

ICC INCOTERMS® 2020 – AT A GLANCE

Incoterms 2020 will come into force on 1st January 2020. The latest edition will be incorporated into contracts entered into after that date which refer to Incoterms, unless the parties have expressly referred to an earlier edition.

The main aim of the latest revision has been to assist users with finding and choosing the most relevant rule to incorporate into their contracts. With that in mind, we set out below the presentational changes made to the latest edition, followed by the substantive changes:

PRESENTATIONAL CHANGES

Re-ordering of Articles

The Articles for each of the Incoterms rules have been re-ordered to ensure that the differences between the various Incoterms are easier to identify. Notably, obligations in relation to Delivery and the Transfer of Risks can now be found at A2 and A3 for each of the Incoterms.

A 'horizontal' view

There is now a 'horizontal' format included behind the traditional format. This allows users to cross-reference all Incoterms by reference to particular Articles (for example, the place of Delivery).

Costs are now grouped together

The article 'Allocation of Costs' now sets out all the costs each party is responsible for.

Explanatory Notes

Each rule now has its own Explanatory Note with updated and additional graphics to provide a quick 'at-a-glance' summary of the relevant rule.

SUBSTANTIVE CHANGES

On-board notation to bills of lading in FCA (Free Carrier) rule

Where an FCA Seller wants or needs a bill of lading with on-board notation (for example, so the Seller can present that bill of lading through banking channels), Incoterms 2020 allow the parties to include provision for such a document.

DAT becomes DPU

Delivered at Terminal has become Delivered at Place Unloaded, to reflect the fact that 'terminal' could be any place where goods could be unloaded.

Change in the level of insurance cover for CIP

Previously, CIF and CIP rules required the same minimum insurance coverage to be provided by the Seller (namely, that as provided by Institute Cargo Clauses (C)). Incoterms 2020 has amended the CIP rule so that the Seller is now required to provide insurance as provided in Institute Cargo Clause (A), although the parties can expressly agree alternative levels of cover for both CIF and CIP.

Security-related requirements

There is now the express inclusion of security-related requirements within the 'Carriage' and 'Allocation of Costs' articles, specifying whether the Buyer or Seller is responsible for complying with and paying for transport-related security requirements for transport to the destination.

Own means of transport

Incoterms 2010 did not reflect the reality that many Buyers and Sellers had access to their own mode of transport. The FCA, DAP, DPU and DDP rules now make express provision for both contracting for and arranging a contract of carriage.



ICC INCOTERMS 2020[®] COMMENTARY

The International Chamber of Commerce (ICC) published the 9th revision of the Incoterms last month. It will come into force on 1 January 2020.

Which Incoterms will apply?

Parties to English law contracts will remain free to choose which version of Incoterms to incorporate into their contracts. However, for contracts entered into from 1 January 2020 onwards, Incoterms 2020 will apply unless the contract expressly specifies otherwise.

For contracts signed between now and 1 January 2020, wording that refers to the “latest version” or similar will be construed as referring to the Incoterms 2010, unless the parties specify that the 2020 version is to apply.

Presentation: A picture paints a thousand words

Incoterms 2020 are designed to make the Incoterms more user-friendly. The volume of goods traded on Incoterms every year is enormous, and the ICC has acknowledged that the consequences of parties choosing an inappropriate Incoterm for their transaction can be damaging to businesses. With that risk in mind, the ICC has reworked the presentation of the Incoterms in order to assist parties in ensuring that they choose the most appropriate Incoterm for their contracts.

Graphics to demonstrate key features (such as when delivery takes place, where risk transfers etc.) first appeared in the 2010 version. These have been enhanced and expanded in Incoterms 2020, to give users an easy reference point to check whether the Incoterm they have selected meets their needs.

Users will recognise the first part of the book, in which the features of each Incoterm are set out rule-by-rule in alphabetical order, with the multimodal transport rules in the first section and maritime-only rules in the second. However, the features of each rule have now been reordered so that the most critical features appear first. For example, obligations in relation to Delivery and the Transfer of Risks can now be found at A2 and A3 for each of the Incoterms.

In a new section, the articles of each Incoterm are presented “horizontally:” in addition to a rule-by-rule presentation, users can now refer to this further section to cross reference each Incoterm to the individual articles as well. For example, this section will demonstrate when delivery takes place under each of the Incoterms.

In response to feedback from users that they were finding themselves in disputes with counterparties over cost allocation, a new section groups together the cost allocation between sellers and buyers. The allocation of costs has not changed (the principle remains broadly that the seller is responsible for all costs up to delivery and the buyer is responsible for them thereafter)

but by extracting the articles that relate to costs, the ICC has aimed to ensure greater clarity, in the hope of reducing the frequency of disputes.

What's new?

FCA

One of the key changes in the Incoterms 2020 is the adoption of language in the FCA term to allow the seller to require the buyer to procure an on-board bill of lading.

Container trading is often carried out on a FOB basis. This is problematic for sellers because they lose control of the containers once they are delivered to the container consortium at the loadport but still carry the risk of damage to the goods until they are loaded. The Incoterms solution would be to use the FCA term but in that case, the seller does not deliver the containers on-board the vessel, and cannot obtain an on-board bill of lading (as they can under the FOB term). This puts them in difficulty in relation to payment: where payment is made by letter of credit, presentation of an on-board bill of lading is usually required in order to satisfy the issuing bank that the goods have in fact been shipped. The amended FCA Incoterm seeks to resolve this dilemma by allowing the seller on an FCA sale to require the buyer to procure an on-board bill of lading.

DPU

The DAT term has been replaced with DPU, “delivered at place unloaded”. The rationale behind this was twofold. First there was widespread confusion among users as to the difference between the DAT (“delivered at terminal”) term and the DAP (“delivered at place”) term. (The key difference between these terms is that under DAT, delivery takes place once the goods have been unloaded from the carrying vessel and made available to the buyer at a specified place within the terminal whereas under DAP, delivery takes place before the goods are unloaded, when they are placed at the buyer’s disposal on the arriving means of transport.) The renaming of DAT to DPU is intended to clarify this.

The second reason for this change was to provide for greater flexibility in determining the place at which delivery occurs. The ICC recognised that DAT is a multimodal term and not all destination points will include a “terminal”. The new rule clarifies that the *physical* place of delivery may be anywhere at the discharge point, and *legally*, delivery takes place once the goods have been unloaded and placed at the buyer’s disposal.

Insurance

Under Incoterms 2010, the seller was required to obtain the minimum coverage under Institute Cargo Clause C in both CIF and CIP contracts. In Incoterms 2020, the ICC has responded to feedback that in practice, these two terms often call for different levels of cover. CIF is a maritime-only term and is therefore more typically used for trading bulk cargoes for which Institute Cargo Clause C level coverage is sufficient. However, CIP is a multimodal term, often used for manufactured goods which may require a higher level of cover.

It remains open to the parties to decide on the appropriate level of insurance cover for their trade; this can be provided for expressly in the contract. Parties should be aware, however, that under Incoterms 2020, the default position under CIP is that the seller must procure the level of cover provided for in Institute Cargo Clause A.

Security

Since the last revision of the Incoterms in 2010, the geopolitical backdrop against which international trade is conducted has changed significantly. With that in mind, the ICC has expanded security-related requirements and there are new provisions to allocate responsibility for these between seller and buyer.

Carriage

In recognition of the increasing trend towards trading parties investing in their own logistics supply chains, the language in Incoterms 2020 now provides that the relevant party must “*contract or arrange at its own cost for the carriage of the goods*”.



The future: Free on Moon?

The next revision of the Incoterms will be in 2030. As matters stand, it is likely that users can expect technology-driven amendments that reflect developments in relation to digital trade and the increasing use of smart contracts, which are absent from the Incoterms 2020.

There has even been talk of introducing an Incoterm to accommodate the shipment of goods to other planets, but the ICC is reported to have deprioritised that for the 2020 version. Whether that becomes necessary by 2030, we can but watch this space...

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