caution:

By qualifying a rule, there is the danger of introducing ambiguity. Examples: expressions such as “Liner terms” and “Liner out” are open to different interpretations. “EXW, loaded” – there are different views as to whether loading is at buyer’s or at seller’s risk.

INCOTERMS® 2010 RULES CHART OF RESPONSIBILITY											
	Any Transport Mode		Sea/Inland Waterway Transport				Any Transport Mode				
	EXW	FCA	FAS	FOB	CFR	CIF	CPT	CIP	DAT	DAP	DDP
Charges/Fees	Ex Works	Free Carrier	Free Alongside Ship	Free On Board	Cost & Freight	Cost Insurance & Freight	Carriage Paid To	Carriage Insurance Paid To	Delivered at Terminal	Delivered at Place	Delivered Duty Paid
Packaging	Buyer or Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller*	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty & Taxes	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance						Seller		Seller			
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Import Duty & Taxes	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

WORDS OF ADVICE

Please be aware of the limitations of these summaries.

If you are involved in establishing an Incoterms policy for your organisation, or in the drafting of contracts with trading partners or service providers, you will need to study the complete text of Incoterms 2010 + Transport guide, which is found in the ICC publications