

INCOTERMS

Applicable legislation in this field

- **Incoterms 2000** – official rules of the International Chamber of Commerce for the interpretation of the commercial conditions

I. Purpose and scope of Incoterms rules

Incoterms represent a codification or a collection of usages in the field of international goods sale, usages enforceable on the European territory.

As juridical force, these rules have an **optional nature**, applying only if the parties have expressly referred to an Incoterms rule in their contract. The Incoterms Rules have been created for the purpose of avoiding possible litigations that may arise as a result of the fact that the contracting parties are not aware of the different commercial usages in force in their partners' countries.

The scope of Incoterms is limited to the issues connected with the rights and liabilities of the parties to the sale-purchasing contract, regarding the delivery of the goods sold. Thus, Incoterms refer to a series of precise obligations imposed to the parties.

There are 13 Incoterms rules, each rule being expressed through a three letters acronym representing a type of international sale of goods.

Advantage of their use:

- they allow for a save of time and contractual space – instead of negotiating the content of the sale-purchasing contract, the seller's and the purchaser's liabilities, the parties only negotiate the type of sale, namely the Incoterms rule they understand to apply;
- the safety, security of the transaction, because no matter how well the parties of such a contract would negotiate, they cannot eliminate the risk of certain inadvertences between different clauses.

Being the work of specialists, Incoterms rules completely eliminate these risks.

The recitals of certain commercial conditions warn the parties regarding the necessity of establishing certain special contractual conditions if the parties want to extend the Incoterms rules.

II. Incoterms structure

In 1990, the conditions were grouped in four different categories, grouping that has remained even after the amendments and completions from 2000:

- **Group E** – departure – comprises only one condition:
 - EXW Ex Works – “Ex Works” means that the seller complies with his liability of delivery in the moment in which he puts at the buyer’s disposal in the seller’s premises or another designated place (factory, plant, warehouse, etc.) without the fulfillment of the formalities for export and without the loading of the goods in a vehicle sent to collect them.

“E” Condition is the condition in which the seller’s liabilities are minimum, thus he only has to put the goods at the buyer’s disposal at the agreed place.

- **Group F** – main transport non-paid – comprises 3 conditions:
 - FCA Free carrier – “Free Carrier” means that the seller complies with his liability of delivery in the moment in which he has delivered the goods, in the designated place, with the export formalities fulfilled, in the custody of the carrier appointed by the buyer. The buyer may assign the seller with the task of delivering the goods to another person than the carrier.
 - FAS Free Alongside Ship- the seller complies with his liability of delivery when the goods have been deposited alongside ship in the designated dispatching port.

From that moment the buyer shall bear all the costs and risks of loss of deterioration of goods. This condition requests for the seller to fulfill all the export formalities and may only be used for the transport of goods on sea or on inland waterway.

Conditions from the “F” Group oblige the seller to deliver the goods for the transport according to the buyer’s decision.

- **Group C** – Main Transport paid – comprises 4 conditions:
 - CFR Cost and Freight – “Cost and Freight” means that the seller has complied with the delivery liability when **the goods pass over the balustrade of the ship in the dispatching port**. The seller has the obligation to pay the costs and the freight necessary in order to bring the goods in the designated destination port. CFR conditions oblige the seller to the fulfillment of the export customs formalities. This condition may only be used for the transport of goods on sea or on inland waterway.

- CIF Cost, Insurance and Freight – “Cost, Insurance and Freight” means that the seller complies with his delivery liability in the moment in which the goods pass over the balustrade of the ship in the dispatching port. The seller is obliged to pay the costs and the freight necessary for bringing the goods in the destination port, but the risk of loss or goods deterioration, as well as any other additional costs due to certain events subsequent to the delivery are transferred from the seller to the buyer. According to this condition, **the seller has the obligation to get the marine insurance against the buyer’s risk of loss or of the deterioration of the goods during the transportation.**
- CPT Carriage Paid To – The condition “Carriage paid to” – the buyer has to bear all the risks and any other costs after the goods have been thus delivered.
- CIP Carriage and Insurance Paid To – This condition may be used for any means of transportation, including multimodal transport. The condition “Carriage and Insurance Paid To” means that the seller delivers the goods to the carrier appointed by him, having also the liability of paying the cost of the transport for bringing the goods on the designated destination. The buyer shall bear all the risks and any other additional costs after the goods have been delivered.

The conditions comprised in Group “C” oblige the seller to contract the transport according to the usages and on his own expense.

- **Group D – Arrival** – comprises 5 conditions:
 - DAF Delivered at Frontier – “Delivered at Frontier” means that the seller complies with his delivery liability when the goods were put at the buyer’s disposal upon the arrival of the unloaded means of transportation, with the export formalities fulfilled, but before the fulfillment of import customs formalities in the designated point and place at the frontier. This condition may be used regardless of the transport modality when the goods must be delivered at a terrestrial frontier. If the delivery is made in the destination port, on the deck of the ship or on the quay it is better for the condition DES or DEQ to be used.
 - DES Delivered Ex Ship – “Delivered Ex Ship” means that the seller complies with his delivery liability when the goods are put at the buyer’s disposal on the ship deck, in the designated destination port, without the fulfillment of import formalities. This condition

may only be used in the event in which the goods are going to be delivered at sea, at inland waterway or multimodal transport on a ship in the destination port.

- DEQ Delivered Ex Quay – “Franco Ex Quay” means that the seller complies with his delivery liability when the goods are put at the buyer’s disposal, without the fulfillment of the import formalities, on the quay from the designated destination port. The seller has to bear the costs and the risks involved by the bringing of the goods in the designated destination port and the unloading of the goods on the quay (pontoon). DEQ condition obliges the buyer to fulfill the customs formalities for the import of goods and to pay all the formalities, taxes and duties and other expenses connected with the import of goods. This condition may only be used in the event in which the goods are going to be delivered at sea, at inland waterway or multimodal transport through the unloading from the ship on the quay in the destination port.
- DDP Delivered Duty Paid – If this condition is used, the seller shall deliver the goods to the buyer with the fulfillment of the import formalities and non-unloaded, at the arrival in any type of means of transportation, at the designated destination place. The seller shall bear all the costs implied by the bringing of the goods in that place, including, as the case may be, any duty for the import in the destination country. DDP is the condition having maximum of obligations for the seller. This condition must not be used if the seller cannot obtain, directly or indirectly, the import license.
- DDU Delivery Duty Unpaid – “Delivered Duty Unpaid” means that the seller delivers the goods to the buyer, without the fulfillment of the import formalities and non-unloaded at their arrival in any type of means of transportation, at the designated destination place. The seller bears the costs and the risks implied by the bringing of the goods in that place, others than, where the case may be, any duty for the import in the destination country.

Conditions from the “D” group establish the seller’s responsibility for the arrival of the goods at the designated place or destination point at the frontier or on the territory of the importing country.

The seller must bear all the risks and costs of the transportation of the goods at their destination.

“D” Conditions are “arrival contracts” whereas “C” Conditions are “departure contracts”.

Use Recommendations

In certain cases, the recitals of the Incoterms rules recommend for the use or non-use of a certain condition, which is extremely important, especially with reference to the choosing between FCA and FOB.

III. Description of the conditions

As we have already mentioned, the Incoterms scope is limited to the problems connected with the rights and liabilities of the parties to the sell-purchasing contract, regarding the delivery of the goods sold.

Thus, Incoterms refer to a series of precise obligations imposed to the parties.

Seller's obligations refer to: a) delivery of the goods according to the contract; b) obligation regarding the obtaining of licenses, authorizations and the fulfillment of other formalities; c) obligation regarding the conclusion of the transport and insurance contracts; d) obligation of delivery of goods; e) transfer of risks; f) distribution of costs; g) obligation to notify the buyer; h) obligation to make the proof of the delivery; i) obligation to check, package and mark the goods; j) other obligations.

Buyer's obligations refer to: a) obligation to pay the price; b) obligation to obtain the import license or other official authorization and to fulfill, as the case may be, the customs formalities necessary for the import of the goods; c) obligation to conclude the transport and insurance contract; d) obligation of taking over of the goods; e) transfer of risks; f) distribution of costs; g) obligation to notify the seller; h) obligation to accept the proof of delivery, the transport document or the equivalent electronic message; i) obligation to check the goods; j) other obligations.

- **Seller's obligation to deliver the goods according to the contract**

The seller is obliged to deliver the goods and along with them the commercial invoice or an equivalent electronic message according to the sale-purchasing contract.

The seller shall also deliver any other proof of conformity that may be requested by contract.

- **Licenses, authorizations and formalities**

The seller is obliged to give to the buyer, upon his request, all the assistance for the obtaining, if appropriate, of any export license or of another official authorization, necessary for the export of the goods.

The only Incoterms rule in which the costs of such approaches are borne by the buyer is **EXW**. In this rule the buyer's obligation to deliver to the seller an adequate proof regarding the taken over of the goods is stipulated.

- **Proof of delivery, transport document or the equivalent electronic message**

On his own expense, the seller must deliver to the buyer the usual document proving the delivery of the goods.

In the case of the transport document, the seller has the obligation of giving to the buyer, upon his request, on his risk and expenses, all the assistance in the obtaining of a transport document.

The electronic message replaces the document stipulated in the event in which the seller and the buyer have agreed upon communicating through electronic means.

In the case of the **EXW condition**, this proof is not mandatory, but the parties may stipulate in the contract concluded by them the seller's obligation to provide this proof.

In the case of the **DAF condition**, if the parties agree upon the continuation of the transport beyond the frontier, the seller has the obligation to provide to the buyer, upon his request, on his risk and expenses, a direct transport document, usually obtained in the country of dispatching, to cover in a usual way the transport of the goods from the point of dispatching from that country to the place of final destination from the importing country, designated by the buyer.

- **Checking, packaging, marking**

The seller has the obligation to pay all the costs of those operations of checking, regarding the checking of the quality, measuring, weighting, counting.

These operations are necessary for the putting of the goods at the buyer's disposal.

The seller has also the obligation of packing the goods in an adequate way to the transport but only to the extent in which the circumstances regarding the transport are brought to his knowledge before the conclusion of the sale-purchasing contract.

- **Inspection of the goods**

If the contract does not provide otherwise, the costs of any inspection of the goods, made before their dispatching shall be borne by the buyer,

except the inspection commissioned by the authorities from the exporting country.

If the inspection has been made with a view to allow for the seller to comply with the mandatory provisions applicable to the export of the goods in their own country, he shall be obliged to pay for the respective control of the goods; if the condition EXW is used, the buyer shall bear the costs of the inspection in this case too.

- **Other obligations**

The seller has the obligation to provide the buyer, upon his request, on his risk and expenses with all the assistance in order to obtain any documents or equivalent electronic messages issued or transmitted in the country of delivery and / or origin that the buyer may request for the import and / or export of the goods and, if necessary, for their transit across another country.

Upon buyer's request, the seller has the obligation to provide him with the information necessary for the insurance.

Correlatively to the seller's obligation, the buyer has the obligation to pay all the costs and expenses resulted from the obtaining of the documents or equivalent electronic messages mentioned above and to reimburse the expenses borne by the seller in granting assistance.

In the case of the **DDP condition**, the seller bears all the costs and duties resulted from the obtaining of the documents. The seller shall reimburse the expenses borne by the buyer in the assistance provision.