

Sujet d'intérêt



The new ICC Incoterms® 2010

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In October 2010, the International Chamber of Commerce (ICC) published the new version of Incoterms®, Incoterms® 2010. The new rules took effect on January 1st, 2011. They are the ICC's official Incoterms® rules for the use of national and international trade terms. Incoterms® facilitate the transaction of world trade. They clearly define the respective obligations of each of the parties, the Seller and the Buyer, for the delivery of goods in relation to a sales contract and they greatly contribute to the reduction of inherent risks of legal disputes. Incoterms® basically point out the obligations, costs and risks in relation to the sale and delivery of goods between a Seller and a Buyer.

The new Incoterms®, of which there are 11, take the following aspects into consideration: global reality, security, the national trade context, fast-growing economic areas, electronic information, aid between the parties and its fair remuneration, and transport changes. Incoterms® establish the point of transfer of risks as being either the place of loading/pick-up or the place of destination.

The oft-used “FOB” now loses its place and has become reserved strictly for bulk maritime shipping, non-containerized goods. Meanwhile, in regard to the point of transfer of risk, the term “ship’s rail” is no longer used and it has been replaced by the notion of “on-board” the vessel.

Incoterms® do not define or regulate the transfer of ownership of goods. Nor do the rules regulate equipment installations, after-sales service, intellectual property, warranties, customs requirements or immigration requirements (individual) for on-site training and/or managing of the contracts.

If you or your representatives are more comfortable with the 2000 version, there is nothing preventing you from using it. It is extremely important that you always note the Incoterms® rule and the version (1990, 2000 or 2010) used in your sales contract. If there is no indication of the version being used, the 2010 version will be

automatically applied and recognized by all parties in the transaction. This will also be the case in matters of litigation. Of relevance, companies will eventually all have to update their practices and adopt the use of Incoterms® 2010 over time.

From the standpoint of cargo insurance, only two Incoterms® - CIF and CIP – require the Seller to take out an insurance policy. For the others, either the Seller or Buyer has to assess the risks based on the point of transfer of the risks, the value of the goods, mode of transport used and the country of destination. But one thing is certain: companies must, first of all, check their internal insurance contract pertaining to transport and the delivery of goods (Seller) locally or internationally. The same is true for the Buyer in the matter of receiving goods. Then it's up to the parties to decide as to whether to take out cargo insurance for their own benefit or for the benefit of the other party. In the case of financing or payment by letter of credit, banks can definitely make Incoterms® and cargo insurance compulsory.

Selecting the appropriate Incoterms® for your transactions isn't always obvious. You have to be familiar with all the basic issues involved in the sales transaction, including its financial and other risks, along with its limits and capacities internationally. To put it succinctly, you need to be in management and control mode.

There will always be questions upon which the parties will simply have to agree to, such as whether the freight is "in" or separate from the merchandise charges. On these points, the Incoterms don't replace negotiations between the parties and we discover this every day in the negotiation process. One party or the other would probably like to add or delete one of the selected Incoterms® terms. In this case, you have to legibly and clearly write, in parentheses, the addition or deletion. Here is an example: DDP, Paris, France (Excluding VAT), Incoterms 2010. This means the Canadian Seller will have to pay all costs up to the delivery of goods to Destination, including customs clearance in France, but that the French Buyer will have to pay the VAT. Also, according to Incoterms® DDP, the Seller will assume all risks up to Destination.

Intermediaries such as transporters, forwarders, insurers, customs brokers and others will arrange their work in relation to the Incoterms® selected by their client (Seller or Buyer). Make sure your intermediary has the same understanding of things as you do! Make sure the same information is written on all of your documents, including the payment documents: Ex: sales invoice, (Bill of lading), letter of credit and others.

Watch out for misleading interpretations! There are all of these elaborate tables and nice charts but unless they are from the ICC, they aren't official documents, and have no legal validity, whether they bear the ICC logo or not. They do nothing more than serve as a guide. Only the ICC prepared documents have official and legal validity.

What's happening in the United States? Since 2004, articles 2.319 to 2.324 of the famous UCC (Uniform Commercial Codes – FOB Plant, FOB Frontier and FOB Destination) have been deleted. They have been replaced by "Incoterms® for Americans®" and about 10,000 copies of the first version referring to Incoterms® 2000 were sold. In January 2011, they came out with a completely rewritten version to refer to Incoterms® 2010 ([see cover page here](#)). The document also gives us the Americans' viewpoint, in the context of national or international transactions.

In any case, getting the original and official documents (<http://www.iccwbo.org/incoterms/>) is a must and it's an essential tool to have and master. Is a training session required? In a group or in a business, it's something that is never a waste of time or money! It's an investment. Consulting an expert? Here again, it's an investment. Working in management mode and planning and learning how to reduce financial and legal risks and the related costs, and reduce the risks of losing clientele so that you can stay in business and make profits... on this, I'm with you all the way!

Best of luck in all your endeavours!

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