

# Exporting to the United States

## OVERVIEW OF INCOTERMS USED IN TRADE



This guide provides an overview of the International Commercial Terms, commonly known as '*Incoterms*', which are terms used in international trade transactions involving the movement of goods, and which provide a common understanding of the parties' responsibilities and obligations, and when risk passes from the seller to the buyer.

*Incoterms* significantly simplify international contracting between sellers and buyers and provide clarity and certainty on various critical aspects underlying the sale and transportation of goods as these move from the seller's premises to the buyer. Each incoterm represents a different standard, with specific obligations, and involves different points of the journey where risk passes from the seller to the buyer. Traders may rely on the underlying criteria of each respective *Incoterm* when choosing a specific *Incoterm*, making it easier to conclude a business transaction, manage the logistics process, and to resolve disputes between the parties should they arise.



### Incoterms: a timeline

1936	The International Chamber of Commerce (ICC) develops the first set of <i>Incoterms</i> , to address an increasing need by traders for harmonized definitions of trade-related processes to help facilitate international trade.
1953 - 2010	The ICC publishes periodic updates to the <i>Incoterms</i> , specifically in 1953, 1967, 1976, 1980, 2000, 2010, in response to changing developments and practices in international trade.
2020	The ICC releases the most recent and current update (9th edition), which includes a number of changes to the earlier 2010 version and is applicable since 1 January 2020. The previous version <i>Incoterms</i> remains valid but to avoid confusion, contracts should specify the <i>Incoterm</i> version that they rely on.

### What are the key elements covered by Incoterms?

#### Carriage

*Incoterms* define which parts of an international journey are the financial responsibility of the seller and the buyer respectively, including arrangements for loading and carriage. International shipping tends to feature a number of legs, and *incoterms* provide important clarity.

#### Cost

Responsibility for the payment of the costs of the journey is regulated by the chosen *Incoterm*, and may be incorporated into the invoice price where this responsibility lies with the exporter. *Incoterms* also regulate various other costs, such as clearance, offloading and delivery.

#### Risk

An international journey usually involves a number of legs, and the chosen *Incoterm* defines exactly for which part of the journey the seller assumes risk for, and from what point onwards the buyer assumes the responsibility for risk and for arranging insurance cover.

### What is specified by each Incoterm?

#### ○ Obligations of buyer and seller

**Which party is responsible for which part of the journey?**  
Each *Incoterm* defines the obligations of each party to an international trade journey insofar as it relates to who is responsible for aspects such as transportation, import and export clearance, customs, wharfage (port usage charges by port authorities), loading and offloading of the goods, etc.

#### ○ Risk transfer from seller to buyer

**For which part of the journey does each party assume risk?**  
Each *Incoterm* also defines the point at which risk transfers from the seller to the buyer, which may not necessarily coincide with the respective parties' obligations with respect to transport and related costs. The point of risk transfer provides clarity to the parties on issues such as obtaining insurance cover for the goods.

### Why use Incoterms in international trade?

#### A common language

One of the key benefits of *Incoterms* is that they provide a **common language** and understanding to traders as it relates to their international trade transactions. When *Incoterms* are integrated into a sales contract, key terms of the logistics process that the parties agree to are defined through the use of the appropriate *Incoterm*.

#### Simplifying trade

*Incoterms* simplify trade and contracting since they are **legal terms** that are **internationally recognized**. Not only do they set out the obligations of the parties relating to shipping and associated costs, but they condense the contracting process by specifying important terms and conditions through a chosen *Incoterm*.

#### Providing clarity

The use of *Incoterms* is not mandatory and remains the prerogative of the parties to the trade transaction. For *Incoterms* to be legally binding, they should be explicitly **incorporated into the contractual arrangements**. To provide additional clarity, the respective *Incoterm* version should be specified, especially if it relates to a previous version *Incoterm* where there may have been changes. *Incoterms* are not only critical in setting out the respective **obligations** of the seller and the buyer in terms of each party's responsibility relating to the journey, but **allows risk to be managed and mitigated** (for example, to inform decisions on obtaining insurance cover for specific legs of the journey, in relation to the point where risk transfers from the seller to the buyer).



## What are the different Incoterms and which forms of transportation do they apply to?

*Incoterms 2020*, in place since January 2020, is the most current version of the trade terms and comprises 11 different *Incoterms*. This number is unchanged from the 2010 version, albeit with various changes. The previous 2000 version comprised 13 terms.

*Incoterms* can be broadly divided into two groups: (a) those that are applicable to all modes of transportation, and (b) those that are only relevant to inland waterway and maritime transportation.

	All types of transportation	Inland waterway and maritime transportation
<b>GROUP E</b>	1. <b>EXW</b> <i>Ex Works</i>	
<b>GROUP F</b>	2. <b>FCA</b> <i>Free Carrier</i>	8. <b>FAS</b> <i>Free alongside Ship</i> 9. <b>FOB</b> <i>Free on Board</i>
<b>GROUP C</b>	3. <b>CPT</b> <i>Carriage Paid To</i> 4. <b>CIP</b> <i>Carriage and Insurance Paid To</i>	10. <b>CFR</b> <i>Cost and Freight</i> 11. <b>CIF</b> <i>Cost Insurance and Freight</i>
<b>GROUP D</b>	5. <b>DPU</b> <i>Delivery at Place Unloaded</i> 6. <b>DAP</b> <i>Delivery at Place</i> 7. <b>DDP</b> <i>Delivery Duty Paid</i>	

In addition, the *Incoterms* can be divided into 4 principal groups according to the type of responsibility that attaches to each term. These are groups E, F, C and D respectively, with each *Incoterm* being grouped according to its respective starting letter. The common element within each grouping relates to the characteristics of the seller's obligations for transport, and certain commonalities around the point where risk passes from seller to buyer.

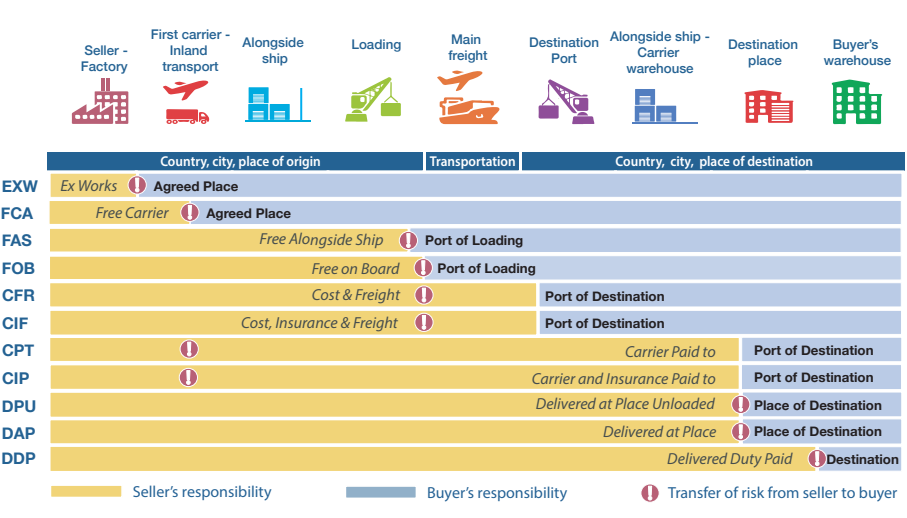
	Group E 'Departure'	Group F 'Main Carriage Unpaid'	Group C 'Main Carriage Paid'	Group D 'Arrival'
Incoterm groups	<b>Seller's obligation ends at the factory door</b>	<b>Seller's obligation ends at the vessel</b>	<b>Carriage and related charges are covered by the seller</b>	<b>Seller is generally responsible for delivery up to buyer's premise</b>
	With the Group E <i>Incoterm</i> , the goods are made available to the buyer at the export location as specified by the seller. The risks associated with loading the goods, or responsibility for customs clearance and carriage, lie with the buyer. Risk passes at the specified location	Group F <i>Incoterms</i> (FCA, FAS and FOB) the seller is the responsible party for delivery of goods to an agreed place which is either onboard or alongside ship at the port of loading. Risk and cost obligations pass to the buyer at this point.	With Group C <i>Incoterms</i> (CPT, CIP, CFR and CIF), the responsibility for transportation to the agreed port or destination lies with the seller. This includes various associated costs such as export clearance and loading. However, risk transfers to the buyer at an earlier point, depending on the <i>Incoterm</i> used.	With group D <i>Incoterms</i> (DPU, DAP and DDP) the seller is responsible for delivery up to an agreed place (buyer's premises, destination port, or other facility) and is responsible for the cost of carriage as well as associated risks up to that point. Risk passes to the buyer on delivery.

### Schematic overview of 2020 Incoterms: Responsibilities and transfer of risk

This schematic provides an overview of the 2020 *Incoterms*, identifies the point where risk (relating to the goods being shipped) transfers from the seller to the buyer, and shows which part of the shipping journey the seller and buyer are responsible for, in relation to each *Incoterm*.

### Using Incoterms in trade

- 1 Be specific (port names, named place of delivery, etc.)
- 2 Use the appropriate term based on product, means of transport
- 3 Integrate Incoterms into the sales contract
- 4 Don't over-rely on Incoterms: specify payment terms, shipping costs, and transfer of ownership where appropriate in the contract



### Incoterm updates: Incoterms: 2020 vs. 2010

- FCA**: FCA now permits Bills of Lading to be issued after loading, satisfying the conditions of a LC (letter of credit). Previously, exporters often preferred using FOB to arrange payment under a LC.
- DAT**: DAT (Delivery at terminal) has been renamed to DPU (Delivery at Place Unloaded). This replacement term now covers all delivery options, and is no longer limited to the 'terminal'.
- CIP**: CIP (Carriage and Insurance Paid To) has undergone changes to the insurance provisions, with the seller now obliged to obtain a higher level of insurance than previously. CIP and CIF both require the seller to obtain insurance, in and for the buyer's name and benefit.

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