

Overview

Incoterms[®] 2020

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Incoterms® 2020

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Incoterms are a set of 11 internationally recognized rules that define the responsibilities of sellers and buyers for the sale of goods in international and domestic transactions. They define who is responsible for what during each step of a transaction, assisting buyers and sellers in determining the risk of loss, and the party responsible for costs relating to the transportation of goods. This article provides practitioners an overview of Incoterms 2020 updates, practitioner tips, and valuable resources.

What are Incoterms?

International commercial terms, globally referred to as Incoterms®, are published by the [International Chamber of Commerce \(ICC\)](#) as a commitment to facilitate international trade and promote open markets. In response to an ever-evolving global trade landscape, and to provide a common language for traders, the ICC developed the first global system of rules to govern trade.

Incoterms are not law, and instead are designed to prevent confusion between global traders by clarifying contract obligations of buyers and sellers. The first version was published in 1936 and is [updated periodically](#) to conform to evolving trade practices, with its most recent update in 2020. Updates are made by a handpicked group of experts from various nationalities chosen for their contribution to international commercial law.

Practice Tip: Contracts should specify which version parties are using (e.g., [Incoterms 2020](#)).

What Do Incoterms Cover?

Each Incoterms® rule clarifies the tasks, costs, and risks the buyers and sellers is responsible for during the transaction. A full set of terms are provided under each Incoterm rule and parties to a sales contract do not have to adopt the terms in their entirety. The parties may incorporate specific provisions from the relevant Incoterms as they are voluntary and a source of guidance. Incoterms focus on the various practical elements of a sale such as:

- Primary obligations of the seller and buyer
- Clarify responsibilities of parties to a sales transaction
- Time of delivery
- The transfer of risk
- Insurance
- Export and import clearance
- Division of other costs pertaining to the delivery of goods

Incoterms do not address all the conditions of a sale, such as:

- Transfer of title
- Identifying the goods being sold
- Listing the contract price
- Payment method
- Referencing the method or timing of payment negotiated between the seller or buyer
- Specifying which documents must be provided by the seller to the buyer to facilitate the customs clearance process at the buyer's country

- Addressing liability for the failure to provide the goods in conformity with the contract of sale, delayed delivery, or dispute resolution mechanisms
- Addressing force majeure; termination; insolvency
- Compliance and trade restrictions
- Applicable law and jurisdiction

Incoterms® are incorporated into contracts by express (written) reference whether in special or standard contract terms.

Practice Tips: Prior to entering an agreement for the purchase of goods, verify all costs of delivery are accounted for through the transactions and that the supplier has the capacity to deliver

When incorporating the specific Incoterms into an agreement, such as a contract or Terms and Condition, specifically state which version of Incoterms is being relied on, such a provision may state, “all commercial terms are defined under Incoterms® 2020,” since previous versions continue to be in effect

Most Recent Update & its Relevance

Incoterms® 2020 became effective on Jan. 1, 2020. [Contracts using any 2010 and earlier version](#) are valid if the incoterm and version used are agreed upon by all parties to the transaction and are correctly identified stating the version referenced.

This ninth edition has undergone changes in style and substance from Incoterms® 2010. The revisions address issues that were not prevalent in 2010. While Incoterms are drafted in English, they are translated into 29 different languages. The introduction of the 2020 edition explains how to choose the most appropriate Incoterms rule for a sale contract.

The revision aims to respond to changes in the global market to continue to be relevant and useful to trade. The main focal points are:

- The growth of the global economy and greater access to markets worldwide
- Increasing attention to security in the transportation of goods
- The need for flexibility when considering insurance coverage, depending on the type of goods and transport

2020 Updates

The following chart is a snapshot of new, modified, and eliminated Incoterms:

Unchanged	New	Modified	Eliminated
EXW (Ex Works)	DPU (Delivered at Place Unloaded)	FCA (Free Carrier)	DAT (Delivery at Terminal)
FAS (Free Alongside Ship)		CIF (Cost Insurance and Freight)	
FOB (Free on Board)		CIP (Carriage and Insurance Paid To)	
CFR		DAP	

(Cost and Freight)		(Delivered at Place)	
CPT (Carriage Paid To)		DDP (Delivered Duty Paid)	

Seven main subjects underwent changes in Incoterms® 2020:

1. Bills of lading with an on-board notation in Free Carrier (FCA) deliveries
2. Different levels of insurance between Cost Insurance and Freight (CIF) and Carriage and Insurance Paid To (CIP)
3. Acknowledging the use by parties of their own transportation in Free Carrier (FCA), Delivery at Place (DAP), Delivered at Place Unloaded (DPU), and Delivered Duty Paid (DDP) deliveries
4. The inclusion of security-related requirements within carriage obligations and costs
5. Detailed Explanatory Notes for Users
6. The arrangement of provisions relating to costs
7. Delivered at Place Unloaded (DPU) replaces Delivered at Terminal (DAT) to underline the change that delivery can happen anywhere and not just at a transport terminal

Each of these subjects had substantive changes:

Subject	Revisions Made to Incoterms® 2020
Bills of lading with an on-board notation in FCA deliveries	<p>In FCA deliveries, parties often require a bill of lading with on-board notation, however, these deliveries are completed before goods are loaded into the vessel, which means the seller may not always be able to obtain an on-board bill of lading from the carrier.</p> <p>Under the 2020 revision, for letter of credit purposes, the parties (buyer and seller) may agree that the buyer can now instruct its carrier to issue an on-board bill of lading to the seller after the goods have been loaded, if included in the parties' sales contract. This prompts the terms of a letter of credit to be satisfied quicker.</p> <p>When the above option is exercised, the ICC emphasized that the seller does not take on an obligation to the buyer in respect of the terms of the contract of carriage.</p>
Different levels of insurance cover in CIF and CIP	<p>Minimum insurance cover for CIF and CIP deliveries is included in the 2020 revisions.</p> <p>Prior to the revisions, CIF and CIP required minimum insurance coverage at the level of Clause (C) of the Institute Cargo Clauses. Now, for CIF deliveries, the default position remains the same with minimum coverage –basic liability insurance (Free of Particular Average). CIF stands for C (cost-selling price of the goods), I (cost of insurance), F (all freight costs). Parties may agree on higher levels of coverage at the time of negotiations.</p> <p>For CIP deliveries, the seller is required to obtain ALL RISK Insurance Coverage. This means a higher level of insurance coverage at the level of Clause (A) of the Institute Cargo Clauses–</p>

	<p>at least 110% of the value of the goods is now required. The increase in minimum insurance coverage for CIP deliveries benefits the buyer, however, parties are free to agree to have lower levels of insurance coverage when negotiating.</p>
<p>Acknowledging transportation by own transport in FCA, DAP, DPU, and DDP deliveries</p>	<p>Incoterms® 2010 were drafted under the assumption that, when goods are carried from seller to buyer, they would be carried by a third-party carrier. This version of Incoterms did not consider situations where FCA, DAP, DPU, and DDP deliveries where a third-party carrier is not required or contracted because the parties would use its own transportation.</p> <p>The revisions in Incoterms® 2020 take into consideration this situation and expressly provide for the arrangement of carriage.</p>
<p>Inclusion of security-related requirements within carriage obligations and costs</p>	<p>The Incoterms® 2020 revisions expressly provide for import and export security-related and costs obligations for each rule. The purpose of this change is to establish stronger security-related requirements, something previous Incoterms revisions did not address.</p>
<p>Explanatory Notes for Users</p>	<p>The previously featured Guidance Notes at the beginning of individual Incoterms® are now Explanatory Notes for Users. These Notes lay out fundamentals for each relevant Incoterm such as: when it should be used, when risk transfers, and how costs are allocated. These Notes help users choose the most appropriate Incoterms and provide guidance for interpretation.</p>
<p>Arrangement of provisions relating to costs</p>	<p>All costs related to the various aspects of the sale are now separately listed for each Incoterm. This change provides users with a complete list of costs in one place, so that the seller and the buyer are more aware of the costs for which each will be responsible under a particular Incoterm.</p>
<p>Change from DAT to DPU</p>	<p>In the 2020 revision, there is a change to the order of the individual Incoterms so that DAP appears before DAT to reflect the fact that delivery on DAP terms occurs before delivery on DAT terms.</p> <p>DAT has also been changed to DPU to reflect that the destination for a DAT/DPU delivery could be at any place and not just at a terminal.</p> <p>DPU is the only Incoterm rule that puts responsibility for off-loading on the seller.</p>

The following chart is a cheat sheet for practitioners to use as a quick reference tool when considering which Incoterm is best suited for their client's proposed transaction:

Incoterm 2020	Export Customs Declaration	Carriage To Port of Export	Unloading of Truck In Port of Export	Loading On Vessel In Port of Export	Carriage (Sea/Air) To Port Of Import	Insurance	Unloading In Port of Import	Loading On Truck In Port of Import	Carriage To Place of Destination	Import Customs Clearance	Import Taxes
EXW	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
FCA	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
FAS	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
FOB	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
CFR	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
CIF	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
CPT	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer
CIP	Seller	Seller	Seller	Seller	Seller	Seller	Buyer/Seller	Buyer/Seller	Buyer	Buyer	Buyer
DPU	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer
DAP	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer
DDP	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller/Not including VAT/FAT

Practice Tip: When selecting the most appropriate Incoterm for a client's prospective transactions contemplate whether the responsible party in the best position to perform the duty? Specifically consider:

- For EXW
 - Where a buyer (foreign entity) is responsible completing export procedures that may be more familiar to the seller (domestic entity).
 - In the U.S., buyer is responsible for filing an Electronic Export Information (EEI) but may have to coordinate any export licensing with the seller.
 - Represents the least responsibility for the seller and most for the buyer (may not be beneficial for a seller when a letter of credit is in place).
 - Seller loses control early in the transaction; Seller may lose buying power with carriers.
 - Buyer must have the ability to control goods early in the transaction and does have control over transportation costs.
- For FCA, implications when there is more than one carrier.
 - Can be used in place of EXW if the seller wants to control loading.
 - Can reduce the seller's risk while still providing control in origin country.
- For FOB
 - While Incoterm 2020 and The Uniform Commercial Code (UCC) both include FOB, the term is often mistakenly considered interchangeable by sellers and buyers. Practitioners should caution clients of the difference between Incoterm 2020 FOB and the UCC F.O.B. Under Incoterm 2020, FOB is strictly for sea mode of transport, and under the UCC any mode of transportation is permissible.
- For CPT
 - Seller bears risk to point of carrier acceptance at origin.
 - Buyers bears risk during main and on carriage, even though the seller has control of decision regarding main carriage.
 - Can work to the seller's advantage with letters of credit or other payment terms where control of the export process is beneficial.

- Under DPU and DAP, consider selecting a liaison to communicate with all parties if there is a post-clearance delivery point. Connecting the buyer's customs house broker with other parties can avoid costly delays.
- For EX-Works requires the buyer to load at the seller's location, even though the seller may be in a better position to load.
- For DDP, whether the seller can undertake compliance and paying for taxes and duties as a foreign IOR, especially in light of possible U.S. Customs and Border Protection enforcement actions, including seizure as well as the unexpected costs in tariffs caused by the ever-change, on-going trade wars. DDP pushes all risk on the seller. DDP is a good option for samples, tradeshows, warranty replacements, or when the buyer is not an experienced importer.

Incoterms® 2020 are divided into four groups (C, D, E, and F) and categorized by two by modes of transport. Of the 11 rules, there are seven for general mode(s) of transport and four for sea or inland waterway transport. The following chart provides the four groupings, and the second chart defines the terms by modes of transportation.

C Group	<p>In group C (Main Carriage Paid), the seller concludes a transport contract with the forwarder and takes the costs. In this case, the seller is responsible for conducting export clearance. Important to note that for terms including "C" the risk transfers at the time the cargo is loaded on board at the origin port. All matters arising after loading costs related to transporting, and other events, are the buyer's responsibility.</p> <p>Group C includes the following Incoterms rules: C.F.R. CIF, CPT, and CIP. For terms with "I," it requires the seller to purchase the insurance in the buyer's name and provide an insurance certificate to the buyer.</p> <p>Practice Tip: Require seller to provide proof of the insurance certificate to the buyer prior to exportation.</p>
D Group	<p>Group D (Arrival) assumes that the seller is obliged to deliver the goods to a specific place or the port of destination. This group includes such Incoterms as DAP, DPU, and DDP.</p>
E Group	<p>In group E (Departure), the seller makes the goods available to the buyer at the delivery point indicated by the seller. The seller is not obliged either to customs or export clearance and does not bear the risk and costs of loading. In group E, there is only Incoterm EXW.</p>
F Group	<p>In Group F (Main Carriage Unpaid) obliges the seller to perform export customs clearance. The seller does not pay transport and insurance costs. FCA, FAS, and FOB belong to this group.</p>

GENERAL TRANSPORT	
EXW (EX WORKS OR EX WAREHOUSE)	The seller delivers when it places the goods at the disposal of the buyer at the seller's premises or at another named place (i.e., works, factory, warehouse, etc.). The seller does not need to load the goods on any collecting vehicle, nor does it need to clear the goods for export, where such clearance is applicable.
FCA (FREE CARRIER PLACE)	The seller delivers the goods to the carrier or another person nominated by the buyer at the seller's premises or another named place. The parties are well advised to specify as clearly as possible the point within the named place of delivery, as the risk passes to the buyer at that point.
CPT (CARRIAGE PAID TO)	The seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any place is agreed between parties) and that the seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination.
CIP (CARRIAGE AND INSURANCE PAID)	The seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such place is agreed between parties) and that the seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination. The seller also contracts for insurance cover against the buyer's risk of loss of or damage to the goods during the carriage. The buyer should note that under CIP the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree as much expressly with the seller or to make its own insurance arrangements.
DPU (DELIVERED AT PLACE UNLOADED)	The seller delivers the goods, once unloaded, are placed at the disposal of the buyer at a named place of destination. The seller bears all risks involved in bringing the goods to and unloading them at the named place of destination.
DAP (DELIVERED AT PLACE)	The seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the name place of destination. The seller bears all risks involved in bringing the goods to the named place.
DDP (DELIVERY DUTY PAID)	The seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.
SEA AND INLAND WATERWAY TRANSPORT	
FAS (FREE ALONGSIDE SHIP)	The seller delivers when the goods are placed alongside the vessel nominated by the buyer at the named port of shipment. The risk of loss of or damage to the goods passes when the goods are alongside the ship, and the buyer bears all costs from that moment onwards.
FOB (FREE ON BOARD)	The seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already 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.
CFR (COST AND FREIGHT)	The seller delivers the goods on board the vessel 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. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.
CIF (COST INSURANCE & FREIGHT)	The seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss or damage to the goods passes when the goods are onboard the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination. The seller also contracts for insurance cover against the buyer's risk of loss or damage to the goods during the carriage. The buyer should not that under CIF the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either agree as much expressly with the seller or to make its own extra insurance arrangements.

More Tips & Resources

The following are some useful tips that can be used moving forward with Incoterms® 2020 revisions:

- For contracts already entered into since before the 2020 revisions, [Incoterms 2010 will continue to apply](#) even if performance of the contract will take place in 2020, unless the contract says otherwise.
 - For contracts entered into between September 2019 and January 2020, parties must state which set of Incoterms® apply, especially if performance is taking place after Jan. 1, 2020.
 - After Jan. 1, 2020, courts and arbitrators can be expected to assume that any reference to Incoterms® in new contracts are of Incoterms® 2020.
- In addition to expressly citing the Incoterm and version, a named place must be listed, e.g., FCA Miami Intl Airport, Incoterm 2020 to avoid confusion of agreed upon place of delivery. It is recommended to define the location where the buyer or seller are in the beginning or end of the transaction and included it in the contract or Terms and Conditions. Depending on the Incoterm selected, the "Named Place" can be the origin or destination as appropriate.
- In light of Covid-19 and logistic realities, it is best practice to:
 - Ensure the policy covers the value of cargo, when relying on Incoterms for insurance responsibility
 - For buyers to include buffer time in case there are issues in delays and in sourcing from the seller's side
 - For buyers to document each step of the transaction and transportation
 - For buyers to consider having multiple suppliers and consider reshoring at least one supplier (even with higher costs or lower quality) to purchase from when foreign supply chains are constrained and deliverables to customers are needed

Resources:

- Incoterms® 2020 can be purchased through the ICC's [new e-commerce platform](#), available in 29 languages
- More than [250 launch events and training seminars](#) organized worldwide by ICC national committees are available
- Educational online course and certificate program is provided by the [ICC Academy](#)
- An [app](#) is also available from the ICC that allows for instant descriptions of the rules and access to up-to-date news, among other important features