



THE 6<sup>TH</sup> EDITION OF THE INTERNATIONAL CONFERENCE  
EUROPEAN INTEGRATION  
REALITIES AND PERSPECTIVES

**The Implications of the Modernization of  
International Transactions: INCOTERMS 2010**

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**Abstract:** Over time, in the global trade relations were formed a few types of individual international sales, particularly in relation to how the obligations of the parties are defined. Collection and collation of commercial practices in international sale of goods found their first expression in a coded form in 1936 under the auspices of the International Chamber of Commerce in Paris as Trade Terms – Trade Terms. The paper was the result of laborious work of several trading experts, assembling in a Special Committee, constituted on the occasion of the first Congress of the International Chamber of Commerce, whose works were held in Paris in 1920. The significant development of international trade determined the elaboration by the International Chamber of Commerce of a new set of codified practices, known as Incoterms 2010, which applied from 1<sup>st</sup> January 2011. Since the last review in 2000, there have been many changes in global trade, which makes the current review to consider issues related to development of techniques used to secure the load and the need to replace paper documents with the electronic ones. The new terms of delivery clearly define the obligations of the parties and reduce the risk of legal complications.

**Keywords:** incoterms 2010; the seller's obligations; the buyer's obligations; legal implications

## 1. Introduction

The negotiation and conclusion of foreign trade contract of sale-purchase of goods has a great complexity of issues related to the orientation and guiding of the parties involved, for which requires a sound knowledge of the technique of negotiations, legislation and practices in foreign trade, international settlements, of expedition and customs international insurance, the profitability calculations and more. In this context, choice and inclusion in the trade contracts of the most favorable terms, at a certain moment, both the seller and the buyer, presents a particular importance, the relationships between them are governed by all the terms stipulated in the contract, some of them being specifically agreed and others chosen from among those used in current practice, integrated, of the international trade. (Rules and commercial usage, 2001)

In the practice of foreign trade were settled habits of a normative nature on the conclusion of contracts. The usages complete the contract between the parties and have a special significance because facilitate the negotiations between the contracting parties and accelerate the conclusion of contracts. (Ciobanu, 2008) Among general practices, the most important for the international trade are those that relate to

the delivery conditions and international payments. (Costin & Deleanu Sergiu, 1997) The purpose of "INCOTERMS rules" is to provide a set of international rules for interpretation of the most commonly used trade terms in foreign trade. Thus, the ambiguity of different interpretations of these conditions in different countries can be avoided or at least reduced to a considerable extent. Frequently, the contracting parties do not know the various current trade practices in the partner countries. This may cause misunderstandings, controversies and litigation, with all the waste of time and money they generate. It was therefore necessary to codify and standardize these trade conditions, activity which was the responsibility of the International Chamber of Commerce in Paris.

## **2. Brief history of INCOTERMS rules**

To provide traders a set of international rules for interpreting trade conditions most commonly used in international trade and thereby contributing to the simplification of the negotiation of goods sale and the conclusion of commercial contract, since 1928 six delivery conditions or commercial terms have been prepared by International Chamber of Commerce in Paris, intended to establish rules for the interpretation of the principles of international sales, especially as they had a more uncertain and contradictory character. (Rules and commercial usage INCOTERMS 2000, 2001)

The first „INCOTERMS Rules”<sup>1</sup>, complete with uniform rules of interpretation has been published by the International Chamber of Commerce in Paris (ICC-Paris)<sup>2</sup> in 1936. The 11th international commercial terms included in INCOTERMS 1936, also known as "terms of delivery", succeeded to define the seller's and the buyer's obligations better and more complete than the one from 1928 and Incoterms 1936 was accepted by the vast majority traders, with the exception of the British and Americans. (Caraiani, Mihai & Gearâp, 2001, p. 37)

As the world trade development, the changes that have occurred since implementation of international transport and modernization that characterized the evolutionary process of international economic life, "Working committee for trade practices" under ICC-Paris revised, completed and systematized in several occasions, namely in 1953, 1967, 1976, 1980, 1990, 2000 and the last edition of "INCOTERMS-2010", in force since the 1<sup>st</sup> of January 2011.<sup>3</sup>

The rules represent essentially the representatives positions (practices) of the main trends which shows in international trade: the new current "reformer", which aims to integrate (uniform) the global trade practices in order to achieve a wider opening to allow the participation of international exchange, in favorable terms of all states in the world and the "conservative" current in particular supported by some developed powerful countries, still trying to maintain some favorable practices, practices derived from the position of economic supremacy, which they have gained over time.

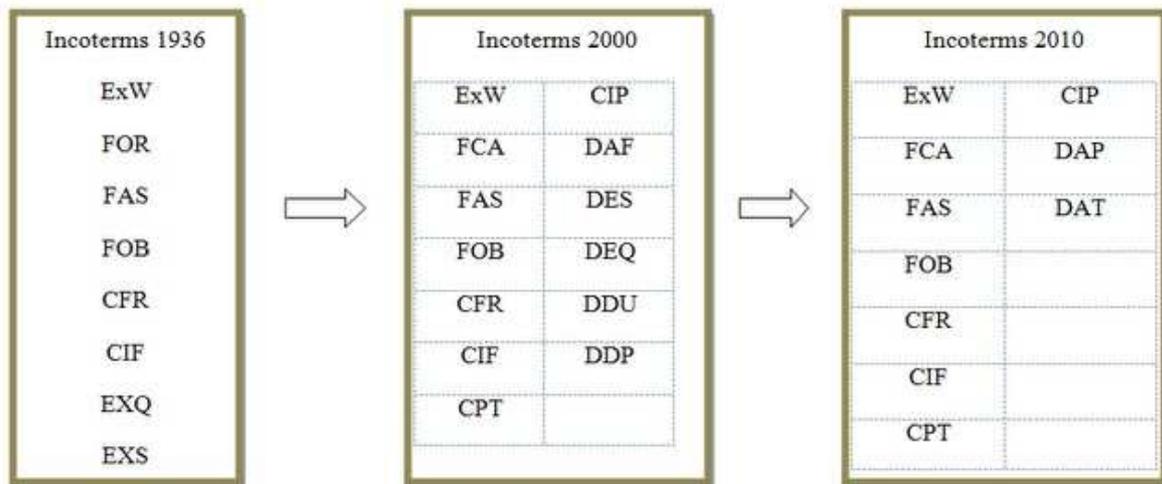
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<sup>1</sup> International Commercial TERMS.

<sup>2</sup> Non-governmental organization, founded in 1919, operating through the National Committees (in 66 countries), working Committees and liaison Offices (in addition to UN and other international organizations in New York and Hong Kong).

<sup>3</sup> Agreements concluded before this date, remain according to regulation of the earlier forms of INCOTERMS.



*Schema 1 Evolutia clauzelor Incoterms 1936 - 2000 - 2010*

### Scheme 1 Terms evolution Incoterms 1936-2000-2010

The need to amend the terms of international trade in 2010 was due to the new reality of EU countries which have no borders to the movement of capital goods and persons. The intra-community trade is not international but "domestic". Another argument in favor of the new edition of Incoterms referred to the language and terms necessity to adapt to new realities of information technology. Thus, the new review takes into account the electronic commerce and electronic invoice system and data transfer (Electronic Data Interchange) thus preparing Incoterms 2010 to respond better to these realities increasingly ubiquitous. Changes in transport practices which were more and more combined, led to disputes and difficulties in interpreting the Incoterms 2000 clauses. Thus a new edition of these terms comes to remove these ambiguities. Terrorist attacks becoming more frequent condition a better security and monitoring of freight transport, Incoterms 2010 comes to conform better to this reality. To the arguments listed is added the usage argument. Thus many Incoterms 2000 clauses were not used in practice so in 2010 comes the time when these clauses are removed.

### 3. Content of INCOTERMS 2010 rules

The arguments listed above led to the current version of Incoterms 2010. Compared with Incoterms 2000 - Incoterms 2010 has undergone major changes both in form and content. We will present further on the regulated delivery conditions INCOTERMS 2010, following the classification of delivery Conditions applicable for all types of transport and delivery Conditions applicable to freight and land transport and then we will highlight the changes suffered by the previous version.

#### The delivery conditions applicable to all types of transport

##### EXW (EX WORKS)

It is the most convenient delivery condition for the seller who must provide packaged goods to the buyer, the latter being obliged to charge at his expense and risk.

The product and the risks are transferred to the buyer, including the transport payment and insurance incus from the seller's factory gate.

Where appropriate, the seller must provide at the request, at the expense and risk of the buyer assistance in getting his license, the export authorization or any other documents required to export goods.

**FCA (Free Carrier)**

The carrier Franco means that the seller fulfills his delivery obligation when the goods are handed over, if necessary, cleared for export, in care of the carrier or other person designated by the buyer at the agreed place or point. If the buyer does not indicate a precise point, the seller can choose the point from the place or territorial area mentioned where the carrier will take the cargo in his custody. If according to trade practices, it is necessary the support of the seller to close the contract with the carrier (such as in railway and air transport), the seller acts at the buyer's risk and expense.

**CPT (Carriage Paid To)**

The seller pays for transportation of goods to the agreed destination. The risk of loss or damage of the goods, and any other additional costs caused by events that took place after the goods have been delivered to the carrier passes from the seller to the buyer when the goods have been delivered to the carrier. If the transportation of goods uses successive carriers, the risks pass from the seller to the buyer when the goods have been delivered to the first carrier. CPT term requires the seller's obligation to clear the goods for export. This term may be used for all ways of transport including multimodal transport.

**CIP (Carriage and Insurance Paid)**

The seller has the same obligations as at the CPT term but in addition; he has to carry additional insurance coverage and risk of loss or damage to goods during transport. The seller closes the contract and pays the insurance premium. The buyer should note that in CIP case the seller is required to obtain insurance premium for minimum coverage. CIP term requires the seller's obligation to clear the goods for export. This term may be used for all ways of transport including multimodal transport.

**DAT (Delivered at Terminal)**

The seller delivers and unloads from the transport at the terminal (the port or place) set with the buyer. Terminal means any place, such as: breakwater, storage, street, cargo terminal, railway terminal. The seller covers all costs for delivery and unloading at the terminal set. It is recommended that the concept of Terminal to be well defined. DAT covers the export customs clearance formalities, but DOES NOT include the cost of import customs clearance formalities.

**DAP (Delivered at Place)**

Description: The seller delivers the goods in suitable transport at the place set with the buyer. The seller covers all costs for delivery and unloading at the terminal set with the buyer. It is recommended that the concept of terminal to be well defined. If the seller bears the costs of unloading the goods at destination, he is NOT entitled to re-invoice these costs to the buyer. It is recommended that the concept of PLACE to be well defined. DAP covers the export customs clearance formalities but DOES NOT include the cost of import customs clearance formalities.

**DDP (Delivered Duty Paid)**

The seller fulfills his delivery obligation when the goods have been provided to the buyer at the specified place in the importing country. The seller must bear all costs and risks of bringing goods in this place including customs duties, taxes and other official charges payable upon importation as well

as the costs and risks of compliance with formalities. This term may be used regardless of the way of transport.

### **Delivery conditions applicable to freight and land transport**

#### **FAS (Free Alongside Ship)**

The seller fulfills his delivery obligation when the goods have been placed along the vessel on the breakwater or flat-boats, barges or ferry in the port of shipment set with the buyer. This means that all costs and risks of loss or damage to goods shall be borne by the buyer at that time. FAS term requires the buyer's obligation to clear the goods for export and should not be used if the buyer cannot meet directly or indirectly the export formalities. This term may be used only for freight or inland waterway transport.

#### **FOB (Free On Board)**

The seller fulfills his delivery obligation when the goods pass the ship's rail at the port of shipment set with the buyer. The costs and risks of loss and damage to goods shall be borne by the buyer at that time. FOB term requires the seller's obligation to clear the goods for export. This term may be used only for freight or inland waterway transport. If the ship's rail is not relevant, such as in the case of roll-on/roll-off traffic or container it is more appropriate to use the FCA term.

#### **CFR (Cost & Freight)**

The seller must pay the freight, and the necessary costs for bringing goods to the agreed port of destination but the risk of loss or damage of the goods, and any additional costs due to events occurring after the goods have been delivered on board is transferred from the seller to the buyer when the goods pass the ship's rail at the port of loading. CFR term requires the seller's obligation to clear the goods for export. If the ship's rail is not relevant, such as in the case of roll-on/roll-off traffic or container it is more appropriate to use the CPT term.

#### **CIF (Cost, Insurance and Freight)**

The seller has the same obligations as in the CFR term case, but in addition, he must perform maritime insurance to cover the buyer's risk of cargo lost or damage during shipping. The seller closes and pays the insurance contracts and pays the insurance premium. The seller should note that in CIF term case, the seller is required to obtain minimum insurance coverage. CIF term requires the seller's obligation to clear the goods for export. If the ship's rail is not relevant, such as in the case of roll-on/roll-off traffic or container it is more appropriate to use the CIP term.

### *Structural Changes*

1. The first structural change brought by Incoterms 2010 compared with Incoterms 2000 is to reduce the terms from 13 (Incoterms 2000), to 11 (Incoterms 2010)
2. The next structural change takes place in Group D, which suffered the biggest changes. Replacing the terms DAF, DES, DEQ, DDU, with DAP (Delivered At Place) and DAT (Delivered at the Terminal).
3. Another change that is at the intersection notions of structure and concept is to adjust the trade terms to the realities of technological progress. According to the new rules the electronic invoice or electronic signatures are recognized and can serve as evidence in settling disputes. Moreover Incoterms 2011 language itself seeks the usage of electronic interfaces in international trade.

### Conceptual changes

1. The first conceptual change is stated on the cover of the Incoterms 2010 guide published by the ICC. Incoterms are not clauses of international trade but also of "domestic" trade and that in order to adapt to new realities when different EU countries trade within the same free trade area.
2. Another structural change is the division into groups and incoterms clauses. Thus, in accordance with Incoterms 2000 clauses were divided into 4 groups: group E, group F, group C and group D. In Incoterms 2010 the division of these classes is kept at the form level, but at the conceptual level is formed only 2 groups: group of clauses that can be applied to all ways of transport (ExW, FCA, CPT, CIP, DAP, DAT, DDP) and the group of clauses which may apply only for freight and inland waterway transport (FAS, FOB, CIF, CFR).
3. The next conceptual change hanging over all the clauses of Incoterms 2010 is the seller's and / or the buyer's obligation to ensure security of goods shipped.
4. A final conceptual change is the obvious tendency to simplify the trade terms so as to be more easier to interpret them without ambiguity and to facilitate the understanding of these terms for traders.

## 4. Conclusions

The primary intention in the interventions made in the INCOTERMS rules, was to clarify the issues at the outset, meaning from the phase of negotiation and conclusion of international sales contract, the contract is the one that actually triggers the conduct of all subsequent operations as: packing, individualization, transportation, insurance, customs clearance, document flow, payment, collection, etc. In this way, the INCOTERMS rules have managed to overcome all borders, representing a common language of business, regardless of the country (market) in which they are used, with direct implications on certain habits which make a discordant note in the trade relations between Europe – Eastern, Europe and the American Continent, American Continent and African Continent etc.

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