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## THE NEW ICC INCOTERMS® 2020

In September 2019, the International Chamber of Commerce (ICC) launched the newest version of Incoterms®, the Incoterms® 2020. These rules will enter in application on January 1<sup>st</sup>, 2020.

The ICC's official Incoterms® rules to be used as national and international trade terms. Incoterms® facilitate the transaction of world trade. They clearly identify and define the respective obligations of each of the parties in the trade, the Seller and the Buyer, for the delivery of goods specified in a sales contract; they greatly contribute to the reduction of inherent risks of legal disputes. Incoterms® essentially point out the obligation, costs and risks in relation to the sale and delivery of goods between a Seller and a Buyer.

The 2020 Incoterms®, numbering 11, are now incorporating specific guidance in the following elements: the growth of global trade giving a more immediate access to markets across the world, transactions of goods of all kinds have now reached a greater number of countries in greater quantities, more variety and at a faster rhythm. As volume and complexity of all these transactions increase, so do possibilities of misunderstandings, bringing forth expensive dispute settlements especially when sales contracts are not properly redacted.

The 2010 Incoterms® advisory notes are, along with the 2020 Incoterms®, detailed explanations legally binding as integral part of a contract. They are grouped, for each Incoterms®, under 10 sections (Obligations for each party). They represent good business practices regarding sales and purchases of goods between businesses (B2B).

The ICC, through a unique mix of advocacy, solutions and standard setting, promotes international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. This guarantees that the Incoterms® 2020 meet the needs of all companies worldwide.

[In the Incoterms® 2010, rules regarding DES and DDU were removed while DEQ was replaced by DAT and DAF was replaced by DAP. In the Incoterms® 2020, DAT is now replaced by DPU striking the "terminal" terminology deemed too restrictive.

For the ICC, "FCA" is the STAR of Incoterms® 2020, it is also the reference document privileged by all banks. New item: it is now possible to get an "On Board" bill of lading when requested by the buyer's bank in some financed transactions.



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A positive element, a well-defined point of transfer clearly identifies when goods are charged or not to the designated location or to the destination.

### **LOCATION “designated” – location of “delivery” – location of “destination”**

#### **For EXW-FCA-FAS-FOB**

- The designated location (named place) identifies where goods are to be delivered; AND
- Where risks are transferred from vendor to buyer

#### **For DAP-DPU-DDP**

- The designated location (named place) identifies the delivery point as well as the destination of the goods
- The vendor is responsible for carriage (transportation) cost and risks to this point

#### **For CPT-CIP-CFR-CIF**

- The designated location (named place) identifies where costs of the vendor ends regarding the carriage (transportation) of the goods
- However, this is not the location or port of delivery

The famous “FOB” has lost strength with the Incoterms® 2010. It is still restricted to bulk sea freight, non containerized goods or non-conventional merchandise. In addition, the point of transfer of liability referred to as “ship’s rail” is no longer used and 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 2010 version, there is nothing preventing you from using it. It is extremely important that you always note the Incoterms® rule and the version (2000 or 2010 or 2020) used in your sales contract. If there is no indication of the version being used, the 2020 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® 2020 over time.



Regarding 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 must 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, 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. In 2020, insurance requirements are different between CIP and CIF for needed coverage. For DDP, it is highly recommended that the vendor be assured as, in case of damages or losses, the vendor will assume the liability to the designated location.

Selecting the appropriate Incoterms® for your transactions isn't always obvious. You must 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 where the Parties will have to agree upon: whether the freight is “in” or separate from the merchandise charges is a good example. We discover often in the negotiation process, on these points, the Incoterms do not replace negotiations between the Parties. Either party would probably like to add or delete one of the selected Incoterms® obligation. In this case, you must legibly and clearly write, in parentheses, the addition or deletion. Here is an example: “DDP, Paris, France (Excluding VAT), Incoterms 2020”, so 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 excluding those during unloading process.

Intermediaries such as transporters, forwarders, insurers, customs brokers and others will organize their work in relation to the Incoterms® selected by their client (Seller or Buyer).

Make sure that the other Party has the same understanding of the transaction elements as you do! Make sure that the information written on all of your documents, including payment documents: Ex: sales invoice, (Bill of lading), letter of credit and others is the same.



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Watch out for misleading interpretations! There exist a variety of texts and of 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 can only be used as guide. Only documents prepared and issued by the ICC 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®” (<https://www.incotermsexplained.com/incoterms-americans/>). In January 2011, they came out with a completely rewritten version to refer to Incoterms® 2010. The document also gives us the Americans' viewpoint, in the context of national or international transactions. At the time of writing this document, there is yet to be an available document covering Incoterms® 2020.

In any case, getting the original and official documents (<https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020/>) is a must and it's an essential tool to have and master.

## RECOMMENDATIONS

- **Make sure that you are IN CONTROL!**
- **Make sure that your client understands the SAME conditions as you do in all aspects**
- With the 2020 Incoterms® advisory notes restricting some contractual agreements, it becomes imperative for companies to know and understand their Incoterms® to avoid negative surprises.
- All parties to a sale and purchase contract must consider the economical and regulatory environment in each other's country in their selection of the right INCOTERMS®. Should there be a doubt, “select a solution as simple and safe that you can master”.
- Always identify the delivery location – location designated (destination location for INCOTERMS® “C”)
- Always clearly identify the version of INCOTERMS® used for that transaction: INCOTERMS® 2010, INCOTERMS® 2020...
- Prioritize FCA or DAP (location), INCOTERMS® 2020; otherwise, CIF...

Is a training session required? Would it benefit you to consult an expert? In a group or in a business, it is never a waste of time or money! It's an investment!



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Work in management mode while planning and learning how to reduce financial and legal risks and the related costs. 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!

Thérèse Vanasse, Administrator  
President – Chairwoman  
Vanasse & Associés Consultants inc.  
[www.vanasse-associes.com](http://www.vanasse-associes.com)