Anexo 4: Incotérminos

INTRODUCTION

1. PURPOSE AND SCOPE OF INCOTERMS

The purpose of Incoterms is to provide a set of international rules for the interpretation of the most commonly used trade terms in foreign trade. Thus, the uncertainties of different interpretations of such terms in different countries can be avoided or at least reduced to a considerable degree.

Frequently, parties to a contract are unaware of the different trading practices in their respective countries. This can give rise to misunderstandings, disputes and litigation with all the waste of time and money that this entails. In order to remedy these problems the International Chamber of Commerce first published in 1936 a set of international rules for the interpretation of trade terms. These rules were known as «Incoterms 1936». Amendments and additions were later made in 1953, 1967, 1976, 1980, 1990 and presently in 2000 in order to bring the rules in line with current international trade practices.

It should be stressed that the scope of Incoterms is limited to matters relating to the rights and obligations of the parties to the contract of sale with respect to the delivery of goods sold (in the sense of «tangibles », not including «intangibles» such as computer software).

It appears that two particular misconceptions about Incoterms are very common. First, Incoterms are frequently misunderstood as applying to the contract of carriage rather than to the contract of sale. Second, they are sometimes wrongly assumed to provide for all the duties which parties may wish to include in a contract of sale.

As has always been underlined by ICC, Incoterms deal only with the relation between sellers and buyers under the contract of sale, and, moreover, only do so in some very distinct respects.

While it is essential for exporters and importers to consider the very practical relationship between the various contracts needed to perform an international sales transaction - where not only the contract of sale is required, but also contracts of carriage, insurance and financing - Incoterms relate to only one of these contracts, namely the contract of sale. Nevertheless, the parties' agreement to use a particular Incoterm would necessarily have implications for the other contracts.

To mention a few examples, a seller having agreed to a CFR - or CIF -contract cannot perform such a contract by any other mode of transport than carriage by sea, since under these terms he must present a bill of lading or other maritime document to the buyer which is simply not possible if other modes of transport are used. Furthermore, the document required under a documentary credit would necessarily depend upon the means of transport intended to be used.

Second, Incoterms deal with a number of identified obligations imposed on the parties - such as the seller's obligation to place the goods at the disposal of the buyer or hand them over for carriage or deliver them at destination - and with the distribution of risk between the parties in these cases.

Further, they deal with the obligations to clear the goods for export and import, the packing of the goods, the buyer's obligation to take delivery as well as the obligation to provide proof that the respective obligations have been duly fulfilled. Although Incoterms are extremely important for the implementation of the contract of sale, a great number of problems which may occur in such a contract are not dealt with at all, like transfer of ownership and other property rights, breaches of contract and the consequences following from such breaches as well as exemptions from liability in certain situations. It should be stressed that Incoterms are not intended to replace such contract terms that are needed for a complete contract of sale either by the incorporation of standard terms or by individually negotiated terms.

Generally, Incoterms do not deal with the consequences of breach of contract and any exemptions from liability owing to various impediments. These questions must be resolved by other stipulations in the contract of sale and the applicable law.

Incoterms have always been primarily intended for use where goods are sold for delivery across national boundaries: hence, international commercial terms. However, Incoterms are in practice at times also incorporated into contracts for the sale of goods within purely domestic markets. Where Incoterms are so used, the A2 and B2 clauses and any other stipulation of other articles dealing with export and import do, of course, become redundant.

2. WHY REVISIONS OF INCOTERMS?

The main reason for successive revisions of Incoterms has been the need to adapt them to contemporary commercial practice. Thus, in the 1980 revision the term Free Carrier (now FCA) was introduced in order to deal with the frequent case
where the reception point in maritime trade was no longer the traditional FOB-point (passing of the ship's rail) but rather a point
on land, prior to loading on board a vessel, where the goods were stowed into a container for subsequent transport by sea or
by different means of transport in combination (so-called combined or multimodal transport).
Further, in the 1990 revision of Incoterms, the clauses dealing with the seller's obligation to provide proof of delivery permitted
a replacement of paper documentation by EDI-messages provided the parties had agreed to communicate electronically.
Needless to say, efforts are constantly made to improve upon the at the seller's own premises (the «E»-term Ex works); followed by the drafting and presentation of Incoterms in order to facilitate their practical implementation.

3. INCOTERMS 2000

During the process of revision, which has taken about two years, ICC has done its best to invite views and responses to successive drafts from a wide ranging spectrum of world traders, represented as these various sectors are on the national
committees through which ICC operates. Indeed, it has been gratifying to see that this revision process has attracted far more
reaction from users around the world than any of the previous revisions of Incoterms. The result of this dialogue is Incoterms
2000, a version which when compared with Incoterms 1990 may appear to have effected few changes. It is clear, however,
that Incoterms now enjoy world wide recognition and ICC has therefore decided to consolidate upon that recognition and avoid
change for its own sake. On the other hand, serious efforts have been made to ensure that the wording used in Incoterms
2000 clearly and accurately reflects trade practice. Moreover, substantive changes have been made in two areas:
• the customs clearance and payment of duty obligations under FAS and DEQ; and
• the loading and unloading obligations under FCA.
All changes, whether substantive or formal have been made on the basis of thorough research among users of Incoterms and
particular regard has been given to queries received since 1990 by the Panel of Incoterms Experts, set up as an additional

service to the users of Incoterms.

4. INCORPORATION OF INCOTERMS INTO THE CONTRACT OF SALE

In view of the changes made to Incoterms from time to time, it is important to ensure that where the parties intend to incorporate Incoterms into their contract of sale, an express reference is always made to the current version of Incoterms. This
may easily be overlooked when, for example, a reference has been made to an earlier version in standard contract forms or in
order forms used by merchants. A failure to refer to the current version may then result in disputes as to whether the parties
intended to incorporate that version or an earlier version as a part of their contract. Merchants wishing to use Incoterms 2000
should therefore clearly specify that their contract is governed by «Incoterms 2000».

5. THE STRUCTURE OF INCOTERMS

In 1990, for ease of understanding, the terms were grouped in four basically different categories; namely starting with the term
whereby the seller only makes the goods available to the buyer at the seller's own premises (the «E»-term Ex works); followed
by the second group whereby the seller is called upon to deliver the goods to a carrier appointed by the buyer (the «F»-terms
FCA, FAS and FOB); continuing with the «C»-terms where the seller has to contract for carriage, but without assuming the risk
of loss of or damage to the goods or additional costs due to events occurring after shipment and dispatch (CFR, CIF, CPT and
CIP); and, finally, the «D»-terms whereby the seller has to bear all costs and risks needed to bring the goods to the place of
destination (DAF, DES, DEQ, DDU and DDP). The following chart sets out this classification of the trade terms.
Further, under all terms, as in Incoterms 1990, the respective obligations of the parties have been grouped under 10 headings
where each heading on the seller's side «mirrors» the position of the buyer with respect to the same subject matter.

6. TERMINOLOGY

While drafting Incoterms 2000, considerable efforts have been made to achieve as much consistency as possible and desirable with respect to the various expressions used throughout the thirteen terms. Thus, the use of different expressions
intended to convey the same meaning has been avoided. Also, whenever possible, the same expressions as appear in the
1980 UN Convention on Contracts for the International Sale of Goods (CISG) have been used.
"shipper"
n some cases it has been necessary to use the same term to express two different meanings simply because there has been
no suitable alternative. Traders will be familiar with this difficulty both in the context of contracts of sale and also of contracts of
INCOTERMS 2000
Group E
Departure
EXW Ex Works
Group F
Main carriage unpaid
FCA Free Carrier (... named place)
FAS Free Alongside Ship (...named port of shipment)
FOB Free On Board (... named port of shipment)
Group C
Main carriage paid
CFR Cost and Freight (... named port of destination)
CIF Cost, Insurance and Freight (... named port of destination)
CPT Carriage Paid To (... named place of destination)
CIP Carriage and Insurance Paid To (... named place of destination)
Group D
Arrival
DAF Delivered At Frontier (... named place)
DES Delivered Ex Ship (... named port of destination)
DEQ Delivered Ex Quay (... named port of destination)
DDU Delivered Duty Unpaid (... named place of destination)
DDP Delivered Duty Paid (... named place of destination)

carriage. Thus, for example, the term «shipper» signifies both the person handing over the goods for carriage and the person
who makes the contract with the carrier: however, these two «shippers» may be different persons, for example under a FOB
contract where the seller would hand over the goods for carriage and the buyer would make the contract with the carrier.
"delivery"
It is particularly important to note that the term «delivery» is used in two different senses in Incoterms. First, it is used to determine when the seller has fulfilled his delivery obligation which is specified in the A4 clauses throughout Incoterms. Second, the term «delivery» is also used in the context of the buyer's obligation to take or accept delivery of the goods, an
obligation which appears in the B4 clauses throughout Incoterms. Used in this second context, the word "delivery" means first
that the buyer "accepts" the very nature of the "C"-terms, namely that the seller fulfils his obligations upon the shipment of the
goods and, second that the buyer is obliged to receive the goods. This latter obligation is important so as to avoid unnecessary
charges for storage of the goods until they have been collected by the buyer. Thus, for example under CFR and CIF contracts,
the buyer is bound to accept delivery of the goods and to receive them from the carrier and if the buyer fails to do so, he may
become liable to pay damages to the seller who has made the contract of carriage with the carrier or, alternatively, the buyer
might have to pay demurrage charges resting upon the goods in order to obtain the carrier's release of the goods to him. When it is said in this context that the buyer must "accept delivery", this does not mean that the buyer has accepted the goods
as conforming with the contract of sale, but only that he has accepted that the seller has performed his obligation to hand the
goods over for carriage in accordance with the contract of carriage which he has to make under the A3 a) clauses of the "C"-
terms. So, if the buyer upon receipt of the goods at destination were to find that the goods did not conform to the stipulations in
the contract of sale, he would be able to use any remedies which the contract of sale and the applicable law gave him against
the seller, matters which, as has already been mentioned, lie entirely outside the scope of Incoterms.

Where appropriate, Incoterms 2000, have used the expression «placing the goods at the disposal of» the buyer when the goods are made available to the buyer at a particular place. This expression is intended to bear the same meaning as that of the phrase "handing over the goods" used in the 1980 United Nations Convention on Contracts for the International Sale of Goods.

"usual"

The word "usual" appears in several terms, for example in EXW with respect to the time of delivery (A4) and in the "C"-terms with respect to the documents which the seller is obliged to provide and the contract of carriage which the seller must procure (A8, A3). It can, of course, be difficult to tell precisely what the word "usual" means, however, in many cases, it is possible to identify what persons in the trade usually do and this practice will then be the guiding light. In this sense, the word "usual" is rather more helpful than the word "reasonable", which requires an assessment not against the world of practice but against the more difficult principle of good faith and fair dealing. In some circumstances it may well be necessary to decide what is "reasonable". However, for the reasons given, in Incoterms the word "usual" has been generally preferred to the word "reasonable".

"charges"

With respect to the obligation to clear the goods for import it is important to determine what is meant by «charges» which must be paid upon import of the goods. In Incoterms 1990 the expression «official charges payable upon exportation and importation of the goods» was used in DDP A6. In Incoterms 2000 DDP A6 the word «official» has been deleted, the reason being that this word gave rise to some uncertainty when determining whether the charge was «official» or not. No change of substantive meaning was intended through this deletion. The «charges» which must be paid only concern such charges as are a necessary consequence of the import as such and which thus have to be paid according to the applicable import regulations.

Any additional charges levied by private parties in connection with the import are not to be included in these charges, such as charges for storage unrelated to the clearance obligation. However, the performance of that obligation may well result in some costs to customs brokers or freight forwarders if the party bearing the obligation does not do the work himself.

"ports", "places", "points" and "premises"

So far as concerns the place at which the goods are to be delivered, different expressions are used in Incoterms. In the terms intended to be used exclusively for carriage of goods by sea -such as FAS, FOB, CFR, CIF, DES and DEQ - the expressions «port of shipment» and «port of destination» have been used. In all other cases the word «place» has been used. In some cases, it has been deemed necessary also to indicate a «point» within the port or place as it may be important for the seller to know not only that the goods should be delivered in a particular area like a city but also where within that area the goods should be placed at the disposal of the buyer. Contracts of sale would frequently lack information in this respect and Incoterms therefore stipulate that if no specific point has been agreed within the named place, and if there are several points available, the seller may select the point which best suits his purpose (as an example see FCA A4). Where the delivery point is the seller's "place" the expression «the seller's premises» (FCA A4) has been used.

"ship" and "vessel"

In the terms intended to be used for carriage of goods by sea, the expressions «ship» and «vessel» are used as synonyms.

Needless to say, the term «ship» would have to be used when it is an ingredient in the trade term itself such as in «free alongside ship» (FAS) and «delivery ex ship» (DES). Also, in view of the traditional use of the expression «passed the ship's rail» in FOB, the word «ship» has had to be used in that connection.

"checking" and "inspection"

In the A9 and B9 clauses of Incoterms the headings «checking -packaging and marking» and «inspection of the goods» respectively have been used. Although the words «checking» and «inspection» are synonyms, it has been deemed appropriate to use the former word with respect to the seller's delivery obligation under A4 and to reserve the latter for the particular case when a «pre -shipment inspection» is performed, since such inspection normally is only required when the buyer or the authorities of the export or import country want to ensure that the goods conform with contractual or official stipulations before they are shipped.

7. THE SELLER'S DELIVERY OBLIGATIONS

Incoterms focus on the seller's delivery obligation. The precise distribution of functions and costs in connection with the seller's
delivery of the goods would normally not cause problems where the parties have a continuing commercial relationship. They
would then establish a practice between themselves («course of dealing») which they would follow in subsequent dealings in
the same manner as they have done earlier. However, if a new commercial relationship is established or if a contract is made
through the medium of brokers - as is common in the sale of commodities -, one would have to apply the stipulations of the
contract of sale and. whenever Incoterms 2000 have been incorporated into that contract, apply the division of functions, costs
and risks following therefrom.
It would, of course, have been desirable if Incoterms could specify in as detailed a manner as possible the duties of the parties

in connection with the delivery of the goods. Compared with Incoterms 1990, further efforts have been made in this respect in
some specified instances (see for example FCA A4). But it has not been possible to avoid reference to customs of the trade in
FAS and FOB A4 («in the manner customary at the port »), the reason being that particularly in commodity trade the exact
manner in which the goods are delivered for carriage in FAS and FOB contracts vary in the different sea ports.

8. PASSING OF RISKS AND COSTS RELATING TO THE GOODS

The risk of loss of or damage to the goods, as well as the obligation to bear the costs relating to the goods, passes from the
seller to the buyer when the seller has fulfilled his obligation to deliver the goods. Since the buyer should not be given the
possibility to delay the passing of the risk and costs, all terms stipulate that the passing of risk and costs may occur even
before delivery, if the buyer does not take delivery as agreed or fails to give such instructions (with respect to time for shipment
and/or place for delivery) as the seller may require in order to fulfil his obligation to deliver the goods. It is a requirement for
such premature passing of risk and costs that the goods have been identified as intended for the buyer or, as is stipulated in
the terms, set aside for him (appropriation).
This requirement is particularly important under EXW, since under all other terms the goods would normally have been
identified as intended for the buyer when measures have been taken for their shipment or dispatch («F» - and «C»-terms) or
their delivery at destination («D»-terms). In exceptional cases, however, the goods may have been sent from the seller in bulk
without identification of the quantity for each buyer and, if so, passing of risk and cost does not occur before the goods have
been appropriated as aforesaid (cf. also article 69.3 of the 1980 United Nations Convention on Contracts for the International
Sale of Goods).

9. THE TERMS

9.1 The"E"- term is the term in which the seller's obligation is at its minimum:
the seller has to do no more than place the goods at the disposal of the buyer at the agreed place - usually at the seller's own
premises. On the other hand, as a matter of practical reality, the seller would frequently assist the buyer in loading the goods
on the latter's collecting vehicle. Although EXW would better reflect this if the seller's obligations were to be extended so as to
include loading, it was thought desirable to retain the traditional principle of the seller's minimum obligation under EXW so that
it could be used for cases where the seller does not wish to assume any obligation whatsoever with respect to the loading of
the goods. If the buyer wants the seller to do more, this should be made clear in the contract of sale.
9.2 The"F" - terms require the seller to deliver the goods for carriage as instructed by the buyer. The point at which the parties
intend delivery to occur in the FCA term has caused difficulty because of the wide variety of circumstances which may
surround contracts covered by this term. Thus, the goods may be loaded on a collecting vehicle sent by the buyer to pick them
up at the seller's premises; alternatively, the goods may need to be unloaded from a vehicle sent by the seller to deliver the
goods at a terminal named by the buyer. Incoterms 2000 take account of these alternatives by stipulating that, when the place

named in the contract as the place of delivery is the seller's premises, delivery is complete when the goods are loaded on the
buyer's collecting vehicle and, in other cases, delivery is complete when the goods are placed at the disposal of the buyer not
unloaded from the seller's vehicle. The variations mentioned for different modes of transport in FCA A4 of Incoterms 1990 are
not repeated in Incoterms 2000.
The delivery point under FOB, which is the same under CFR and CIF, has been left unchanged in Incoterms 2000 in spite of a
considerable debate. Although the notion under FOB to deliver the goods «across the ship's rail» nowadays may seem inappropriate in many cases, it is nevertheless understood by merchants and applied in a manner which takes account of the
goods and the available loading facilities. It was felt that a change of the FOB-point would create unnecessary confusion,
particularly with respect to sale of commodities carried by sea typically under charter parties.
Unfortunately, the word «FOB» is used by some merchants merely to indicate any point of delivery-such as «FOB factory»,
«FOB plant», «FOB Ex seller's works» or other inland points -thereby neglecting what the abbreviation means: Free On Board.
It remains the case that such use of «FOB» tends to create confusion and should be avoided.
There is an important change of FAS relating to the obligation to clear the goods for export, since it appears to be the most
common practice to put this duty on the seller rather than on the buyer. In order to ensure that this change is duly noted it has
been marked with capital letters in the preamble of FAS.
9.3 The «C»-terms require the seller to contract for carriage on usual terms at his own expense. Therefore, a point up to which
he would have to pay transport costs must necessarily be indicated after the respective «C»-term. Under the CIF and CIP
terms the seller also has to take out insurance and bear the insurance cost. Since the point for the division of costs is fixed at a
point in the country of destination, the «C»-terms are frequently mistakenly believed to be arrival contracts, in which the seller
would bear all risks and costs until the goods have actually arrived at the agreed point. However, it must be stressed that the
«C»-terms are of the same nature as the «F»-terms in that the seller fulfils the contract in the country of shipment or dispatch.
Thus, the contracts of sale under the «C»-terms, like the contracts under the «F»-terms, fall within the category of shipment
contracts.
It is in the nature of shipment contracts that, while the seller is bound to pay the normal transport cost for the carriage of the
goods by a usual route and in a customary manner to the agreed place, the risk of loss of or damage to the goods, as well as
additional costs resulting from events occurring after the goods having been appropriately delivered for carriage, fall upon the
buyer. Hence, the «C»-terms are distinguishable from all other terms in that they contain two «critical» points, one indicating
the point to which the seller is bound to arrange and bear the costs of a contract of carriage and another one for the allocation
of risk. For this reason, the greatest caution must be observed when adding obligations of the seller to the «C»-terms which
seek to extend the seller's responsibility beyond the aforementioned «critical» point for the allocation of risk. It is of the very
essence of the «C»-terms that the seller is relieved of any further risk and cost after he has duly fulfilled his contract by contracting for carriage and handing over the goods to the carrier and by providing for insurance under the CIF- and CIPterms.
The essential nature of the "C"-terms as shipment contracts is also illustrated by the common use of documentary credits as
the preferred mode of payment used in such terms. Where it is agreed by the parties to the sale contract that the seller will be
paid by presenting the agreed shipping documents to a bank under a documentary credit, it would be quite contrary to the
central purpose of the documentary credit for the seller to bear further risks and costs after the moment when payment had
been made under documentary credits or otherwise upon shipment and dispatch of the goods. Of course, the seller would
have to bear the cost of the contract of carriage irrespective of whether freight is pre-paid upon shipment or is payable at destination (freight collect); however, additional costs which may result from events occurring subsequent to shipment and

dispatch are necessarily for the account of the buyer.
If the seller has to provide a contract of carriage which involves payment of duties, taxes and other charges, such costs will, of
course, fall upon the seller to the extent that they are for his account under that contract. This is now explicitly set forth in the
A6 clause of all "C"-terms.
If it is customary to procure several contracts of carriage involving transhipment of the goods at intermediate places in order to
reach the agreed destination, the seller would have to pay all these costs, including any costs incurred when the goods are
transhipped from one means of conveyance to the other. If, however, the carrier exercised his rights under a transhipment -or
similar clause - in order to avoid unexpected hindrances (such as ice, congestion, labour disturbances, government orders,
war or warlike operations) then any additional cost resulting therefrom would be for the account of the buyer, since the seller's
obligation is limited to procuring the usual contract of carriage.
It happens quite often that the parties to the contract of sale wish to clarify the extent to which the seller should procure a contract of carriage including the costs of discharge. Since such costs are normally covered by the freight when the goods are
carried by regular shipping lines, the contract of sale will frequently stipulate that the goods are to be so carried or at least that
they are to be carried under «liner terms». In other cases, the word «landed» is added after CFR or CIF. However, it is advisable not to use abbreviations added to the «C»-terms unless, in the relevant trade, the meaning of the abbreviations is
clearly understood and accepted by the contracting parties or under any applicable law or custom of the trade.
In particular, the seller should not - and indeed could not, without changing the very nature of the «C»-terms - undertake any
obligation with respect to the arrival of the goods at destination, since the risk of any delay during the carriage is borne by the
buyer. Thus, any obligation with respect to time must necessarily refer to the place of shipment or dispatch, for example, «shipment (dispatch) not later than...». An agreement for example, «CFR Hamburg not later than...» is really a misnomer and
thus open to different possible interpretations. The parties could be taken to have meant either that the goods must actually
arrive at Hamburg at the specified date, in which case the contract is not a shipment contract but an arrival contract or, alternatively, that the seller must ship the goods at such a time that they would normally arrive at Hamburg before the specified
date unless the carriage would have been delayed because of unforeseen events.
It happens in commodity trades that goods are bought while they are at sea and that, in such cases, the word «afloat» is added after the trade term. Since the risk of loss of or damage to the goods would then, under the CFR- and CIF-terms, have
passed from the seller to the buyer, difficulties of interpretation might arise. One possibility would be to maintain the ordinary
meaning of the CFR- and CIF-terms with respect to the allocation of risk between seller and buyer, namely that risk passes on
shipment: this would mean that the buyer might have to assume the consequences of events having already occurred at the
time when the contract of sale enters into force. The other possibility would be to let the passing of the risk coincide with the
time when the contract of sale is concluded. The former possibility might well be practical, since it is usually impossible to
ascertain the condition of the goods while they are being carried. For this reason the 1980 United Nations Convention on Contracts for the International Sale of Goods article 68 stipulates that «if the circumstances so indicate, the risk is assumed by
the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage». There is, however, an exception to this rule when «the seller knew or ought to have known that the goods had been
lost or damaged and did not disclose this to the buyer». Thus, the interpretation of a CFR- or CIF-term with the addition of the
word «afloat» will depend upon the law applicable to the contract of sale. The parties are advised to ascertain the applicable
law and any solution which might follow therefrom. In case of doubt, the parties are advised to clarify the matter in their contract.
In practice, the parties frequently continue to use the traditional expression C&F (or Ñ and F, C+F). Nevertheless, in most
cases it would appear that they regard these expressions as equivalent to CFR. In order to avoid difficulties of interpreting their
contract the parties should use the correct Incoterm which is CFR, the only world-wide-accepted standard abbreviation for the

term «Cost and Freight (... named port of destination)».
CFR and CIF in A8 of Incoterms 1990 obliged the seller to provide a copy of the charterparty whenever his transport document
(usually the bill of lading) contained a reference to the charterparty, for example, by the frequent notation «all other terms and
conditions as per charterparty». Although, of course, a contracting party should always be able to ascertain all terms of his
contract - preferably at the time of the conclusion of the contract - it appears that the practice to provide the charterparty as
aforesaid has created problems particularly in connection with documentary credit transactions. The obligation of the seller
under CFR and CIF to provide a copy of the charterparty together with other transport documents has been deleted in Incoterms 2000.
Although the A8 clauses of Incoterms seek to ensure that the seller provides the buyer with «proof of delivery», it should be
stressed that the seller fulfils that requirement when he provides the «usual» proof. Under CPT and CIP it would be the «usual
transport document» and under CFR and CIF a bill of lading or a sea waybill. The transport documents must be «clean», meaning that they must not contain clauses or notations expressly declaring a defective condition of the goods and/or the
packaging. If such clauses or notations appear in the document, it is regarded as «unclean» and would then not be accepted
by banks in documentary credit transactions. However, it should be noted that a transport document even without such clauses or notations would usually not provide the buyer with incontrovertible proof as against the carrier that the goods were
shipped in conformity with the stipulations of the contract of sale. Usually, the carrier would, in standardized text on the front
page of the transport document, refuse to accept responsibility for information with respect to the goods by indicating that the
particulars inserted in the transport document constitute the shipper's declarations and therefore that the information is only
«said to be» as inserted in the document. Under most applicable laws and principles, the carrier must at least use reasonable
means of checking the correctness of the information and his failure to do so may make him liable to the consignee. However,
in container trade, the carrier's means of checking the contents in the container would not exist unless he himself was responsible for stowing the container.
There are only two terms which deal with insurance, namely CIF and CIP. Under these terms the seller is obliged to procure
insurance for the benefit of the buyer. In other cases it is for the parties themselves to decide whether and to what extent they
want to cover themselves by insurance. Since the seller takes out insurance for the benefit of the buyer, he would not know
the buyer's precise requirements. Under the Institute Cargo Clauses drafted by the Institute of London Underwriters, insurance
is available in «minimum cover» under Clause C, «medium cover» under Clause Â and «most extended cover» under Clause
A. Since in the sale of commodities under the CIF term the buyer may wish to sell the goods in transit to a subsequent buyer
who in turn may wish to resell the goods again, it is impossible to know the insurance cover suitable to such subsequent buyers and, therefore, the minimum cover under CIF has traditionally been chosen with the possibility for the buyer to require
the seller to take out additional insurance. Minimum cover is however unsuitable for sale of manufactured goods where the risk
of theft, pilferage or improper handling or custody of the goods would require more than the cover available under Clause C.
Since CIP, as distinguished from CIF, would normally not be used for the sale of commodities, it would have been feasible to
adopt the most extended cover under CIP rather than the minimum cover under CIF. But to vary the seller's insurance obligation under CIF and CIP would lead to confusion and both terms therefore limit the seller's insurance obligation to the
minimum cover. It is particularly important for the CIP-buyer to observe this: should additional cover be required, he should

agree with the seller that the latter could take out additional insurance or, alternatively, arrange for extended insurance cover
himself. There are also particular instances where the buyer may wish to obtain even more protection than is available under

Institute Clause A, for example insurance against war, riots, civil commotion, strikes or other labour disturbances. If he wishes
the seller to arrange such insurance he must instruct him accordingly in which case the seller would have to provide such
insurance if procurable.
9.4 The «D»-terms are different in nature from the «C»-terms, since the seller according to the «D»-terms is responsible for
the arrival of the goods at the agreed place or point of destination at the border or within the country of import. The seller must
bear all risks and costs in bringing the goods thereto. Hence, the «D»-terms signify arrival contracts, while the «C»-terms evidence departure (shipment) contracts.
Under the «D»-terms except DDP the seller does not have to deliver the goods cleared for import in the country of destination.
Traditionally, the seller had the obligation to clear the goods for import under DEQ, since the goods had to be landed on the
quay and thus were brought into the country of import. But owing to changes in customs clearance procedures in most countries, it is now more appropriate that the party domiciled in the country concerned undertakes the clearance and pays the
duties and other charges. Thus, a change in DEQ has been made for the same reason as the change in FAS previously mentioned. As in FAS, in DEQ the change has been marked with capital letters in the preamble.
It appears that in many countries trade terms not included in Incoterms are used particularly in railway traffic («franco border»,
«franco-frontiere», «Frei Grenze»). However, under such terms it is normally not intended that the seller should assume the
risk of loss of or damage to goods during the transport up to the border. It would be preferable in these circumstances to use
CPT indicating the border. If, on the other hand, the parties intend that the seller should bear the risk during the transport DAF
indicating the border would be appropriate.
The DDU term was added in the 1990 version of Incoterms. The term fulfils an important function whenever the seller is prepared to deliver the goods in the country of destination without clearing the goods for import and paying the duty. In countries where import clearance may be difficult and time consuming, it may be risky for the seller to undertake an obligation
to deliver the goods beyond the customs clearance point. Although, according to DDU B5 and B6, the buyer would have to
bear the additional risks and costs which might follow from his failure to fulfil his obligations to clear the goods for import, the
seller is advised not to use the DDU term in countries where difficulties might be expected in clearing the goods for import.

10. THE EXPRESSION «NO OBLIGATION»

As appears from the expressions «the seller must» and «the buyer must» Incoterms are only concerned with the obligations
which the parties owe to each other. The words «no obligation» have therefore been inserted whenever one party does not
owe an obligation to the other party. Thus, if for instance according to A3 of the respective term the seller has to arrange and
pay for the contract of carriage we find the words «no obligation» under the heading «contract of carriage» in B3 a) setting
forth the buyer's position. Again, where neither party owes the other an obligation, the words «no obligation» will appear with
respect to both parties, for example, with respect to insurance.
In either case, it is important to point out that even though one party may be under "no obligation" towards the other to perform
a certain task, this does not mean that it is not in his interest to perform that task. Thus, for example, just because a CFR buyer owes his seller no duty to make a contract of insurance under B4, it is clearly in his interest to make such a contract, the
seller being under no such obligation to procure insurance cover under A4.

11. VARIANTS OF INCOTERMS

In practice, it frequently happens that the parties themselves by adding words to an Incoterm seek further precision than the
term could offer. It should be underlined that Incoterms give no guidance whatsoever for such additions. Thus, if the parties
cannot rely on a well-established custom of the trade for the interpretation of such additions they may encounter serious problems when no consistent understanding of the additions could be proven.
If for instance the common expressions «FOB stowed» or «EXW loaded» are used, it is impossible to establish aworld-wide
understanding to the effect that the seller's obligations are extended not only with respect to the cost of actually loading the
goods in the ship or on the vehicle respectively but also include the risk of fortuitous loss of or damage to the goods in the

process of stowage and loading. For these reasons, the parties are strongly advised to clarify whether they only mean that the
function or the cost of the stowage and loading operations should fall upon the seller or whether he should also bear the risk
until the stowage and loading has actually been completed. These are questions to which Incoterms do not provide an answer:
consequently, if the contract too fails expressly to describe the parties' intentions, the parties may be put to much unnecessary
trouble and cost.
Although Incoterms 2000 do not provide for many of these commonly used variants, the preambles to certain trade terms do
alert the parties to the need for special contractual terms if the parties wish to go beyond the stipulations of Incoterms.
In some cases sellers and buyers refer to commercial practice in liner and charter party trade. In these circumstances, it is
necessary to clearly distinguish between the obligations of the parties under the contract of carriage and their obligations to
each other under the contract of sale. Unfortunately, there are no authoritative definitions of expressions such as «liner terms»
and «terminal handling charges» (THC). Distribution of costs under such terms may differ in different places and change from
time to time. The parties are recommended to clarify in the contract of sale how such costs should be distributed between
themselves.
Expressions frequently used in charterparties, such as «FOB stowed», «FOB stowed and trimmed», are sometimes used in
contracts of sale in order to clarify to what extent the seller under FOB has to perform stowage and trimming of the goods
onboard the ship. Where such words are added, it is necessary to clarify in the contract of sale whether the added obligations
only relate to costs or to both costs and risks.
As has been said, every effort has been made to ensure that Incoterms reflect the most common commercial practice.
EXW the added obligation for the seller to load the goods on the buyer's collecting vehicle;
CIF/CIP the buyer's need for additional insurance;
DEQ the added obligation for the seller to pay for costs after discharge.

However in some cases - particularly where Incoterms 2000 differ from Incoterms 1990 - the parties may wish the trade terms
to operate differently. They are reminded of such options in the preamble of the terms signalled by the word «However».

12. CUSTOMS OF THE PORT OR OF A PARTICULAR TRADE

Since Incoterms provide a set of terms for use in different trades and regions it is impossible always to set forth the obligations
of the parties with precision. To some extent it is therefore necessary to refer to the custom of the port or of the particular trade
or to the practices which the parties themselves may have established in their previous dealings (cf. article 9 of the 1980 United Nations Convention on Contracts for the International Sale of Goods). It is of course desirable that sellers and buyers
keep themselves duly informed of such customs when they negotiate their contract and that, whenever uncertainty arises, they
clarify their legal position by appropriate clauses in their contract of sale. Such special provisions in the individual contract
would supersede or vary anything that is set forth as a rule of interpretation in the various Incoterms.

13. THE BUYER'S OPTIONS ASTOTHE PLACE OF SHIPMENT

In some situations, it may not be possible at the time when the contract of sale is entered into to decide precisely on the exact
point or even the place where the goods should be delivered by the seller for carriage. For instance reference might have been
made at this stage merely to a «range» or to a rather large place, for example, seaport, and it is then usually stipulated that the
buyer has the right or duty to name later on the more precise point within the range or the place. If the buyer has a duty to
name the precise point as aforesaid his failure to do so might result in liability to bear the risks and additional costs resulting
from such failure (B5/B7 of all terms). In addition, the buyer's failure to use his right to indicate the point may give the seller the
right to select the point which best suits his purpose (FCA A4).

14. CUSTOMS CLEARANCE

The term «customs clearance» has given rise to misunderstandings. Thus, whenever reference is made to an obligation of the

seller or the buyer to undertake obligations in connection with passing the goods through customs of the country of export or
import it is now made clear that this obligation does not only include the payment of duty and other charges but also the performance and payment of whatever administrative matters are connected with the passing of the goods through customs
and the information to the authorities in this connection. Further, it has - although quite wrongfully - been considered in some
quarters inappropriate to use terms dealing with the obligation to clear the goods through customs when, as in intra-European
Union trade or other free trade areas, there is no longer any obligation to pay duty and no restrictions relating to import or
export. In order to clarify the situation, the words «where applicable» have been added in the A2 and B2, A6 and B6 clauses of
the relevant Incoterms in order for them to be used without any ambiguity where no customs procedures are required.
It is normally desirable that customs clearance is arranged by the party domiciled in the country where such clearance should
take place or at least by somebody acting there on his behalf. Thus, the exporter should normally clear the goods for export,
while the importer should clear the goods for import.
Incoterms 1990 departed from this under the trade terms EXW and FAS (export clearance duty on the buyer) and DEQ (import
clearance duty on the seller) but in Incoterms 2000 FAS and DEQ place the duty of clearing the goods for export on the seller
and to clear them for import on the buyer respectively, while EXW -representing the seller's minimum obligation - has been left
unamended (export clearance duty on the buyer). Under DDP the seller specifically agrees to do what follows from the very
name of the term - Delivered Duty Paid - namely to clear the goods for import and pay any duty as a consequence thereof.

15. PACKAGING

In most cases, the parties would know beforehand which packaging is required for the safe carriage of the goods to destination. However, since the seller's obligation to pack the goods may well vary according to the type and duration of the
transport envisaged, it has been felt necessary to stipulate that the seller is obliged to pack the goods in such a manner as is
required for the transport, but only to the extent that the circumstances relating to the transport are made known to him before
the contract of sale is concluded (cf. articles 35.1. and 35.2.b. of the 1980 United Nations Convention on Contracts for the
International Sale of Goods where the goods, including packaging, must be «fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the
buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement»).

16. INSPECTION OF GOODS

In many cases, the buyer may be well advised to arrange for inspection of the goods before or at the time they are handed
over by the seller for carriage (so-called pre -shipment inspection or PSI). Unless the contract stipulates otherwise, the buyer
would himself have to pay the cost for such inspection that is arranged in his own interest. However, if the inspection has been
made in order to enable the seller to comply with any mandatory rules applicable to the export of the goods in his own country,
the seller would have to pay for that inspection, unless the EXW term is used, in which case the costs of such inspection are
for the account of the buyer.

17. MODE OF TRANSPORT AND THE APPROPRIATE INCOTERM 2000

Any mode of transport

Group E EXW Ex Works (... named place)
Group F FCA Free Carrier (... named place)

18. THE RECOMMENDED USE

In some cases the preamble recommends the use or non-use of a particular term. This is particularly important with respect to
the choice between FCA and FOB. Regrettably, merchants continue to use FOB when it is totally out of place thereby causing
the seller to incur risks subsequent to the handing over of the goods to the carrier named by the buyer. FOB is only appropriate to use where the goods are intended to be delivered «across the ship's rail» or, in any event, to the ship and not

where the goods are handed over to the carrier for subsequent entry into the ship, for example stowed in containers or loaded
on lorries or wagons in so-called roll on - roll off traffic. Thus, a strong warning has been made in the preamble of FOB that the
term should not be used when the parties do not intend delivery across the ship's rail.
It happens that the parties by mistake use terms intended for carriage of goods by sea also when another mode of transport is
contemplated. This may put the seller in the unfortunate position that he cannot fulfil his obligation to tender the proper document to the buyer (for example a bill of lading, sea waybill or the electronic equivalent). The chart printed at paragraph 17
above makes clear which trade term in Incoterms 2000 it is appropriate to use for which mode of transport. Also, it is indicated
in the preamble of each term whether it can be used for all modes of transport or only for carriage of goods by sea.

19. THE BILL OF LADING AND ELECTRONIC COMMERCE

Traditionally, the on board bill of lading has been the only acceptable document to be presented by the seller under the CFR
and CIF terms. The bill of lading fulfils three important functions, namely:

• proof of delivery of the goods on board the vessel;
• evidence of the contract of carriage; and
• a means of transferring rights to the goods in transit to another party by the transfer of the paper document to him.

Transport documents other than the bill of lading would fulfil the two first-mentioned functions, but would not control the delivery of the goods at destination or enable a buyer to sell the goods in transit by surrendering the paper document to his
buyer. Instead, other transport documents would name the party entitled to receive the goods at destination. The fact that the
possession of the bill of lading is required in order to obtain the goods from the carrier at destination makes it particularly difficult to replace by electronic means of communication.
Further, it is customary to issue bills of lading in several originals but it is, of course, of vital importance for a buyer or a bank
acting upon his instructions in paying the seller to ensure that all originals are surrendered by the seller (so-called «full set»).
This is also a requirement under the ICC Rules for Documentary Credits (the so-called ICC Uniform Customs and Practice,
«UCP»;current version at date of publication of Incoterms 2000: ICC publication 500).
The transport document must evidence not only delivery of the goods to the carrier but also that the goods, as far as could be
ascertained by the carrier, were received in good order and condition. Any notation on the transport document which would
indicate that the goods had not been in such condition would make the document «unclean» and would thus make it unacceptable under the UCP.
In spite of the particular legal nature of the bill of lading it is expected that it will be replaced by electronic means in the near
future. The 1990 version of Incoterms had already taken this expected development into proper account. According to the A8
clauses, paper documents may be replaced by electronic messages provided the parties have agreed to communicate electronically. Such messages could be transmitted directly to the party concerned or through a third party providing addedvalue
services. One such service that can be usefully provided by a third party is registration of successive holders of a bill of lading. Systems providing such services, such as the so-called BOLERO service, may require further support by appropriate
legal norms and principles as evidenced by the CMI 1990 Rules for Electronic Bills of Lading and articles 16-17 of the 1996
UNCITRAL Model Law on Electronic Commerce.

20. NON-NEGOTIABLE TRANSPORT DOCUMENTS INSTEAD OF BILLS OF LADING

In recent years, a considerable simplification of documentary practices has been achieved. Bills of lading are frequently

Group C CPT Carriage Paid To (... named place of destination)
CIP Carriage and Insurance Paid To (... named place of destination)
Group D DAF Delivered At Frontier (... named place)
DDU Delivered Duty Unpaid (... named place of destination)
DDP Delivered Duty Paid (... named place of destination)

Maritime and inland waterway transport only

Group F FAS Free Alongside Ship (... named port of shipment)
FOB Free On Board (... named port of shipment)
Group C CFR Cost and Freight (... named port of destination)
CIF Cost, Insurance and Freight (... named port of destination)
Group D DES DES Delivered Ex Ship (... named port of destination)
DEQ Delivered Ex Quay (... named port of destination)

replaced by non-negotiable documents similar to those which are used for other modes of transport than carriage by sea.
These documents are called «sea waybills», «liner waybills», «freight receipts», or variants of such expressions. Nonnegotiable documents are quite satisfactory to use except where the buyer wishes to sell the goods in transit by surrendering a paper document to the new buyer. In order to make this possible, the obligation of the seller to provide a bill of lading under CFR and CIF must necessarily be retained. However, when the contracting parties know that the buyer does not contemplate selling the goods in transit, they may specifically agree to relieve the seller from the obligation to provide a bill of lading, or, alternatively, they may use CPT and CIP where there is no requirement to provide a bill of lading.

21. THE RIGHT TO GIVE INSTRUCTIONS TO THE CARRIER

A buyer paying for the goods under a «C»-term should ensure that the seller upon payment is prevented from disposing of the goods by giving new instructions to the carrier. Some transport documents used for particular modes of transport (air, road or rail) offer the contracting parties a possibility to bar the seller from giving such new instructions to the carrier by providing the buyer with a particular original or duplicate of the waybill. However, the documents used instead of bills of lading for maritime carriage do not normally contain such a barring function. The Comite Maritime International has remedied this shortcoming of the above-mentioned documents by introducing the 1990 «Uniform Rules for Sea Waybills» enabling the parties to insert a «no-disposal» clause whereby the seller surrenders the right to dispose of the goods by instructions to the carrier to deliver the goods to somebody else or at another place than stipulated in the waybill.

22. ICC ARBITRATION

Contracting parties who wish to have the possibility of resorting to ICC Arbitration in the event of a dispute with their contracting partner should specifically and clearly agree upon ICC Arbitration in their contract or, in the event that no single contractual document exists, in the exchange of correspondence which constitutes the agreement between them. The fact of incorporating one or more Incoterms in a contract or the related correspondence does NOT by itself constitute an agreement to have resort to ICC Arbitration.
The following standard arbitration clause is recommended by ICC: «All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.»

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