



## INCOTERMS® 2020 Changes Rules for Buyers, Sellers and Shippers of Goods in International Trade

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The International Chamber of Commerce (the “ICC”) has issued INCOTERMS® 2020 (short for International Commercial Terms) to be effective January 1, 2020. INCOTERMS 2020 provides an updated template and standardized set of definitions for the terms most commonly used in international commercial transactions (and some that are less common but are used for specific purposes). By specifically designating INCOTERMS 2020 in an agreement prior to January 1, 2020, buyers, sellers, shippers and others can use INCOTERMS 2020 today even though the official effective date is not until January 1, 2020. References in agreements, purchase orders, confirmations, letters of credit and other contracts to INCOTERMS after January 1, 2020, without a designation as to an INCOTERMS version will likely result in the application of INCOTERMS 2020.

INCOTERMS 2020 is written in plain unambiguous language. Over the decades, INCOTERMS®, in its various versions, has provided for a common shorthand, lexicon and understanding for sellers, buyers, shippers and other participants involved in international trade through the publication of INCOTERMS in multiple languages. The use of commonly defined trade terms provides for predictability for the contracting parties and can avoid lengthy negotiations and disputes over otherwise commonly understood key deal points.

INCOTERMS 2020 makes some significant changes to its predecessor, INCOTERMS® 2010, changing a number of duties and responsibilities, eliminating some terms, and adding new terms that vary the duties of importers, exporters, buyers, sellers, shippers, freight forwarders, logistics operators, banks, letter of credit issuers and others involved in international trade. Not all of the terms in INCOTERMS 2010 have been changed, but it is important to understand which terms have changed, which have been deleted and which have been added when making reference to any of the INCOTERMS trade terms. Some of the terms continue to be relevant to transport by sea and inland waterway only, while others have a far wider application.

Choosing a term defined in INCOTERMS does not replace the need for a contract between the seller and the buyer. However, by referencing an INCOTERMS’ defined trade term in the contract (which may or may not be a long form contract, purchase order, confirmation, fax, email or other communication), the parties to an agreement are specifying, among other things, when the risk of loss moves from seller or shipper to buyer, where and how the goods must be delivered (e.g., at the shipper’s dock, at the boat, at the buyer’s facility), which of the parties has responsibility for hiring the carrier, airline or ship and for putting the goods into the hands of the carrier (loading), who pays for shipment and for export or import fees and duties, what documents need to accompany the goods so that they can clear customs, who is responsible for insurance and claims on insurance and sometimes when payment is due (for example, upon tender of documents). INCOTERMS does not deal with payment terms (unless a specific trade term so provides and the parties have not agreed to the contrary), quantities, when the goods are to be delivered, warranties, damages, force majeure events, hardship, infringement, and a number of other significant terms in the parties’ contract or that are imposed by applicable law or the U.N. Convention on the International Sale



of Goods (the "CISG").<sup>1</sup> A prior course of dealings may provide missing terms in sales contracts, especially when under the CISG an agreement is made orally.

It is important that all those involved in international trade or who write agreements, requests for proposals, write or accept letters of credit or other documents affecting international trade review their boilerplate, standard terms, purchase order templates, confirmation forms, shipping documents, letters of credit and other key documents before January 1, 2020. Changes may be needed to reference the appropriate INCOTERMS 2020 trade term, choose a different term or specify which prior INCOTERMS version should apply to a term that no longer is defined in or has changed in INCOTERMS 2020.

Unless a specific INCOTERMS version is stated, it will likely be presumed by a court or arbitrator that you are working with the INCOTERMS version in effect when the order is placed or the contract is executed. However, if a term is specified in an agreement and that term is no longer in the current version of INCOTERMS 2020, then the judge or arbitrator will, hopefully, look to a prior version that included the term, the Uniform Commercial Code (since it too has definitions for common terms) and trade usage. However, there can be no assurance that the judge or arbitrator will do so. Similarly, if a preexisting agreement is to be fulfilled or purchase orders are to be issued after January 1, 2020 under long term agreements, there could be some confusion about what duties, documents and actions are expected from the seller, buyer, shipper and carrier, and what carriage and delivery terms may apply.

Under INCOTERMS 2010 there were 11 basic terms that most sellers, buyers, shippers, importers and exporters have used to deal with their international transactions:

EXW -- Ex Works

FCA -- Free Carrier

FAS -- Free Alongside Ship

FOB -- Free On Board

CPT -- Carriage Paid To

CFR -- Cost and Freight

CIP -- Carriage and Insurance Paid To

CIF -- Cost, Insurance and Freight

DAT -- Delivered At Terminal

DAP -- Delivered At Place

DDP -- Delivered Duty Paid

<sup>1</sup> This QuickStudy does not address the differences between the CISG and the various commercial codes (including the Uniform Commercial Code in the United States) that might apply to any given transaction. It should be noted, however, that in contracts involving entities in countries that have ratified or adopted the CISG, the CISG may supersede some of the domestic commercial code provisions unless the parties expressly opt out of the CISG in the sales contract. Therefore it is important for buyers and sellers to understand what law applies to their particular transaction, what court or arbitration authority will have jurisdiction to construe and enforce the underlying sales agreement and how the applicable law and chosen transport/trade terms will affect the duties and responsibilities of the parties.



Some of the changes made in INCOTERMS 2020 include<sup>2</sup>:

- FOB (Free on Board) and CIF (Cost Insurance and Freight) which nominally did not apply to container shipments handed over to the carrier before being placed on board the vessel under INCOTERMS 2010, may be used again under INCOTERMS 2020 for transport by containers via carriers before being so placed on board.
- DAT (delivered at terminal) has been split into DAP -- Delivery at Place and DPU -- Delivery at Place Unloaded.
- DDP is replaced with DTP (Delivered at Terminal Paid) and DPP (Delivered at Place Paid), which have very different meanings and duties for the seller.

For domestic transactions, the Uniform Commercial Code (UCC) will continue to apply to deal with some of the matters covered by INCOTERMS in international trade, but the parties may still choose to use INCOTERMS defined transport/carriage terms. The definitions and risk passing provisions in the UCC may differ from those in INCOTERMS 2020 and INCOTERMS 2010 so buyers, sellers and others dealing in domestic sales contracts should carefully choose the terms that they want to apply and what default rules (or version of INCOTERMS) will govern their rights and obligations. If the parties use trade terms in a domestic sales of goods transaction that are found only in a version of INCOTERMS and INCOTERMS is not specifically incorporated into or referenced in the documentation, then there could be unintended consequences for one or both parties.

A copy of INCOTERMS 2020 can be purchased directly from the ICC in book and electronic versions, found [here](#), with a dedicated INCOTERMS 2020 mobile application and dedicated e-learning platform available from the ICC. It is also anticipated that there will also be an ICC issued guide available in the future to assist in understanding INCOTERMS 2020. A number of brokers and carriers may also prepare and make available to their customers, clients and other interested parties charts and summaries of INCOTERMS 2020. Currently there are a number of such charts and summaries that summarize INCOTERMS 2010 so care is required when relying on such charts and summaries for any of the new or revised terms.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the author.

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<sup>2</sup> It is highly recommended that parties to international and domestic transactions review the actual language of the chosen INCOTERMS® 2020 term before relying upon the shorthand definition attributed to the term since the details concerning the responsibilities of the parties as set forth in INCOTERMS 2020 are key to understanding how the chosen term will be applied in practice.



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