



INTERNATIONAL TRADE OPERATIONS

TERMS OF DELIVERY

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CONTENT:

1. TERMS OF DELIVERY	3
1.1 International interpretative rules	4
1.1.1 International Chamber of Commerce - ICC:	4
1.1.2 Development of INCOTERMS.....	4
1.1.3 Obligations of the seller and the buyer	6
1.2 INCOTERMS 2010	8
1.2.1 RULES WHICH ARE SUITABLE FOR ANY TYPE OF TRANSPORT	9
• EXW – Ex Works	10
• FCA – Free Carrier.....	10
• CPT – Carriage Paid To	10
• CIP – Carriage and Insurance Paid to	10
• DAT – Delivered at Terminal	10
• DAP – Delivered at Place	11
• DDP – Delivered Duty Paid.....	11
1.2.2 RULES WHICH ARE SUITABLE FOR Sea and inland waterway transport	11
• FAS – Free Alongside Ship.....	11
• FOB – Free on Board.....	11
• CFR – Cost and Freight.....	11
• CIF – Cost, Insurance and Freight.....	11
2. SOURCES	11

ABSTRACT:

This work deals with the terms of delivery, which are part of the purchase agreement. Works also deals with the impact of the terms of delivery on INCOTERMS. Next, the work deals with INCOTERMS themselves, their development and use in international trade.

KEY WORDS:

Terms of delivery, clauses, INCOTERMS

1. TERMS OF DELIVERY

Terms of delivery or parity plays an important role in international trade. It is embedded in the contract of sale and defines the rights and obligations of the parties to each other international sale of goods taken over. Mainly determines the time when the risk of damage to goods occurs, the definition of the responsibilities associated with the transport of goods, insurance.¹ Furthermore, terms of delivery govern the division of costs between buyer and seller incurred in transporting goods, etc. The choice significantly affects the purchase price. The seller may increase the purchase price depending on the length of terms of delivery, namely the costs incurred for the circulation of goods. The buyer could otherwise select an appropriate delivery rate as much as possible to reduce the costs and risks and thereby keep the price at a lower level. Particulars that are regulated by terms of delivery:

- manner, place and moment of delivery of goods to the buyer
- manner, place and moment of transition costs and risks from the seller to the buyer
- other obligations of the parties in the provision of transport, loading and unloading goods, accompanying documents, inspections, insurance, customs clearance etc.²

Various trade practices in different regions have gradually required unification delivery conditions hence the emergence of delivery clauses. In an effort to unify and thereby facilitate the interpretation of delivery clauses are first caused by International Law Association in Warsaw in 1928-1932. To be known as the Warsaw-Oxford Rules, but due to the fact that it dealt only with the unification of a single delivery clause (CIF17) is their usability in the future almost zero.

Another effort of unification was called RAFTD (Revised American Foreign Trade Definition). As is clear from the name itself, their use can be found mainly in the Americas. RAFTD practically never been updated, and therefore the current business practices have been forgotten.

In one regularly revised set of delivery clauses can currently be regarded as a set of international rules of interpretation INCOTERMS, published by the International Chamber of Commerce in Paris.

¹ KANDA, A. *Kupní smlouva v mezinárodní obchodním styku (Úmluva OSN o smlouvách o mezinárodní koupi zboží)*. Praha: Linde Praha a.s. 1999, str. 45

² MACHKOVÁ, H., ČERNOHLÁVKOVÁ, E., SATO, A. *Mezinárodní obchodní operace*. 4. vyd. Praha: Grada Publishing, 2007, p. 57

1.1 INTERNATIONAL INTERPRETATIVE RULES

Abbreviation for International interpretative rules INCOTERMS comes from the original English name International Commercial Terms. It is an internationally recognized set of rules in the use of international and domestic contracts for trade in goods. For their formation and evolution is responsible the International Chamber of Commerce, founded in 1919 in Paris.

1.1.1 INTERNATIONAL CHAMBER OF COMMERCE - ICC:

ICC is an institution that brings together businesses, corporations, associations and various organizations from more than 130 countries worldwide. It should be emphasized that its members are across government departments as is the case in the WTO, but really just trading companies, businesses, etc. in international trade and business ICC fulfills a very important function.

During his ninety-year existence is focused on creating rules to facilitate trade and payment transactions and the creation of new mechanisms for the advancement of the international division of labor and mutual trust between international partners. In this sense, the ICC has large multinational authority and respect. Dedicated, for example, the issue of these publications : Sample international sales contract , bank guarantees, documentary letter of credit practice and further including the implementation of Incoterms 2000 in transport and insurance and , last but not least, the interpretation of the latest version of Incoterms 2010. Since the international interpretative rule extended to nearly every continent, the procedure was translated from french into many languages.

1.1.2 DEVELOPMENT OF INCOTERMS

More than 75 years the Incoterms fully demonstrates the usability and usefulness of this instrument drawn up by the International Chamber of Commerce. In 1936, the first ever appearance of INCOTERMS containing 11 clauses was made. Very successful seemed especially from the perspective of unification and unification of different interpretations of clauses by different countries. Other efforts to unify as RAFTD or the Warsaw - Oxford Rules did not succeed to attract attention professionals for an extended period of time. Because the trade has continually evolved, the rule from 1936 became suddenly quite obsolete and calls for revision. The first revised edition was published in 1953 under the name of

Incoterms 1953 and this wording is used till today. About 14 years later, in 1967, the International Chamber of Commerce decided to add 11 clauses of the following 2:

- Delivered at Frontier (DAF)
- Delivery duty paid (DDP)

Work on the amendment continued as well in 1976, the ICC adopted a new clause called FOB Airport. After further adjustments to the designation of certain clauses, the new edition of Incoterms 1980 could enter into force from March 1980.

Since the end of the 80th years there have been regular updates to a set of rules about every 10 years. Contributed to this rapidly evolving technology that allows electronic data interchange EDI, further growth of the Internet, the development of transport systems etc. Issue INCOTERMS 1990, the following changes in trade in goods significantly adjusted. Due to the frequent unification of goods in containers and the use of combined transport, the clause FCA - FREE CARRIER - adjusted to suit all types of service irrespective of how a combination of different types of transportation.³ There were also completely omitted the clause FOR / FOT and FOB Airport dealing with only certain types of traffic.

Trade also developed in the next decade, so in 2000 the International Chamber of Commerce has released the 7th revised version of Incoterms representing simpler and clearer presentation of the 13 clauses. INCOTERMS 2000 flexibly react to situations and contemporary trends in international trade and taking into account changes in the international transport and increased liberalization of trade. In the edition of Incoterms 2000 have been significant changes in the two parities, which are still practiced successfully in business. It was a change in customs clearance at the delivery terms FAS and DEQ. In the case of newly formulated clauses FAS is able to deliver the seller's goods to the buyer by his own type of transport to another pre- contracted sites and is not responsible for unloading already.

Processing such changes and release a new version of the international rules of interpretation is always preceded by a survey conducted by a group of international experts from around the world working in the field of international transport law, insurance, etc. This group of experts assesses and comments received hundreds of comments from various national committees related to the current MOK edition of INCOTERMS. Its main task is solving the problem, change the text or individual clauses or introduction of entirely new clauses. This principle was also confirmed in the case of a recent survey in response to

³ KANDA, A. *Kupní smlouva v mezinárodní obchodním styku (Úmluva OSN o smlouvách o mezinárodní koupi zboží)*. Praha: Linde Praha a.s. 1999, p. 46

changes in the development of existing business practices, transport and insurance was issued last year to 8th reprocessing INCOTERMS. The new rules called INCOTERMS 2010 came into force on 1st of January 2011 unlike the previous release contain symbolic 11 clauses.

1.1.3 OBLIGATIONS OF THE SELLER AND THE BUYER

It should be noted that INCOTERMS regulate only relations between the seller and the buyer. Not, for example relationships with carriers, forwarders or banks. INCOTERMS is only a determination of the minimum obligations that may be in their own interest an enlarged or modified and expressly agreed in the purchase contract.

Interpretation of the various clauses of Incoterms is always divided into two parts of ten articles. Part A sets out the obligations of the seller and part B describes the responsibilities of the buyer. The purchase agreement is possible to distribute all of the articles in detail especially when the contracting parties acting together for the first time. Standing business partners usually only refer to specific delivery parity without further clarification of the responsibilities.

Obligations of the seller and the buyer:

A	Obligations of the seller	B	Obligations of the buyer
A1	General obligations of the seller	B1	General obligations of the buyer
A2	Licenses, permits, safety measures and other formalities	B2	Licenses, permits, safety measures and other formalities
A3	The contract of carriage and insurance	B3	The contract of carriage and insurance
A4	Delivery	B4	Accepting delivery
A5	Passing of risk	B5	Passing of risk
A6	Appointment of costs	B6	Apportionment of costs
A7	Notification buyer	B7	Notification seller
A8	Delivery document	B8	Proof of delivery
A9	Checking - packaging - marking	B9	Inspection of goods
A10	Cooperation in the exchange of information and associated costs	B10	Cooperation in the exchange of information and associated costs

The table indicates which obligations are related to the seller and buyer. At first glance, you can see that, the individual cells follow each other (A4 - Delivery, B4 Taking delivery, etc.) The basic responsibilities include seller to deliver the goods in accordance with the terms of the purchase agreement, have the goods available to the buyer at the time and place fixed in the purchase agreement, etc. Buyer's obligations are for example, take over the goods at the place and time specified in the purchase agreement, to pay the purchase price, bear all costs associated with the goods when it was made available.⁴

INCOTERMS are not considered the norm, thus contracting parties have no legal obligation to put them in the purchase contract. However, due to its uniqueness, the use of delivery clauses became a pillar of international trade reported today in virtually every international contract. In order to become binding conditions of the contractual relationship, partners must expressly refer to them in the purchase agreement (as opposed to international business practices, which are binding even without explicit referral). When establishing new contacts for accuracy is recommended to purchase the entire text characterizing the contract delivery parity, as mentioned above, and also to refer to a valid file amended rules, including the year of issue.

The selected rule can serve well, only if the parties determine as precisely as possible, place or port of destination.⁵ As an example: "FOB San Francisco, USA INCOTERMS 2010" or "FCA Waltershofer Hafen, Hamburg, Germany INCOTERMS 2010". What most accurate determination of the place of destination in the contract of sale is normally prevents or doubts or future disputes between trading partners.

⁴ MACHKOVÁ, H., ČERNOHLÁVKOVÁ, E., SATO, A. *Mezinárodní obchodní operace*. 4. vyd. Praha: Grada Publishing, 2007, p. 58

⁵ ICC, *Incoterms 2010*, ICC Česká republika, Praha 2010, p. 12

1.2 INCOTERMS 2010

International interpretative rules INCOTERMS 2010 published by the International Chamber of Commerce, representing eleven clauses instead of the original thirteen and at the same time provide a simpler and more understandable interpretation of these rules. A total of 11 clauses was achieved by replacing the four original rules called "delivery" DAF, DES, DEQ and DDU two new **DAT** (Delivered at terminal) and **DAP** (Delivered at place). If trading partners have a desire to continue to use the repealed clauses, they should not be in the purchase agreement refer to INCOTERMS 2010 but still the INCOTERMS 2000.

The updated rules INCOTERMS 2010 shall take due account of the expansion of free customs zones, the wider use of electronic communications in business transactions, the demands on the safety of movement of goods and changes in traffic ways.⁶ The adjustments were made on the basis of long-term scientific research around the world (including the USA and the Far East) to conform to current trends in the development of international trade and the demands of business practice.

INCOTERMS can be divided into several groups in different ways. The rules are usually **divided by the obligations of the seller** respectively by the initial letters - E (ex), F (free), C (cost, carriage), D (Delivered) into four groups, the first three groups are relatively difficult for the buyer, because the obligation of the seller to the buyer passes to go with dispatch of the goods. Clauses in the last group D are referred to as clauses delivery, because the obligation passes from the seller to the buyer usually upon delivery of goods, therefore they are costly and time consuming for the seller.

However, in the latest edition of Incoterms 2010 prefers clauses only division into two groups **according to the type of the selected transport** goods. The first group includes seven rules to suit any mode of transport, and in the second group there are four clauses applicable for maritime and inland waterway transport.

RULES WHICH ARE SUITABLE FOR ANY TYPE OF TRANSPORT⁷:

EXW – EX WORKS

FCA – FREE CARRIER

CPT – CARRIAGE PAID TO

CIP – CARRIAGE AND ISURANCE PAID TO

⁶ ICC, *Incoterms 2010*, ICC Česká republika, Praha 2010, p. 6

⁷ ICC, *Incoterms 2010*, ICC Česká republika, Praha 2010, p. 16

DAT - DELIVERED AT TERMINAL

DAP - DELIVERED AT PLACE

DDP – DELIVERED DUTY PAID

RULES WHICH ARE SUITABLE FOR SEA AND INLAND WATERWAY TRANSPORT⁸:

FAS – FREE ALONGSIDE SHIP

FOB – FREE ON BOARD

CFR – COST AND FREIGHT

CIF – COST, INSURANCE AND FREIGHT

The first group includes rules EXW, FCA, CPT, CIP, DAT, DAP and DDP. They do not take into account here the mode of transportation, nor whether it was use one or more modes of transport – so it automatically includes the combined transport. Maritime transport when using this rule group does not occur at all, or may be included within the overall transport.

The rules FAS, FOB, CFR and CIF figure on both sides of the port, it means the place of delivery and the place where the goods delivered to the buyer, and therefore it is not surprising that this group called rules: Rules for sea and inland waterway transport. For the last three rules INCOTERMS 2000, when compared to the change. Place of delivery imaginary line through the railing of the ship was appropriately replaced by the place of delivery on board.

1.2.1 RULES WHICH ARE SUITABLE FOR ANY TYPE OF TRANSPORT

- **EXW – EX WORKS (NAMED PLACE OF DELIVERY)**

The seller makes the goods available at his/her premises. The buyer is responsible for uploading. This term places the maximum obligation on the buyer and minimum obligations on the seller. The Ex Works term is often used when making an initial quotation for the sale of goods without any costs included. EXW means that a seller has the goods ready for collection at his premises (works, factory, warehouse, plant) on the date agreed upon. The

⁸ ICC, *Incoterms 2010*, ICC Česká republika, Praha 2010, p. 18

buyer pays all transportation costs and also bears the risks for bringing the goods to their final destination. The seller does not load the goods on collecting vehicles and does not clear them for export. If the seller does load the goods, he does so at buyer's risk and cost. If parties wish seller to be responsible for the loading of the goods on departure and to bear the risk and all costs of such loading, this must be made clear by adding explicit wording to this effect in the contract of sale.

- **FCA – FREE CARRIER (NAMED PLACE OF DELIVERY)**

The seller delivers goods, cleared for export, to the buyer-designated carrier at a named and defined location. This is used for any mode of transport. The seller must load goods onto the buyer's carrier. The key document signifying transfer of responsibility is receipt by carrier to exporter.

- **CPT – CARRIAGE PAID TO (NAMED PLACE OF DESTINATION)**

The seller pays for carriage. Risk transfers to buyer upon handing goods over to the first carrier at place of shipment in the country of export. - This term is used for all kind of shipments.

- **CIP – CARRIAGE AND INSURANCE PAID TO (NAMED PLACE OF DESTINATION)**

Seller pays for carriage and insurance to the named destination point, but risk passes when the goods are handed over to the first carrier.

- **DAT – DELIVERED AT TERMINAL (NAMED TERMINAL AT PORT OR PLACE OF DESTINATION)**

The Seller delivers when the goods, once unloaded from the arriving means of transport, are placed at the Buyer's disposal at a named terminal at the named port or place of destination. "Terminal" includes any place, whether covered or not, such as a quay, warehouse, container yard or road, rail or air cargo terminal. The Seller bears all risks involved in bringing the goods to and unloading them at the terminal at the named port or place of destination.

- **DAP – DELIVERED AT PLACE (NAMED PLACE OF DESTINATION)**

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 DAT (Delivered at terminal), where the seller is responsible for unloading.)

- **DDP – DELIVERED DUTY PAID (NAMED PLACE OF DESTINATION)**

Seller is responsible for delivering the goods to the named place in the country of the buyer, and pays all costs in bringing the goods to the destination including import duties and taxes. The seller is not responsible for unloading. This term is often used in place of the non-Incoterms "Free In Store (FIS)". This term places the maximum obligations on the seller and minimum obligations on the buyer.

1.2.2 RULES WHICH ARE SUITABLE FOR SEA AND INLAND WATERWAY TRANSPORT

- **FAS – Free Alongside Ship (named port of shipment)**

The seller must place the goods alongside the ship at the named port. The seller must clear the goods for export. Suitable only for maritime transport but **NOT** for multimodal sea transport in containers. This term is typically used for heavy-lift or bulk cargo.

- **FOB – FREE ON BOARD (NAMED PORT OF SHIPMENT)**

The buyer must advance government tax in the country of origin as commitment to load the goods on board a vessel designated by the buyer. Cost and risk are divided when the goods are actually on board of the vessel. The buyer must clear the goods for export because he did not pay for the goods in the country of origin. The term is applicable for maritime and inland waterway transport only but **NOT** for multimodal sea transport. The seller must instruct the buyer the details of the vessel and the port where the goods are to be loaded, and there is no reference to, or provision for, the use of a carrier or forwarder. This term has been greatly misused over the last three decades ever since *Incoterms 1980* explained that FCA should be used for container shipments.

It means the seller pays for transportation of goods to the port of shipment, loading cost. The buyer pays cost of marine freight transportation, insurance, uploading and transportation cost from the arrival port to destination. The passing of risk occurs when the goods are in buyer account.



- **CFR – Cost and Freight (named port of destination)**

Seller must pay the costs and freight to bring the goods to the port of destination. However, risk is transferred to the buyer once the goods are loaded on the vessel. Insurance for the goods is **NOT** included. This term is formerly known as CNF (C&F, or C+F). Maritime transport only.

- **CIF – Cost, Insurance and Freight (named port of destination)**

Exactly the same as CFR except that the seller must in addition procure and pay for the insurance. Maritime transport only.

Chart for responsibility for both seller and buyer in every transportation:

 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
 INTERNATIONAL BUSINESS TRAINING® 1-800-641-0920 www.i-b-t.net <small>This chart is designed to provide a basic level of understanding of Incoterms® 2010 Rules and Definitions. For a fuller explanation of the trade terms refer to the ICC website or visit www.i-b-t.net/incoterms.asp.</small>											

* Seller is responsible for loading charges, if the terms state FCA at seller's facility.
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2. SOURCES

Books:

- 1) KANDA, A. *Kupní smlouva v mezinárodním obchodním styku (Úmluva OSN o smlouvách o mezinárodní koupi zboží)*. Praha: Linde Praha a.s. 1999
- 2) MACHKOVÁ, H., ČERNOHLÁVKOVÁ, E., SATO, A. *Mezinárodní obchodní operace*. 4. vyd. Praha: Grada Publishing, 2007
- 3) ICC, *Incoterms 2010*, ICC Česká republika, Praha 2010

Internet pages:

- 1) Shippers council: www.shipperscouncil.lk
- 2) International Chamber of Commerce: <http://www.iccwbo.org/>
- 3) Wikipedia.org: <http://en.wikipedia.org/wiki/>