

Incoterms[®]

2020 by the International
Chamber of Commerce (ICC)



ICC RULES
FOR THE USE
OF DOMESTIC AND
INTERNATIONAL
TRADE TERMS



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**First Australian and second non-lawyer
appointed to the ICC's Incoterms® 2020 Drafting
Group**

Owner of the LinkedIn "Incoterms" group

**Author of the new e-book (available on Amazon.com)
"A Commentary on the Incoterms® 2020 Rules".**



Firstly, what is a Sales Contract?

There are three basic essentials:

- Offer
- Acceptance
- Consideration.



But there is more:

- Who
- What
- When
- Where
- How
- and at Whose risk?



Specifying all these in a Sales Contract

Either write many pages of these details in the contract

or....

Refer to a three-letter Incoterms[®] 2020 Rule.



What if I use “FOB” or “CIF” without referencing Incoterms® 2020?

Nobody can stop you doing this

But what if you and your trading partner have different ideas what these mean?

What could be the consequences?

How do you then resolve the problem?



What are the Incoterms[®] rules about?

- In every transaction the seller and buyer agree on a number of mutual obligations which affect risk and costs
- These can be stated in great detail, or they can be rolled into one of eleven 3-letter abbreviations
- The ICC publishes the standard international rules for interpreting these abbreviations.



What are the Incoterms® rules and where did they come from?

- 1919 ICC formed -- *“The Merchants of Peace”*
- 1923 ICC conducted the first study of most commonly used trade terms, identifies disparities in their interpretations
- 1928 ICC conducted second study in over 30 countries
- 1936 ICC published first version of Incoterms® with 6 trade terms relating only to sea carriage.



- 1953 revision added non-maritime transport DCP (Delivered Costs Paid), FOR/FOT (Free on Rail/Truck)
- 1967 two extra rules DAF (Delivered at Frontier), DDP (Delivered Duty Paid) -- EEC established 1957
- 1976 one extra rule FOB Airport – Boeing 747 first flew in 1969
- 1980 revision covering containers, extra rule FRC (Free Carrier).



- 1990 complete revision, ten point layout, deleted FOB Airport, FOR/FOT, absorbing them into renamed FCA
- 2000 complete revision, modified FAS and DEQ
- 2010 complete revision, deleted DAF, DES and DDU rolling them into DAP, deleted DEQ and expanded it to DAT.



How are these rules created?

- 1990 Nine European lawyers under the ICC's Commercial Practices Commission, plus 12 Europeans and one from Japan in the Working Party
- 2000 Five European lawyers plus one practitioner from USA under ICC's Commission on International Commercial Practice
- 2010 Seven European lawyers plus one practitioner from USA under ICC's Commission on Commercial Law and Practice, over 2,000 contributions from ICC NCs.



2020

Five European lawyers
one practitioner from USA
one practitioner from China
and one practitioner from Australia
under ICC's Commission on Commercial Law
and Practice
with over 3,000 contributions from National
Committees.



What was my role on the Drafting Group?

- I had been one of the volunteer Committee writing the “ICC Guide on Transport and the Incoterms[®] 2010 Rules”
- I was then invited by the ICC to join the Incoterms[®] 2020 Drafting Group
- I brought a non-legal, non-European biased, practical input to the discussions.



Are the Incoterms® 2020 rules now perfect?

The trading world, banks and forwarders use FOB, CFR and CIF for containers. Is this now covered?



Eleven Incoterms® 2020 Rules

Divided into two groups:

“Any mode or modes of Transport”

and

“Sea or Inland Waterway Transport”.



Any Mode or Modes of Transport:

EXW Ex Works

FCA Free Carrier

CPT Carriage Paid To

CIP Carriage and Insurance Paid To

DAP Delivered At Place

DPU Delivered At Place Unloaded

DDP Delivered Duty Paid



Sea or Inland Waterway Transport:

FAS Free Alongside Ship

FOB Free On Board

CFR Cost and Freight

CIF Cost Insurance and Freight



Each rule is divided into two sets of ten matching obligations

A = Seller's obligations

B = Buyer's obligations



- A1 / B1 General Obligations
- A2 / B2 Delivery
- A3 / B3 Transfer of Risk
- A4 / B4 Carriage
- A5 / B5 Insurance



- A6 / B6 Delivery/transport document
- A7 / B7 Export/import clearance
- A8 / B8 Checking/packaging/marking
- A9 / B9 Allocation of costs
- A10 / B10 Notices



What are the major innovations in Incoterms[®] 2020?

- Plain English instead of legalistic language
- Order of articles to reflect actual processes
- FCA includes issue of “on board” B/L
- CIP insurance now ICC(A)
- DAT is now DPU
- Horizontal layout, article by article
- New free app for smartphones.



How do I decide which Incoterms® 2020 rule best suits my transaction?

- Do not pick a rule and try to make it fit
- Work out what you and your trade partner want to achieve and then select the rule which best matches
- Specify any variances in your contract.



But how do I know which is the right Incoterms[®] 2020 rule for me to use?

Learn all about the new Incoterms[®] 2020 rules, what they say and how to use them at ICC UAE's upcoming workshops in early December.



Not only the Incoterms[®] 2020 rules....

- Making the L/C compatible with the contract
- Are drafts necessary in L/Cs?
- Should B/Ls be consigned to order of a bank?
- Interesting ICC Banking Commission Opinions
- Case studies.



I hope to see you in December!

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