



BExA Commentary Incoterms® 2010

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When exporting, it is important to define when “delivery” occurs (legally and physically), and to determine the responsibilities of each party in relation to (i) the loading and unloading of goods. (ii) customs documentation, and (iii) which party bears the risk of loss or damage at each stage of the physical movement of the goods and therefore insures them.

The International Chamber of Commerce (ICC) has developed a set of International Commercial Terms ‘Incoterms®’ to define these vital aspects of exporting. Incoterms® 2010 is the latest revision of these terms which have been in existence since 1936.

In essence, Incoterms® can provide a commonly understood basis for interpreting contractual responsibilities relating to the physical movement of goods and it can provide ready-made definitions of the actual point of delivery (legal and physical). This degree of clarity is a vital step towards the creation of a payment obligation under the terms of the contract of sale. By incorporating ‘Incoterms® 2010’ into a contract, the parties can save drafting work because the terms are tried, tested and published in many languages.

Wide as they are, Incoterms® do not address:

- transfer of property rights in the goods (title)
- relief from obligations /exemptions from liability in case of force majeure events
- consequences breach of contract, excepting in relation to the failure by a buyer to accept the goods or to nominate the carrier under an F-term.
- Method and terms of payment (although they can impact on the former)
- Some of the implications of the contract of carriage

Incoterms® 2010 sets out 11 terms of delivery. Four commonly-used terms (FAS, FOB, CFR and CIF) are designed solely for conventional sea freight and inland waterway transit, i.e. they are not generally appropriate for containerised seafreight, and not for delivery by road or air. Where delivery takes place at the exporter’s premises, it is common to use Free Carrier (FCA). For international trade, FCA is generally used in preference to ExWorks because it avoids the difficulty that ExWorks involves loading by the customer at the exporter’s premises, with risk passing to the customer at that point. As a result, the transport company works for the customer and is under no legal obligation to provide any documents to the exporter – which can make it difficult for the exporter to obtain the commercial evidence of export (i.e. transport documentation) necessary for VAT compliance for EU despatches, or a copy of the customs export declaration naming the exporter for shipments to non-EU countries.

The ‘D’ terms (DAT, DAP and DDP) should be applied with caution because they require considerable local knowledge, by the exporter or its appointed carrier, of transport and customs formalities in the destination country.

BExA recommends that all exporters of goods obtain a copy of Incoterms® 2010 from the ICC world business organisation and construct a clear Incoterms® policy within the company.

More background is available from BExA’s Guide to Successful Exporting and the Guide to Export Compliance.

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Incoterms® 2010

The 11 Incoterms® can be used for domestic and/or export sales and are divided into 4 groups E, F, C, and D. ExWorks puts the least responsibility on the Seller and the final term in Group D (DDP Delivered Duty Paid) gives maximum responsibility to the Seller. Four terms, FAS, FOB, CFR and CIF are to be used solely for sea or inland waterway transit.

Group Term

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| E | ExWorks | |
| F | FCA | Free Carrier – country of departure |
| F | FAS | Free alongside Ship - Country of departure* |
| F | FOB | Free on Board - Country of departure* |
| C | CPT | Carriage Paid To - Country of destination |
| C | CIP | Carriage & Insurance Paid To named place in country of destination |
| C | CFR | Cost & Freight – named port in country of destination* |
| C | CIF | Cost Insurance & Freight – named port in country of destination* |
| D | DAT | Delivered at Terminal – named terminal at port or place of destination |
| D | DAP | Delivered at Place -named place of destination |
| D | DDP | Delivered Duty Paid –named place of destination |

* *Sea and inland waterway transport only*

ICC website <http://www.iccwbo.org/incoterms/>