

Incoterms® 2010 – What you need to know

The International Chamber of Commerce's Incoterms® 2010 came into force on 1 January 2011. This is a new edition of the domestic and international trade terms and all your clients involved in trading, importing and exporting should have reviewed their trading documents and practices to ensure that their contracts are up-to-date.

Incoterms® 2010 will only apply with force or law if the parties voluntarily contract on the basis of these terms. Otherwise, their relevance will be a guide only in the interpretation of sale terms and the parties' obligations. Incoterms® 2010 is not significantly different to the previous edition, but it does have some key simplifications and improvements:

1. The rules now more clearly state whether a term should be used for sea and inland water carriage only, or are suitable for any mode of transport. The majority of terms are ones in which maritime transport can, but does not have to, form part of the transit. In contrast, under FAS, FOB, CFR and CIF, because both the place of delivery and the place to which goods are carried are ports, these new terms should only be used for sea or inland water transport.
2. The reference to 'ship's rail' as the point of delivery under FOB, CFR and CIF terms has been deleted. These terms now refer to delivery 'on board' the vessel. This change is intended to reflect modern



commercial realities, rather than the antiquated image of goods dangling across the ship's rails at loading.

3. Incoterms® 2010 aims to encourage use in domestic sales of goods, and in trading blocs where import and export requirements might not apply. Therefore, the new rules expressly state that import and export obligations will only exist where applicable.
4. Electronic forms of documents, such as Commercial Invoices, are now treated in the same way as paper documents. This

will be the case under Incoterms® 2010 as long as the buyer and seller agree or where it is customary for electronic versions to be exchanged.

5. Obligations to obtain cargo insurance have been updated. For example, the new rules clarify that under CIF terms, the seller must obtain cover complying with at least the minimum cover provided by Clause C of the Institute Cargo Clauses (LMA/IUA) or any similar clauses. When required by the buyer, the seller must also procure

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additional cover, such as that provided by Institute Cargo Clauses A or B; or Institute War or Strikes Clauses.

6. Incoterms® 2010 now include an express obligation to obtain or render assistance in obtaining security clearances and information. For example, under articles A10/B10 of CIP terms, the seller must provide or render assistance in obtaining security related information that the buyer needs for import or transport of goods. This is at the buyer's risk and expense.
7. Perhaps the most important change in Incoterms® 2010 is the replacement of the terms DAF, DES, DEQ and DDU with two new terms - DAT and DAP, thus reducing the number of terms from 13 to 11.

Although Incoterms® 2010 brings some welcome clarifications and improvements to global trade rules, it remains up to buyers, sellers, insurers and others to ensure that the new rules are used correctly. As with previous editions of the Incoterms, care should always be taken to ensure that Incoterms® 2010 is properly incorporated into a contract. The terms of trade should specify the chosen term, the pivotal place in the contract, and that the 2010 version of the rules applies.

For example, a commercial invoice should state 'FCA Melbourne, Australia, Incoterms® 2010,' rather than just 'FCA Melbourne' as would more commonly appear, and which does not nominate any particular version of the Incoterms.

Furthermore, care should always be taken to adopt the correct term for particular goods, rather than just referring to the more well known terms. As Incoterms® 2010 cautions – FOB is unlikely to be the appropriate term for containerised cargo, which is typically delivered at a terminal. In this situation, FCA is usually the rule to apply.

While Incoterms® 2010 might not revolutionise business, its introduction certainly provides a timely reminder to ensure that trading documents are up-to-date. Bills of lading, cargo insurance policies and a myriad of other template documents produced by companies, may refer to old versions of the rules, or use the soon to be defunct terms DAF, DES, DEQ or DDU. Prudent traders, exporters and importers would be well advised to take a proactive approach to the new rules, and to capitalise on the use of electronic communications.

New Terms:

DAT – Delivered at Terminal. Under this new term, delivery occurs at the named destination, at the buyer's disposal unloaded from the arriving vehicle. This is similar to the former DEQ term. This term can be used for any or multimodal transport and the named place for delivery can be a port. Goods are delivered with the seller bearing all risks and costs (other than import costs where applicable) to the named destination.

DAP – Delivered at Place. Under this new term, delivery occurs at the named destination, but ready for unloading (not unloaded). This is similar to the former DAF, DES and DDU terms. This term can be used for any multimodal or maritime transport, as the arriving 'vehicle' can be a ship and the named destination can be a port. Goods are delivered with the seller bearing all risks and costs (other than import costs where applicable) to the named destination.

For a quick reference guide to the new Incoterms® 2010 go to:
workin.eu/resources/incoterms%202010.gif

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