# New Incoterms 2010 summary of the principal changes to Incoterms 2000

On 1 January 2011, the ICC's Incoterms 2010 come into force. These are the eighth revision of the Incoterm Rules, with the last revision dating back to 2000. The new Rules have been revised to take into account developments in international trade over the past ten years as the volume and complexity of global sales has increased, to address security issues arising in recent times and to provide for the ongoing changes in electronic communication. The new Rules also recognize the growth of customs-free areas.

One of the principal concerns with regard to the Incoterms has been that often the wrong term is selected for use by the parties. The introduction to the new 2010 Rules stresses the need to use the term appropriate to the goods, to the chosen means of transport and to whether or not the parties intend to impose additional obligations on the seller or buyer. In addition, there are Guidance Notes (and a diagram) at the front of each Incoterms Rule containing information to assist in making a choice on which Rule to use.

Summarized below are the principal changes to the 2000 version.

Reclassification of Rules

The new Rules have been separated into two classes: (i) Rules for use in relation to any mode or modes of transport, which can be used where there is no maritime transport at all or where maritime transport is used for only part of the carriage and (ii) Rules for sea and inland waterway transport, where the point of delivery and the place to which the goods are carried to the buyer are both ports.

FAS, FOB, CFR and CIF belong to the second class of Rules. In respect of FOB, CFR and CIF, reference to the "ship's rail" has now been deleted and this has been replaced with the goods being delivered when they are "on board" the vessel.

Rules apply to domestic as well as international trade

The Incoterms have traditionally been used for international sale contracts even though some trade blocs, such as the European Union, have minimized the significance of border formalities. The new Rules now recognize that they can also be used for domestic sale contracts and reference is made in a number of the Rules that export and import formalities will only need to be complied with where applicable. It is anticipated that this change may encourage greater use of the Rules in the USA in place of the former US Uniform Commercial Code.

Two new terms replace four current terms

Incoterms 2000 contained 13 Rules, which have been reduced to 11 terms in Incoterms 2010. This has been achieved by introducing two new Rules to replace five current Rules. The two new Rules may be used irrespective of the mode of transport selected and under both new Rules, delivery takes place at a named destination. In essence, the "D" (Delivered) terms under the 2000 Rules have been consolidated to reduce the number of terms that were considered to have little real difference between them.

DAT (Delivered at Terminal) replaces DEQ (Delivered ex Quay). DAT may be used irrespective of the mode of transport selected and may also be used where more than one mode of transport is employed. "Delivered at Terminal" means that the seller delivers when the goods, having been unloaded from the arriving means of transport, are placed at the buyer's disposal at a named terminal at the named port or place of destination. DAT requires the seller to clear the goods for export where applicable but the seller has no obligation to clear the goods for import, pay any import duty or carry out any import customs formalities. It was considered that DAT would prove more useful than DEQ in the case of containers that might be unloaded and then loaded into a container stack at the terminal, awaiting shipment. There was previously no term clearly dealing with containers that were not at the buyer's premises.

DAP (Delivered at Place) replaces DAF, DES, DEQ and DDU. The arriving "vehicle" under DAP could be a ship and the named place of destination could be a port. Consequently, the ICC considered that DAP could safely be used instead of DES and that it would make the Rules more "user-friendly" if they abolished terms that were fundamentally the same. Again, a seller under DAP bears all the costs (other than any import clearance costs) and risks involved in bringing the goods to the named destination.

String sales

Commodities are often sold several times over during transit through a string of sale contracts. There will therefore be more than one seller and only the first seller will have been responsible for shipping the goods. The new Rules have been amended to reflect this. For example, CIF and CFR now refer to an obligation to "contract or procure a contract for the carriage of the goods…".

Terminal handling charges

Under certain Incoterms 2000 Rules (e.g. CIF/CFR), the buyer potentially faced paying for the same service twice. The seller was including freight costs as part of the sale price, yet the buyer was sometimes expected by the carrier or terminal operator to pay the costs of handling and moving the goods within the port or container terminal facilities. Incoterms 2010 seek to avoid this potential double exposure by clearly allocating such costs under the relevant Rules.

Insurance cover and security related clearances

The new Rules take into account the 2009 revision of the Institute Cargo Clauses and expressly provide for information duties relating to insurance. They also allocate obligations between the buyer and seller in respect of obtaining or assisting in obtaining security-related clearances for the goods in question.

Electronic communication

The previous Rules provided for the use of Electronic data interchange (EDI) messages, where the parties had agreed to use them. Given the evolution of new electronic procedures and the likelihood that such procedures will continue to evolve, Incoterms 2010 provide instead for the use of paper communications or "equivalent electronic record or procedure" where agreed or customary.

Application of Incoterms 2010

As with the previous versions of Incoterms, if parties wish the Incoterms 2010 to apply to their sale contract, they should expressly provide for this in the contract. "Incoterms 2010" rather than just "Incoterms" should be referred to in the sale contract if it is the intention to incorporate the latest version, so as to avoid any subsequent dispute as to which set of Rules applies. If the parties wish to incorporate a specific Rule from Incoterms 2000, or all of Incoterms 2000, again they should make specific reference to this in the contractual document.