

# **THE NEW INCOTERMS® 2010 RULES OF THE INTERNATIONAL CHAMBER OF COMMERCE**

## **Trade terms for the next decade**

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### **What is new in ICC Incoterms 2010**

Clearer presentation by a division between Incoterms for all types of transport and Incoterms for maritime transport only, Incoterms for domestic trade, Incoterms for transport in containers, Cargo security related information in Incoterms, Electronic documents, Terminal Handling charges, D-Terms modernized.

### **The importance of Incoterms® in contracts for sale of goods**

Incoterm rules have been known and respected worldwide for more than 70 years as the rules of the International Chamber of Commerce, which reflect international trade practice of exporters and importers.

Incoterm rules are applied and understood by traders, contract drafters as well as by courts and arbitrators in a uniform way.

Since Incoterms define the obligations of the seller and the buyer regarding delivery, transfer of risk, loading of the goods, export or import clearance, conclusion of transport contracts, Incoterm rules are an essential tool in the negotiation of international contracts.

The choice of an Incoterm has a direct impact on the allocation of cost and risk. If the use of an Incoterm simplifies contractual drafting, the contractual parties must pay special attention to the choice of the right Incoterm rule.

The choice of the Incoterm rule has also an impact on the documents to be exchanged, an important point if payment is made via documentary credit in conformity with ICC rules. (UCP 600)

Incoterms impact on other contracts around the sales contract: transport contract, insurance contracts, finance contracts.

### **The revision of Incoterms 2000 towards the Incoterms® 2010 rules**

The revision process was achieved in mid-2010. The 11 Incoterm rules 2010 entered into force on January, 1<sup>st</sup>, 2011.

Traditionally ICC proceeds to revision of Incoterm rules when the international trade practices changes. The revision follows the evolution of the global market, the evolution of trade or transport practice and the development of new legislation governing international trade. It is not ICC that invents new Incoterm rules; it is international practice that determines the content of the new Incoterm rules.

A drafting group of 8 experts was mandated in 2007 by ICC, co-chaired by Me Christoph Martin RADTKE, France and by Professor Charles Debattista, United Kingdom. A questionnaire was sent to all ICC national committees who consulted their members, exporting and importing business, banks, transport companies and insurance companies etc. to inquire about their expectations.

3 drafts were sent to all national committees and during 2 years, more than 2000 comments were received and analyzed by the drafting group.

The large consultation of users has resulted in a world wide consensus and is the best guarantee that the Incoterm 2010 rules reflect today's trade practice and will be accepted globally.

### **The principle changes**

The principle changes concern: a) the presentation of the 11 Incoterm 2010 rules and b) the content.

#### **a) The new presentation of Incoterms® 2010**

As far as the presentation is concerned, the aim was to make the rules clearer and to give better explanations and more guidance. This is achieved by:

- A concise general introduction, giving the essential explanations
- clear Guidance notes before each Incoterm rule
- An update of the text of the 10 "A" and "B" rules

An important change was made in the presentation of Incoterms following a strong demand of users worldwide as shown in the comments of the national committees. The traditional list of the 13 Incoterms 2000 has been replaced by a presentation which clearly distinguishes between the 7 Incoterms 2010 rules for all modes of transport and the 4 rules applicable exclusively to maritime or inland waterway. This is to avoid a frequent confusion in practice between the 2 types of Incoterm rules.

Each Incoterm 2010 rule is preceded by a guidance note which contains the necessary instructions for guidance and for the proper use of each Incoterm 2010 rule.

For example, the guidance note for the CPT and CIP Incoterm rule alerts the user that the risk is transferred when the goods are handed over to the first carrier whereas the cost of transport are supported by the seller until the goods are handed over by the buyer at the place of destination. Incoterms 2010 guidance notes indicates that this is the default solution "unless the parties decide that the risks are transferred at a later stage."

The text of the A1 to A10 and B1 to B10 rules was completely revised to be as clear as possible and to facilitate the translation of the official English version to other languages.

Finally, the introduction was completely modified. The short introduction contains the key information and definitions which are essential for the understanding of the rules. The new introduction is so short that every user of the Incoterm 2010 rules is expected to read the entire introduction before using the Incoterm rules.

## b) The changes of the rules

As far as content is concerned, the revision seeks to adapt Incoterms to the following changes of trade practice:

### Obligations regarding cargo security

Cargo inspection concerning the security of the goods, measures that have become necessary due to the rise of international terrorism which appeared during the last decade, needed a response in the Incoterm rule. The rules reflect the duty of each party regarding information obligations and allocation of cost. In the A2/B2 and A10/B10 rules of each Incoterm, the obligation of the seller and the buyer regarding information to be given to the other party or assistance to be given for obtaining such information is specified.

### Changes of the "D" terms

International transport of goods has largely developed towards containerisation. This has a direct impact on the place of delivery and the terminal handling charges.

This has led ICC to make significant changes in the "D" terms as well as to introduce 2 new Incoterms rules.

In fact, 3 of the Incoterms 2000 "D" rules have a place of delivery at destination in the buyer's country (DAF, DES, DDU). The co-existence of 3 Incoterms for such a very similar situation required a clarification and a simplification.

These 3 former "D" terms are replaced by one single new Incoterms 2010 rule: **DAP** (delivered at place) which reduces the number of Incoterms from 13 to 11.

Incoterm 2000 "DAF" was no longer satisfying and created a problem when the buyer could not examine the goods before taking delivery at the frontier.

The new Incoterm 2010 rule "DAP" (Delivered at Place) covers all situations in which the seller delivers the goods to the buyer on the arriving means of transport **not unloaded**, which is the situation covered before by DAF, DES as well as all deliveries at the buyer's premises (DDU).

Another Incoterm 2000 DEQ (Delivered ex quay) has been modernised and replaced by a new rule **DAT** (Delivered at Terminal), which can be used with all modes of transport in case of a delivery at the place of destination.

The difference between DAP and DAT is that under the DAT rule, the seller delivers the goods to the buyer **unloaded** from the means of transport.

The Incoterm 2000 gave no satisfying solution within the "D" terms for the situation where the goods are delivered unloaded from the arriving means of transport in a terminal.

The new DAT (Delivered at Terminal) solves this problem and covers all situations formerly governed by the DEQ.

Such a change was necessary to follow the changes of trade practice since the disappearance of the liner terms formerly negotiated by the maritime conferences between the shipping companies. The former liner terms tend to disappear and are replaced by freight conditions which are freely negotiated between the maritime transport companies and the users.

Such freight conditions include more and more the entire handling charges which can best be negotiated by the transport companies with the port authorities at the port of destination. For this

reason in the container transport practice conditions like "terminal in-terminal out" have become the normal practice and they include cost of unloading at destination.

This is now reflected in the new DAT Incoterms 2010 rule. FCA and DAT are the Incoterms 2010 rules tailored to reflect today's practice of container transport.

Other changes concern

- the use of Incoterms in custom-free or free trade zones and in domestic markets, which make Incoterms fit as trade terms for use in US trade,
- the use of electronic communication instead of documents in writing
- clarification of the division of terminal handling charges between seller and buyer

### **Certified training**

The new presentation of the Incoterms, the essential introduction and the guidance notes for each term will improve the proper use of the new Incoterm 2010 rules once they enter into force on January, 1<sup>st</sup>, 2011.

It is nevertheless recommended to users to follow one of the training sessions organised by the ICC and by the national committees after the launch of the Incoterms, in order to prepare the users to the best use of the new rules.