INCOTERMS 2014

The International Chamber of Commerce (ICC) published the 8th and current version of its International Commercial Terms, also known as INCOTERMS® on January 1, 2011.

The revised rules, originally designated "INCOTERMS 2010", contain a series of changes, such as a reduction in the number of terms to 11 from 13. The DAF, DES, DEQ, and DDU designations have been eliminated, while two new terms, Delivered at Terminal (DAT) and Delivered at Place (DAP), have been added. INCOTERMS 2010 also attempt to better take into account the roles cargo security and electronic data interchange now play in international trade.

WHAT INCOTERMS ARE - INCOTERMS are a set of three-letter standard trade terms most commonly used in international contracts for the sale of goods. First published in 1936, INCOTERMS provide internationally accepted definitions and rules of interpretation for most common commercial terms. In the US, INCOTERMS are increasingly

WHAT INCOTERMS DO - INCOTERMS inform the sales contract by defining the respective obligations, costs and risks involved in the delivery of goods from the Seller to the Buyer.

WHAT INCOTERMS DO NOT DO - INCOTERMS by themselves ***DO NOT***:

- Constitute a contract;
- Supersede the law governing the contract;
- Define where title transfers; nor,
- Address the price payable, currency or credit terms.

These items are defined by the express terms in the sales contract and by the governing law.

INCOTERMS are grouped into two classes:

1. TERMS FOR ANY TRANSPORT MODE

- **EXW - EX WORKS (... named place of delivery)**
    - The Seller's only responsibility is to make the goods available at the Seller's premises. The Buyer bears full costs and risks of moving the goods from there to destination.
- **FCA - FREE CARRIER (... named place of delivery)**
    - The Seller delivers the goods, cleared for export, to the carrier selected by the Buyer. The Seller loads the goods if the carrier pickup is at the Seller's premises. From that point, the Buyer bears the costs and risks of moving the goods to destination.
- **CPT - CARRIAGE PAID TO (... named place of destination)**
    - The Seller pays for moving the goods to destination. From the time the goods are transferred to the first carrier, the Buyer bears the risks of loss or damage.
- **CIP - CARRIAGE AND INSURANCE PAID TO (... named place of destination)**
    - The Seller pays for moving the goods to destination. From the time the goods are

 • 145 Hook Creek Boulevard, Suite # C-2SC• Valley Stream, NY 11581 USA
TEL: +001-718-528-8787 • FAX: +001-516-284-5690 • cargo@crescent1.com

transferred to the first carrier, the Buyer bears the risks of loss or damage. The Seller, however, purchases the cargo insurance.

- **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)**
  - The Seller delivers when the goods are placed at the Buyer's disposal on the arriving means of transport ready for unloading at the names place of destination. The Seller bears all risks involved in bringing the goods to the named place.

- **DDP - DELIVERED DUTY PAID (... named place)**
  - The Seller delivers the goods -cleared for import - to the Buyer at destination. The Seller bears all costs and risks of moving the goods to destination, including the payment of Customs duties and taxes.

2. MARITIME-ONLY TERMS

- **FAS - FREE ALONGSIDE SHIP (... named port of shipment)**
  - The Seller delivers the goods to the origin port. From that point, the Buyer bears all costs and risks of loss or damage.

- **FOB - FREE ON BOARD (... named port of shipment)**
  - The Seller delivers the goods on board the ship and clears the goods for export. From that point, the Buyer bears all costs and risks of loss or damage.

- **CFR - COST AND FREIGHT (... named port of destination)**
  - The Seller clears the goods for export and pays the costs of moving the goods to destination. The Buyer bears all risks of loss or damage.

- **CIF - COST INSURANCE AND FREIGHT (... named port of destination)**
  - The Seller clears the goods for export and pays the costs of moving the goods to the port of destination. The Buyer bears all risks of loss or damage. The Seller, however, purchases the cargo insurance.

PRACTICE POINTS

- **BE SPECIFIC:**
  - If you use INCOTERMS in the Sales Contract or Purchase Order, you should identify the appropriate INCOTERM Rule [e.g. FCA, CPT, etc.], state "INCOTERMS 2010" and specify the place or port as precisely as possible.

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- **RECOGNIZE WHERE THE RISK OF LOSS TRANSFERS**:
  - A common misconception when the Seller pays the freight is that the Seller has the risk of loss until the goods are delivered to the place or port specified on the bill of lading or airway bill. Actually, when using INCOTERMS CPT, CIP, CFR or CIF, risk transfers to the Buyer when the Seller hands the goods over to the carrier at origin, not when the goods reach the place or port of destination.
  - Understand that under CIP and CIF, the Seller is only obliged to obtain insurance on minimum cover.

- **UNDERSTAND WHO HAS RESPONSIBILITY FOR LOADING AND UNLOADING CHARGES. FOR EXAMPLE:**
  - DAT obliges the Seller to place the goods at the Buyer's disposal after unloading at the named terminal at port or place of destination.
  - DAP and DDP oblige the Seller to place the goods at the Buyer's disposal on the delivering carrier ***ready for unloading*** at the named place of destination.
  - CPT, CIP, CFR or CIF on the other hand, require the parties to identify as precisely as possible the point at the agreed port of destination because the costs up to that point are for the account of the Seller.
  - Under FCA terms, the seller satisfies his obligation to deliver when he has handed over the goods, cleared for export, into the charge of the carrier named by the buyer at the named place or point. The buyer is responsible for inland freight, unloading at port of embarkation and loading on ocean carrier/airline.

- **UNDERSTAND WHO HAS RESPONSIBILITY FOR U.S. CUSTOMS ENTRY DECLARATIONS**:
  - DDP is the only INCOTERM where the Seller has responsibility for U.S. Customs entry declarations.
  - *IMPORTANT NOTE*: An important factor to be considered when asking the Seller to be responsible for international carriage, is if the goods ship by Ocean Freight, an Importer Security Filing (ISF) must be electronically submitted to Customs 24 hours before the cargo is laden on the vessel bringing the cargo to the U.S. The Buyer should specify in the contract either (a) the shipper is responsible for the ISF or (b) the Seller is responsible for providing the required data in a timely manner (i.e. 72 hrs before lading) to the Buyer's appointed agent (e.g. Customs Broker). In practice, when the broker and the international forwarder are unrelated parties, this requirement is honored more in the breach than in the observance. The Buyer responsible for customs entry should indemnify against the penalties (US$5,000) for filing a late, inaccurate or incomplete ISF. The ISF does not apply at this time to airfreight shipments

- **DETERMINE THE IMPORTANCE OF SUPPLY CHAIN VISIBILITY**
  - When CPT, CIP, CFR or CIF are used the Seller fulfills its obligation to deliver when it hands the goods over to the carrier, not when the goods reach the place of destination.
  - DAT, DAP and DDP the Seller fulfills its obligation to deliver at the named destination. The Seller has no obligation to provide transit status updates.

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