Incoterms 2010 Workshop
AGENDA

Introduction to the International Trade Terms

Trade Terms: EXW; FCA; FAS; FOB; CFR; CIF

Trade Terms: CPT; CIP; DAT; DAP; DDP

Important Notes on Obligations, Risks and Exposure

Critical Transfer Points

Discussion and Wrap-Up
INTRODUCTION TO INTERNATIONAL COMMERCIAL (INCO) TERMS OF TRADE

- International Chamber of Commerce
  — Published the first set of international rules for the interpretation of trade terms in 1936

- American Foreign Trade Definitions of 1941
  — Obsolete in 1980 when INCO terms recommended

- Uniform Commercial Codes (Historically used by Ford)
  — Also known as FOB terms
  — Contractual terms between a buyer and seller
WHAT CHANGED – 2000 versus 2010 terms

1. 13 to 11 Inco terms
   — DAF, DES, DEQ, DDU replaced with DAT & DAP

2. From international sales contracts to International or domestic sales contracts

3. 4 Groups of Terms to 2 Classes
   — Rules for any mode of transportation
   — Rules for sea and inland waterway

4. Terms have addressed obligations between buyer and seller to obtain or provide assistance in obtaining security related clearances
PURPOSE OF INCOTERMS

- To provide a set of international rules for the interpretation of the most commonly used trade terms in foreign trade
- To standardize the international trade terms so that all parties understand their obligations and responsibilities
- To eliminate misunderstanding, disputes, and litigation caused from parties unaware of the different trading practices in their respective countries
Incoterms deal with the following:

1. Delivery of the Goods (from seller to buyer)
2. Buyer’s and Seller’s Obligations
3. Division of Costs and Risks (between buyer and seller)

Division of Costs
INCOTERMS stipulate whether the buyer or the seller is responsible for each of the costs involved in moving cargo from one point to another. (e.g. Local P/D, marking/packing, insurance premiums, transportation costs, etc.)

Division of Risks
INCOTERMS define the point in time when the seller has fulfilled his obligations to deliver the product in good condition into the custody of the buyer.
CATEGORIES OF INCOTERMS

E-Terms (EXW) - Origin/Departure
Terms whereby the seller makes the goods available to the buyer at the seller’s own premises and the buyer assumes all costs and risks involved to the final destination

F-Terms (FCA, FAS, FOB) – International Carriage NOT paid by Seller
Terms whereby the seller is called upon to deliver the goods to a carrier appointed by the buyer, and the buyer contracts and pays for main carriage

C-Terms (CFR, CIF, CPT, CIP) - International Carriage Paid by Seller
Terms whereby 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

D-Terms (DAT, DAP, DDP) – Arrival At Stated Destination
Terms whereby the seller has to bear all costs and risks needed to bring the goods to the country or to the named point of destination
RISK TO SELLER

EXW  Ex Works
FCA  Free Carrier
FAS  Freight Alongside Ship
FOB  Free on Board

CFR  Cost and Freight
CIF  Cost, Insurance and Freight
CPT  Carriage Paid To
CIP  Carriage and Insurance Paid To

DAT  Delivered at Terminal
DAP  Delivered at Place
DDP  Delivered Duty Paid

INCREASING LEVEL OF RISK TO THE SELLER

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SELLER AND BUYER RELATIONSHIP

1. Selling and buying goods internationally under a contract
   • Not assurance that insurable interests covered
   • Communicate terms to employees and freight forwarders
   • Most cases, sale to end user is informal quotation

2. Selling to an end user
   • Acceptance of informal quote by buyer usually in form of purchase order
   • Terms take on broadest interpretation
   • Absolute necessity that all shipments be insured from warehouse to warehouse on each international transaction
   • If buyer purchasing insurance, seller must purchase “sellers” risk insurance

   • Influences risk of loss (transfers to buyer upon issuance of the first bill of lading)
   • Also known as CISG – January 1988
   • Supercedes all commercial laws – unless specifically excluded
Sea vs. Multi-Modal Terms

EXW  Ex WORKS

SEA & Inland Waterway
- FAS  Freight Alongside Ship
- FOB  Free on Board
- CFR  Cost and Freight
- CIF  Cost, Insurance and Freight

MULTI-MODAL
- FCA  Free Carrier
- CPT  Carriage Paid To
- CIP  Carriage and Insurance Paid To
- DAT  Delivered at Terminal
- DAP  Delivered at Place
- DDP  Delivered Duty Paid
INCOTERM: EXW = Ex Works (…named place)

Export/Import Authorization: Buyer’s obligation unless otherwise specified
Contract for Carriage: Buyer
Contract for Insurance: Seller has no obligation to the buyer to provide insurance.
Delivery: At back-door of seller’s premises
Transfer of Risk: At back-door of seller’s premises
Transfer of Cost: At back-door of seller’s premises

IMPORTANT NOTE: This term holds the least amount of responsibility for the seller and the most for the buyer.
EX-WORKS Notes

1. Seller cannot load or assist in loading goods - if so, look at an FCA term (Big change from the 1990 terms - replaced FOB Factory)

2. Mostly used for express airfreight ie: Fedex, UPS

3. Packaging - buyer must notify seller of transportation mode and environment conditions

4. Only time, seller has not insurable interest. Buyer should take out warehouse to warehouse insurance

5. Exporter of record in Canada cannot be the freight forwarder
INCOTERM: FCA = Free Carrier (…named place)

Export/Import Authorization: Seller obligation to carry out all customs formalities for export
Contract for Carriage: Buyer
Contract for Insurance: Seller has no obligation to the buyer to provide insurance
Delivery: To the first carrier
Transfer of Risk: Upon delivery to the first carrier
Transfer of Cost: Upon delivery to the first carrier
FCA Notes

1. FCA unloaded replaces ex-works in 2000 INCO terms

2. Equivalent to FOB Factory under the American Foreign Trade Terms

3. Seller should purchase warehouse to warehouse insurance with option to transfer to buyer at transfer of risk point or sellers risk insurance. Buyer has risk once received at the place designated by them.

4. FCA loaded (sellers dock) = buyer contracts for carriage

5. FCA unloaded (at named place) = Seller contracts for carriage and includes inland freight

6. Seller’s responsibility to pack, mark, load, block and brace goods for safe transportation

7. Payment terms must be taken into consideration when selecting an INCO term - ie if a sight draft (exchange of documents before payment), company may want to consider CPT. Standard methods of payment for FCA are usually open account and cash in advance. If a letter of credit is used, and the seller does not agree with the method of consignment shown in the L/C, the L/C will be due based on the evidence (receipt of goods) that the goods have been delivered to the buyer.
INCOTERM: FAS = Free Alongside Ship (...named port of shipment)

**Export/Import Authorization:** Seller obligated to clear goods for export and carry out export customs formalities

**Contract for Carriage:** Buyer

**Contract for Insurance:** Seller has no obligation to the buyer to provide insurance

**Delivery:** Deliver alongside named vessel

**Transfer of Risk:** Upon delivery alongside the named vessel

**Transfer of Cost:** Upon delivery alongside the named vessel

**Note:** Seller must provide proof of delivery (ie. dock receipt)
FAS Notes

1. Standard methods of payment are open account and cash in advance

2. Goods are not containerized prior to delivery to the carrier

3. Buyer responsible for inland transportation

4. Seller should purchase warehouse to warehouse insurance with option to transfer to buyer at transfer of risk point or sellers risk insurance. Buyer has risk once received at the place designated by them.
INCOTERM: FOB = Free On Board (…named port of shipment)

Export/Import Authorization: Seller obligation to carry out all customs formalities and have the shipment cleared for export

Contract for Carriage: Buyer

Contract for Insurance: Seller has no obligation to the buyer to provide insurance

Delivery: Over the ship’s rail at the port of shipment

Transfer of Risk: Upon loading of the shipment “on board” vessel

Transfer of Cost: Upon loading of the shipment “on board” vessel

Note: Seller must provide proof of delivery (ie. ‘clean on board’ receipt)
FOB Notes

1. Ocean and inland waterway only

2. Bulk goods and not containerized - if containerized consider FCA, FAS or a C term)

3. Should not be used for sole purpose of shipping freight collect - “C” terms are more appropriate

4. Standard payment methods - open account or cash in advance

5. Buyer agrees to insure the goods, however, the seller understands they have insurable risk and will purchase sellers risk, or warehouse to warehouse insurance to cover their insurable interest until the buyer accepts responsibility
INCOTERM: CFR = Cost and Freight (…named port of destination)

Export/Import Authorization: seller’s obligation to carry out all customs formalities and have the shipment cleared for export.
Contract for Carriage: seller
Contract for Insurance: seller has no obligation to the buyer to provide insurance.
Delivery: to the named port of destination.
Transfer of Risk: upon loading of the shipment “on board” vessel
Transfer of Cost: upon delivery of the shipment at the named port of destination.
1. Not containerized- if so, look at CPT or CIP

2. Caution: Forwarders may containerize without your knowledge

3. Normally used for oversized or overweight goods that do not fit into a container - exceeding container weight or dimensions

4. May also consider CFR if shipped to the ocean carrier by rail in boxcars

5. CFR implies buyer doesn’t want seller to purchase insurance on buyers behalf - seller should purchase sellers risk insurance to cancel their risk.

6. If CFR term chosen by the seller - consideration should be given to the term CIF and a Certificate of Insurance purchased with option to transfer to buyer at point of risk transfer

7. All methods of payment can be used as control of goods in exchange for payment is not required (open account, cash in advance, a non-negotiable bill of lading). If seller wishes to exchange the title of goods for payment - a negotiable ocean freight bill of lading is used.
INCOTERM: CIF = Cost, Insurance and Freight (…named port of destination)

Export/Import Authorization: Seller obligated to carry out all customs formalities and have the shipment cleared for export.

Contract for Carriage: Seller

Contract for Insurance: Seller obligated to contract for insurance on behalf of the buyer (as the beneficiary)

Delivery: To the named port of destination.

Transfer of Risk: Upon loading of shipment “on board” vessel

Transfer of Cost: Upon delivery of shipment at named port of destination.
CIF Notes

1. Not appropriate to use if goods loaded into an ocean container

2. Usually limited to oversized or overweight goods exceeding dimensions and weight of a container

3. Minimum insurance required 110% of the value of goods and issued in currency of contract - some buyers may require more

4. Warehouse to warehouse insurance with option to transfer to buyer via certificate of insurance - important both parties are covered! CIF implies buyer is relying on seller to purchase insurance.

5. All methods of payment can be used
INCOTERM: CPT = Carriage Paid To (…named place of destination)

Export/Import Authorization: Seller obligated to carry out all customs formalities and have the shipment cleared for export

Contract for Carriage: Seller

Contract for Insurance: Seller has no obligation to buyer to provide insurance

Delivery: To named place of destination

Transfer of Risk: Upon delivery of shipment to the first carrier

Transfer of Cost: Upon delivery of shpt to named place of destination
CPT Notes

1. Intended for use in shipping by airfreight, containerized ocean shipments, multi-modal shipments, shipments made by an ocean freight consolidator or RO/RO goods

2. Change to 2000 terms is extended responsibility for additional costs such as unloading, duties and customs clearance or other costs, in the event that they are included in the bill of lading - typically encountered when using courier services for small shipments

3. All methods of payment can be used

4. Warehouse to warehouse insurance with option to transfer to buyer via certificate of insurance - important both parties are covered
INCOTERM:  CIP = Carriage Insurance Paid to (…named place of destination)

Export/Import Authorization:  Seller obligated to carry out all customs formalities and have the shipment cleared for export
Contract for Carriage:  Seller
Contract for Insurance:  Seller obligated to contract for insurance on behalf of the buyer (as the beneficiary)
Delivery:  To the named place of destination
Transfer of Risk:  Upon delivery of shipment to the first carrier
Transfer of Cost:  Upon delivery of shpt to named place of destination
CIP Notes

1. Sister term to CIF but allows containerization

2. Used for air shipments, containerized ocean shipments including multimodal, consolidated and ro/ro shipments

3. All methods of payment can be used

4. Warehouse to warehouse insurance with option to transfer to buyer via certificate of insurance - important both parties are covered - seller may chose to limit insurance to sellers risk with the established minimum coverage - 110% of value
INCOTERM: DAT = Delivered at Terminal (… named terminal at port or place of destination)

**Transfer of Cost / Transfer of Risk**

**Export/Import Authorization:** Seller obligated to carry out all customs formalities and have the shipment cleared for export

**Contract for Carriage:** Seller

**Contract for Insurance:** No obligation to buyer to provide insurance

**Delivery:** To the named place of destination before the customs border of the adjoining country

**Transfer of Risk:** Upon delivery of shipment, unloaded, at named place of destination

**Transfer of Cost:** Upon delivery of shipment, unloaded, at named place of destination
INCOTERM: DAP = Delivered at Place (…named place of destination)

Export/Import Authorization: Seller obligated to carry out all customs formalities and have the shipment cleared for export

Contract for Carriage: Seller

Contract for Insurance: No obligation to buyer to provide insurance

Delivery: To the named place of destination before the customs border of the adjoining country

Transfer of Risk: Upon delivery of shipment, not unloaded, at named place of destination

Transfer of Cost: Upon delivery of shipment, not unloaded, at named place of destination
DAT and DAP Notes


2. Like the terms they have replaced, DAT and DAP are “delivered” meaning the seller assumes all costs and risks associated with bringing the goods to the named destination. Excluded are costs associated with import clearance.

3. Used often for surface shipments to Mexico
INCOTERM: DDP = Delivered Duty Paid (…named place of destination)

**Export/Import Authorization:** Seller obligated to carry out all customs formalities and have the shipment cleared for export and import at the destination country

**Contract for Carriage:** Seller

**Contract for Insurance:** No obligation to the buyer to provide insurance

**Delivery:** At named place of destination

**Transfer of Risk:** Upon delivery of shipment at named place of destination

**Transfer of Cost:** Upon delivery of shipment at named place of destination

**IMPORTANT NOTE:** The seller should be very careful when using this term and familiarize self with customs of the importing country. For example, the country may not allow the seller to clear the goods from customs if they are not a resident in the importing country.
DDP Notes

1. Most typically used when point of delivery is a place other than the port or airport of unloading

2. Seller should purchase warehouse to warehouse insurance with option to transfer to buyer at transfer of risk point or sellers risk insurance.

3. Seller responsible for all transportation costs, customs formalities, duties, taxes and any other expenses - responsible for import permit and other OGA requirements

4. Term can be altered with regard to customs clearance - sharing of responsibilities (CAVEAT: If altering, consideration should also be given to the selection of another term that may be more suitable)

5. To protect self - stipulate that only the customs duty is covered and all other state and local taxes are excluded when quoting DDP

6. Spell out - DDP does not include “unloaded” Delivery means “available to buyer at designated place, cleared, duty paid, NOT unloaded....”
E-Terms (EXW) - Departure
• Seller makes goods available at the back door
• Buyer takes full responsibility once the goods have been placed at their disposal

F-Terms (FCA, FAS, FOB) - Main Carriage Unpaid (by seller)
• Seller delivers the goods to the first carrier or port of shipment
• Upon delivery, the buyer takes full responsibility of the goods

C-Terms (CFR, CIF, CPT, CIP) - Main Carriage Paid (by seller)
• Seller arranges for the export clearance and carriage to the name place / port of shipment of the goods
• Seller clears the goods for export, but does not assume any responsibility once the goods have been handed over to the first carrier or vessel

D-Terms (DAP, DAT, DDP) - Arrival
• Seller bears all costs and risks needed to bring the goods to the country or to the named point of destination
• With the exception of DDP, all are delivered without import clearance unless otherwise specified in the contract
Obligations

Risks &

Exposures

• Important notes and additional obligations
• Considerations when choosing an Incoterm
1. The Buyer’s Options

The buyer has a duty to name the precise point of delivery or transfer point. Failure to do so might result in a liability to bear the risks and additional costs resulting from such failure.

2. Customs Clearance

Normally, the exporter clears the goods for export while the importer clears the goods for import. However, under some trade terms, the buyer might undertake to clear the goods for export in the seller’s country (EXW), and vis-a-versa (DDP).

3. Packaging

The seller is obliged to pack the goods in such a manner as is required for the transport of the goods to the extent that is made known to him before the conclusion of the sales contract.
4. Transportation

1. INCOTERMS are completely different from the domestic freight terms defined in the Uniform Commercial Code (UCC) and used exclusively for transportation within the United States, although they share several identical acronyms. IE: As a UCC term for a domestic shipment, the terms FOB named place, and FOB destination are acceptable, but they have a completely different meaning from the Incoterms by the same name.

2. Under the Incoterms, goods cannot be FOB (Free on Board) and still be at the factory. Neither can they be FOB Destination, since FOB means “aboard a vessel”, at the port of departure for sea or inland waterway transport. On Board is explicit in its meaning: goods are not on board, until they have passed the ship’s rail.

3. It is essential that businesses understand that Incoterms 2010 may be used for both domestic and international contracts and transportation, while UCC terms are used ONLY for domestic transactions within the United States.
Uniform Commercial Codes (UCC)

UCC Terms, or better known as FOB terms, are contractual terms between a buyer and seller that indicate the following:

- title transfer
- responsibility for filing freight claims
- payment of freight charges

The following are the UCC FOB Terms:

**FOB Origin, Freight Collect**
- title and responsibility passes at seller dock

**FOB Origin, Freight Prepaid**
- title and responsibility passes at the sellers dock, seller pays freight

**FOB Origin, Freight Prepaid and Charged Back**
- title and responsibility passes at the sellers dock, seller pays freight, but charges customer on the sales invoice.

**FOB Destination, Freight Prepaid**
- title and responsibility passes at the buyers dock, seller pays freight

**FOB Destination, Freight Collect**
- title and responsibility passes at the buyers dock, buyer pays freight

**FOB Destination, Freight Collect and Allowed**
- title and responsibility passes at the buyers dock, buyer pays freight, but deducts it from the buyer’s invoice for the goods.
5. Inspection of the Goods
   Unless otherwise stated in the contract the buyer is responsible for the cost of a pre-shipment inspection.

NOTE: Under a DDP term, if the government of the country where the goods are being imported require a pre-shipment inspection then it would be the seller’s obligation.

6. Addition of Clauses to the Term
   Clauses may be added to a term in the sales contract to clarify the buyer and/or seller’s legal position. Such special provisions in the individual contract would supersede or vary anything which is set forth as a rule of interpretation in the various Incoterms.

7. Obligated Assistance
   All parties are obligated to assist in customs clearance, such as Country of Origin, export and import licensing, packaging suited for the hardest leg of the journey and other documentation.
FACTORS TO CONSIDER WHEN CHOOSING AN INCOTERM

1. Market Situation
   - Country infrastructure (i.e. road conditions, port condition, etc.)
   - Relationship with customer and/or customer reliability

2. Control
   - How much control do you want in the transportation of the goods
   - Political/economic stability in the country will help determine the amount of control you want to maintain in the shipment

3. Government Involvement
   - Customs policies of country of importation (i.e. do the customs authorities receive a commission on the penalties they give for imports?)
   - Does the country’s government require pre-shipment inspection on all shipment being imported
4. Insurance Restrictions
   • Many countries have restrictions on the purchase of insurance outside of the country. These restrictions are most predominant in countries where the insurance is provided by a local state company.
   • When the local company is restricted from purchasing insurance from an outside vendor, the INCOTERMS and contract should reflect this requirement.

5. Revenue Recognition
   • Revenue is not directly related to the INCOTERMS. Transfer of ownership and revenue recognition is dependent on the terms of payment and the INCOTERMS together.
   • Both variables should be clearly understood to determine exactly when revenue can be obtained and to ensure compliance.
THANK YOU!