The 13 Incoterms - FAQs about the basics

Why Incoterms?
Incoterms are international rules that are accepted by governments, legal authorities and practitioners worldwide for the interpretation of the most commonly used terms in international trade. They either reduce or remove altogether uncertainties arising from differing interpretations of such terms in different countries.

What do they cover?
The scope of Incoterms is limited to matters relating to the rights and obligations of the parties to the contract of sale with respect to the delivery of goods sold, but excluding "intangibles" like computer software.

What are the 13 Incoterms?
Each Incoterm is referred to by a three-letter abbreviation. Here is a complete list, with the meanings spelled out.

EXW EX WORKS

FCA FREE CARRIER

FAS FREE ALONGSIDE SHIP

FOB FREE ON BOARD

CFR COST AND FREIGHT

CIF COST, INSURANCE AND FREIGHT

CPT CARRIAGE PAID TO

CIP CARRIAGE AND INSURANCE PAID TO

DAF DELIVERED AT FRONTIER

DES DELIVERED EX SHIP

DEQ DELIVERED EX QUAY

DDU DELIVERED DUTY UNPAID

DDP DELIVERED DUTY PAID

What does it take to use Incoterms correctly?

ICC recommends that "Incoterms 2000" be referred to specifically whenever the terms are used, together with a location. For example, the term "Delivered at Frontier (DAF)" should always be accompanied by a reference to an exact place and the frontier to which delivery is to be made. To prevent misunderstandings, variations of the three-letter Incoterms should be strictly avoided.

Here are three examples of correct use of Incoterms:
FCA Kuala Lumpur Incoterms 2000
FOB Liverpool Incoterms 2000
DDU Frankfurt Schmidt GmbH Warehouse 4 Incoterms 2000

Why do Incoterms need revising periodically?
The main reason is the need to adapt Incoterms to contemporary commercial practice. For instance, in the 1990 version, the clauses dealing with the seller's obligation to provide proof of delivery allowed paper documentation to be replaced by e-mail for that purpose for the first time.

Can you name some main innovations in Incoterms 2000?
They take account of international traders' growing reliance on intermodal transport. Increased use of FCA (Free Carrier) prompted ICC to simplify delivery obligations under this term. A further advantage of the new Incoterms is that they clearly allocate the loading and unloading requirements of both buyer and seller.

Two other changes are worth mentioning:

Under FAS (FREE ALONGSIDE SHIP) the seller is required to clear the goods for export. This is a reversal from previous Incoterms versions, which required the buyer to arrange for export clearance.

Under DEQ (DELIVERED EX QUAY) the buyer is required to clear the goods for import and to pay for all formalities, duties, taxes and other charges upon import. This is a reversal from previous Incoterms versions, which required the seller to arrange for import clearance.

I keep reading about "E"-terms and "C"-terms. What does that mean?
Incoterms 2000, like its immediate predecessor, groups the terms in four categories denoted by the first letter in the three-letter abbreviation.

- Under the "E"-term (EXW), the seller only makes the goods available to the buyer at the seller's own premises. It is the only one of that category.
- Under the "F"-terms (FCA, FAS and FOB), the seller is called upon to deliver the goods to a carrier appointed by the buyer.
- Under the "C"-terms (CFR, CIF, CPT and CIP), the seller has to contract for carriage, but without assuming the risk of loss or damage to the goods or additional costs due to events occurring after shipment or dispatch.
- Under the "D"-terms (DAF, DES, DEQ, DDU and DDP), the seller has to bear all costs and risks needed to bring the goods to the place of destination.

All terms list the Seller's and the Buyer's obligations. The respective obligations of both parties have been grouped under up to 10 headings where each heading on the seller's side "mirrors" the equivalent position of the buyer. Examples are: Delivery, Transfer of risks, Division of costs.

This layout helps the user to compare the parties' respective obligations under each Incoterm.

EXW

EX WORKS
(... named place)

"Ex works" means that the seller delivers when he places the goods at the disposal of the buyer at the seller's premises or another named place (i.e. works, factory, warehouse, etc.) not cleared for export and not loaded on any collecting vehicle.

This term thus represents the minimum obligation for the seller, and the buyer has to bear all costs and risks involved in taking the goods from the seller's premises.

However, if the parties wish the seller to be responsible for the loading of the goods on departure and to bear the risks and all the costs of such loading, this should be made clear by adding explicit wording to this effect in the contract of sale[1]. This term should not be used when the buyer cannot carry out the export formalities directly or indirectly. In such circumstances, the FCA term should be used, provided the seller agrees that he will load at his cost and risk.

[1] Refer to Introduction paragraph 11.

VARIANTS OF INCOTERMS

(11 of the Incoterms 2000 Introduction)

In practice, it frequently happens that the parties themselves by adding words to an Incoterm seek further precision than the term could offer. It should be underlined that Incoterms give no guidance whatsoever for such additions. Thus, if the parties cannot rely on a well-established custom of the trade for the interpretation of such additions they may encounter serious problems when no consistent understanding of the additions could be proven.

If for instance the common expressions "FOB stowed" or "EXW loaded" are used, it is impossible to establish a world-wide understanding to the effect that the seller's obligations are extended not only with respect to the cost of actually loading the goods in the ship or on the vehicle respectively but also include the risk of fortuitous loss of or damage to the goods in the process of stowage and loading. For these reasons, the parties are strongly advised to clarify whether they only mean that the function or the cost of the stowage and loading operations should fall upon the seller or whether he should also bear the risk until the stowage and loading has actually been completed. These are questions to which Incoterms do not provide an answer: consequently, if the contract too fails expressly to describe the parties' intentions, the parties may be put to much unnecessary trouble and cost.

Although Incoterms 2000 do not provide for many of these commonly used variants, the preambles to certain trade terms do alert the parties to the need for special contractual terms if the parties wish to go beyond the stipulations of Incoterms.

EXW — the added obligation for the seller to load the goods on the buyer's collecting vehicle;

CIF/CIP — the buyer's need for additional insurance;

DEQ — the added obligation for the seller to pay for costs after discharge.

In some cases sellers and buyers refer to commercial practice in liner and charter party trade. In these circumstances, it is necessary to clearly distinguish between the obligations of the parties under the contract of carriage and their obligations to each other under the contract of sale. Unfortunately, there are no authoritative definitions of expressions such as "liner terms" and "terminal handling charges" (THC). Distribution of costs under such terms may differ in different places and change from time to time. The parties are recommended to clarify in the contract of sale how such costs should be distributed between themselves.

Expressions frequently used in charterparties, such as "FOB stowed", "FOB stowed and trimmed", are sometimes used in contracts of sale in order to clarify to what extent the seller under FOB has to perform stowage and trimming of the goods onboard the ship. Where such words are added, it is necessary to clarify in the contract of sale whether the added obligations only relate to costs or to both costs and risks.

As has been said, every effort has been made to ensure that Incoterms reflect the most common commercial practice. However in some cases – particularly where Incoterms 2000 differ from Incoterms 1990 – the parties may wish the trade terms to operate differently. They are reminded of such options in the preamble of the terms signalled by the word "However".

FCA

FREE CARRIER
(... named place)

"Free Carrier" means that the seller delivers the goods, cleared for export, to the carrier nominated by the buyer at the named place. It should be noted that the chosen place of delivery has an impact on the obligations of loading and unloading the goods at that place. If delivery occurs at the seller's premises, the seller is responsible for loading. If delivery occurs at any other place, the seller is not responsible for unloading.
This term may be used irrespective of the mode of transport, including multimodal transport.
"Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport by rail, road, air, sea, inland waterway or by a combination of such modes.
If the buyer nominates a person other than a carrier to receive the goods, the seller is deemed to have fulfilled his obligation to deliver the goods when they are delivered to that person.

FAS

FREE ALONGSIDE SHIP

(... named port of shipment)

"Free Alongside Ship" means that the seller delivers when the goods are placed alongside the vessel at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that moment.

The FAS term requires the seller to clear the goods for export.

THIS IS A REVERSAL FROM PREVIOUS INCOTERMS VERSIONS WHICH REQUIRED THE BUYER TO ARRANGE FOR EXPORT CLEARANCE.

However, if the parties wish the buyer to clear the goods for export, this should be made clear by adding explicit wording to this effect in the contract of sale[1].

This term can be used only for sea or inland waterway transport.

[1] Refer to Introduction paragraph 11.

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(11 of the Incoterms 2000 Introduction)

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As has been said, every effort has been made to ensure that Incoterms reflect the most common commercial practice. However in some cases – particularly where Incoterms 2000 differ from Incoterms 1990 – the parties may wish the trade terms to operate differently. They are reminded of such options in the preamble of the terms signalled by the word "However".

FOB

FREE ON BOARD
(... named port of shipment)

"Free on Board" means that the seller delivers when the goods pass the ship's rail at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point. The FOB term requires the seller to clear the goods for export. This term can be used only for sea or inland waterway transport. If the parties do not intend to deliver the goods across the ship’s rail, the FCA term should be used.

CFR

COST AND FREIGHT
(... named port of destination)

"Cost and Freight" means that the seller delivers when the goods pass the ship's rail in the port of shipment.

The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer.

The CFR term requires the seller to clear the goods for export.

This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the CPT term should be used.

CIF

COST, INSURANCE AND FREIGHT
(... named port of destination)

"Cost, Insurance and Freight" means that the seller delivers when the goods pass the ship's rail in the port of shipment.

The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer. However, in CIF the seller also has to procure marine insurance

against the buyer's risk of loss of or damage to the goods during the carriage.

Consequently, the seller contracts for insurance and pays the insurance premium. The buyer should note that under the CIF term the seller is required to obtain insurance only on minimum cover[1]. Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements.

The CIF term requires the seller to clear the goods for export.

This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the CIP term should be used.

[1] Refer to Introduction paragraph 9.3.

THE TERMS

(9.3 of the Incoterms 2000 Introduction)

The "C"-terms require the seller to contract for carriage on usual terms at his own expense. Therefore, a point up to which he would have to pay transport costs must necessarily be indicated after the respective "C"-term. Under the CIF and CIP terms the seller also has to take out insurance and bear the insurance cost. Since the point for the division of costs is fixed at a point in the country of destination, the "C"-terms are frequently mistakenly believed to be arrival contracts, in which the seller would bear all risks and costs until the goods have actually arrived at the agreed point. However, it must be stressed that the "C"-terms are of the same nature as the "F"-terms in that the seller fulfils the contract in the country of shipment or dispatch. Thus, the contracts of sale under the "C"-terms, like the contracts under the "F"-terms, fall within the category of shipment contracts.

It is in the nature of shipment contracts that, while the seller is bound to pay the normal transport cost for the carriage of the goods by a usual route and in a customary manner to the agreed place, the risk of loss of or damage to the goods, as well as additional costs resulting from events occurring after the goods having been appropriately delivered for carriage, fall upon the buyer. Hence, the "C"-terms are distinguishable from all other terms in that they contain two "critical" points, one indicating the point to which the seller is bound to arrange and bear the costs of a contract of carriage and another one for the allocation of risk. For this reason, the greatest caution must be observed when adding obligations of the seller to the "C"-terms which seek to extend the seller's responsibility beyond the aforementioned "critical" point for the allocation of risk. It is of the very essence of the "C"-terms that the seller is relieved of any further risk and cost after he has duly fulfilled his contract by contracting for carriage and handing over the goods to the carrier and by providing for insurance under the CIF- and CIP-terms.

The essential nature of the “C”-terms as shipment contracts is also illustrated by the common use of documentary credits as the preferred mode of payment used in such terms. Where it is agreed by the parties to the sale contract that the seller will be paid by presenting the agreed shipping documents to a bank under a documentary credit, it would be quite contrary to the central purpose of the documentary credit for the seller to bear further risks and costs after the moment when payment had been made under documentary credits or otherwise upon shipment and dispatch of the goods. Of course, the seller would have to bear the cost of the contract of carriage irrespective of whether freight is pre-paid upon shipment or is payable at destination (freight collect); however, additional costs which may result from events occurring subsequent to shipment and dispatch are necessarily for the account of the buyer.

If the seller has to provide a contract of carriage which involves payment of duties, taxes and other charges, such costs will, of course, fall upon the seller to the extent that they are for his account under that contract. This is now explicitly set forth in the A6 clause of all “C”-terms.

If it is customary to procure several contracts of carriage involving transhipment of the goods at intermediate places in order to reach the agreed destination, the seller would have to pay all these costs, including any costs incurred when the goods are transhipped from one means of conveyance to the other. If, however, the carrier exercised his rights under a transhipment – or similar clause – in order to avoid unexpected hindrances (such as ice, congestion, labour disturbances, government orders, war or warlike operations) then any additional cost resulting therefrom would be for the account of the buyer, since the seller's obligation is limited to procuring the usual contract of carriage.

It happens quite often that the parties to the contract of sale wish to clarify the extent to which the seller should procure a contract of carriage including the costs of discharge. Since

such costs are normally covered by the freight when the goods are carried by regular shipping lines, the contract of sale will frequently stipulate that the goods are to be so carried or at least that they are to be carried under "liner terms". In other cases, the word "landed" is added after CFR or CIF. However, it is advisable not to use abbreviations added to the "C"-terms unless, in the relevant trade, the meaning of the abbreviations is clearly understood and accepted by the contracting parties or under any applicable law or custom of the trade.

In particular, the seller should not – and indeed could not, without changing the very nature of the "C"-terms - undertake any obligation with respect to the arrival of the goods at destination, since the risk of any delay during the carriage is borne by the buyer. Thus, any obligation with respect to time must necessarily refer to the place of shipment or dispatch, for example, "shipment (dispatch) not later than...". An agreement for example, "CFR Hamburg not later than..." is really a misnomer and thus open to different possible interpretations. The parties could be taken to have meant either that the goods must actually arrive at Hamburg at the specified date, in which case the contract is not a shipment contract but an arrival contract or, alternatively, that the seller must ship the goods at such a time that they would normally arrive at Hamburg before the specified date unless the carriage would have been delayed because of unforeseen events.

It happens in commodity trades that goods are bought while they are at sea and that, in such cases, the word "afloat" is added after the trade term. Since the risk of loss of or damage to the goods would then, under the CFR- and CIF-terms, have passed from the seller to the buyer, difficulties of interpretation might arise. One possibility would be to maintain the ordinary meaning of the CFR- and CIF-terms with respect to the allocation of risk between seller and buyer, namely that risk passes on shipment: this would mean that the buyer might have to assume the consequences of events having already occurred at the time when the contract of sale enters into force. The other possibility would be to let the passing of the risk coincide with the time when the contract of sale is concluded. The former possibility might well be practical, since it is usually impossible to ascertain the condition of the goods while they are being carried. For this reason the 1980 United Nations Convention on Contracts for the International Sale of Goods article 68 stipulates that "if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage". There is, however, an exception to this rule when "the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer". Thus, the interpretation of a CFR- or CIF-term with the addition of the word "afloat" will depend upon the law applicable to the contract of sale. The parties are advised to ascertain the applicable law and any solution which might follow therefrom. In case of doubt, the parties are advised to clarify the matter in their contract.

In practice, the parties frequently continue to use the traditional expression C&F (or C and F, C+F). Nevertheless, in most cases it would appear that they regard these expressions as equivalent to CFR. In order to avoid difficulties of interpreting their contract the parties should use the correct Incoterm which is CFR, the only world-wide-accepted standard abbreviation for the term "Cost and Freight (... named port of destination)".

CFR and CIF in A8 of Incoterms 1990 obliged the seller to provide a copy of the charterparty whenever his transport document (usually the bill of lading) contained a reference to the charterparty, for example, by the frequent notation "all other terms and conditions as per charterparty". Although, of course, a contracting party should always be able to ascertain all terms of his contract – preferably at the time of the conclusion of the contract – it appears that the practice to provide the charterparty as aforesaid has created problems particularly in connection with documentary credit transactions. The obligation of the seller under CFR and CIF to provide a copy of the charterparty together with other transport documents has been deleted in Incoterms 2000.

Although the A8 clauses of Incoterms seek to ensure that the seller provides the buyer with "proof of delivery", it should be stressed that the seller fulfils that requirement when he provides the "usual" proof. Under CPT and CIP it would be the "usual transport document" and under CFR and CIF a bill of lading or a sea waybill. The transport documents must be "clean", meaning that they must not contain clauses or notations expressly declaring a defective condition of the goods and/or the packaging. If such clauses or notations appear in the document, it is regarded as "unclean" and would then not be accepted by banks in documentary credit transactions. However, it should be noted that a transport document even without such clauses or notations would usually not provide the buyer with incontrovertible proof as against the carrier that the goods were shipped in conformity with the stipulations of the contract of sale. Usually, the carrier would, in standardized text on the front page of the transport document, refuse to accept responsibility for information with respect to the goods by indicating that the particulars inserted in the transport document constitute the shipper's declarations and therefore that the information is only "said to be" as inserted in the document. Under most applicable laws and principles, the carrier must at least use reasonable means of checking the correctness of the information and his failure to do so may make him liable to the consignee. However, in container trade, the carrier's means of checking the contents in the container would not exist unless he himself was responsible for stowing the container.

There are only two terms which deal with insurance, namely CIF and CIP. Under these terms the seller is obliged to procure insurance for the benefit of the buyer. In other cases it is for the parties themselves to decide whether and to what extent they want to cover themselves by insurance. Since the seller takes out insurance for the benefit of the buyer, he would not know the buyer's precise requirements. Under the Institute Cargo Clauses drafted by the Institute of London Underwriters, insurance is available in "minimum cover" under Clause C, "medium cover" under Clause B and "most extended cover" under Clause A. Since in the sale of commodities under the CIF term the buyer may wish to sell the goods in transit to a subsequent buyer who in turn may wish to resell the goods again, it is impossible to know the insurance cover suitable to such subsequent buyers and, therefore, the minimum cover under CIF has traditionally been chosen with the possibility for the buyer to require the seller to take out additional insurance. Minimum cover is however unsuitable for sale of manufactured goods where the risk of theft, pilferage or improper handling or custody of the goods would require more than the cover available under Clause C. Since CIP, as distinguished from CIF, would normally not be used for the sale of commodities, it would have been feasible to adopt the most extended cover under CIP rather than the minimum cover under CIF. But to vary the seller's insurance obligation under CIF and CIP would lead to confusion and both terms therefore limit the seller's insurance obligation to the minimum cover. It is particularly important for the CIP-buyer to observe this: should additional cover be required, he should agree with the seller that the latter could take out additional insurance or, alternatively, arrange for extended insurance cover himself. There are also particular instances where the buyer may wish to obtain even more protection than is available under Institute Clause A, for example insurance against war, riots, civil commotion, strikes or other labour disturbances. If he wishes the seller to arrange such insurance he must instruct him accordingly in which case the seller would have to provide such insurance if procurable.

CPT

CARRIAGE PAID TO
(... named place of destination)

"Carriage paid to..." means that the seller delivers the goods to the carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any other costs occurring after the goods have been so delivered.

"Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport, by rail, road, air, sea, inland waterway or by a combination of such modes.

If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier.

The CPT term requires the seller to clear the goods for export.

This term may be used irrespective of the mode of transport including multimodal transport.

CIP

CARRIAGE AND INSURANCE PAID TO
(... named place of destination)

"Carriage and Insurance paid to..." means that the seller delivers the goods to the carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any additional costs occurring after the goods have been so delivered. However, in CIP the seller also has to procure insurance against the buyer's risk of loss of or damage to the goods during the carriage.

Consequently, the seller contracts for insurance and pays the insurance premium.

The buyer should note that under the CIP term the seller is required to obtain insurance only on minimum cover[1]. Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements.

"Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport, by rail, road, air, sea, inland waterway or by a combination of such modes.

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THE TERMS

(9.3 of the Incoterms 2000 Introduction)

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such costs are normally covered by the freight when the goods are carried by regular shipping lines, the contract of sale will frequently stipulate that the goods are to be so carried or at least that they are to be carried under "liner terms". In other cases, the word "landed" is added after CFR or CIF. However, it is advisable not to use abbreviations added to the "C"-terms unless, in the relevant trade, the meaning of the abbreviations is clearly understood and accepted by the contracting parties or under any applicable law or custom of the trade.

In particular, the seller should not – and indeed could not, without changing the very nature of the "C"-terms - undertake any obligation with respect to the arrival of the goods at destination, since the risk of any delay during the carriage is borne by the buyer. Thus, any obligation with respect to time must necessarily refer to the place of shipment or dispatch, for example, "shipment (dispatch) not later than...". An agreement for example, "CFR Hamburg not later than..." is really a misnomer and thus open to different possible interpretations. The parties could be taken to have meant either that the goods must actually arrive at Hamburg at the specified date, in which case the contract is not a shipment contract but an arrival contract or, alternatively, that the seller must ship the goods at such a time that they would normally arrive at Hamburg before the specified date unless the carriage would have been delayed because of unforeseen events.

It happens in commodity trades that goods are bought while they are at sea and that, in such cases, the word "afloat" is added after the trade term. Since the risk of loss of or damage to the goods would then, under the CFR- and CIF-terms, have passed from the seller to the buyer, difficulties of interpretation might arise. One possibility would be to maintain the ordinary meaning of the CFR- and CIF-terms with respect to the allocation of risk between seller and buyer, namely that risk passes on shipment: this would mean that the buyer might have to assume the consequences of events having already occurred at the time when the contract of sale enters into force. The other possibility would be to let the passing of the risk coincide with the time when the contract of sale is concluded. The former possibility might well be practical, since it is usually impossible to ascertain the condition of the goods while they are being carried. For this reason the 1980 United Nations Convention on Contracts for the International Sale of Goods article 68 stipulates that "if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage". There is, however, an exception to this rule when "the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer". Thus, the interpretation of a CFR- or CIF-term with the addition of the word "afloat" will depend upon the law applicable to the contract of sale. The parties are advised to ascertain the applicable law and any solution which might follow therefrom. In case of doubt, the parties are advised to clarify the matter in their contract.

In practice, the parties frequently continue to use the traditional expression C&F (or C and F, C+F). Nevertheless, in most cases it would appear that they regard these expressions as equivalent to CFR. In order to avoid difficulties of interpreting their contract the parties should use the correct Incoterm which is CFR, the only world-wide-accepted standard abbreviation for the term "Cost and Freight (... named port of destination)".

CFR and CIF in A8 of Incoterms 1990 obliged the seller to provide a copy of the charterparty whenever his transport document (usually the bill of lading) contained a reference to the charterparty, for example, by the frequent notation "all other terms and conditions as per charterparty". Although, of course, a contracting party should always be able to ascertain all terms of his contract – preferably at the time of the conclusion of the contract – it appears that the practice to provide the charterparty as aforesaid has created problems particularly in connection with documentary credit transactions. The obligation of the seller under CFR and CIF to provide a copy of the charterparty together with other transport documents has been deleted in Incoterms 2000.

Although the A8 clauses of Incoterms seek to ensure that the seller provides the buyer with "proof of delivery", it should be stressed that the seller fulfils that requirement when he provides the "usual" proof. Under CPT and CIP it would be the "usual transport document" and under CFR and CIF a bill of lading or a sea waybill. The transport documents must be "clean", meaning that they must not contain clauses or notations expressly declaring a defective condition of the goods and/or the packaging. If such clauses or notations appear in the document, it is regarded as "unclean" and would then not be accepted by banks in documentary credit transactions. However, it should be noted that a transport document even without such clauses or notations would usually not provide the buyer with incontrovertible proof as against the carrier that the goods were shipped in conformity with the stipulations of the contract of sale. Usually, the carrier would, in standardized text on the front page of the transport document, refuse to accept responsibility for information with respect to the goods by indicating that the particulars inserted in the transport document constitute the shipper's declarations and therefore that the information is only "said to be" as inserted in the document. Under most applicable laws and principles, the carrier must at least use reasonable means of checking the correctness of the information and his failure to do so may make him liable to the consignee. However, in container trade, the carrier's means of checking the contents in the container would not exist unless he himself was responsible for stowing the container.

There are only two terms which deal with insurance, namely CIF and CIP. Under these terms the seller is obliged to procure insurance for the benefit of the buyer. In other cases it is for the parties themselves to decide whether and to what extent they want to cover themselves by insurance. Since the seller takes out insurance for the benefit of the buyer, he would not know the buyer's precise requirements. Under the Institute Cargo Clauses drafted by the Institute of London Underwriters, insurance is available in "minimum cover" under Clause C, "medium cover" under Clause B and "most extended cover" under Clause A. Since in the sale of commodities under the CIF term the buyer may wish to sell the goods in transit to a subsequent buyer who in turn may wish to resell the goods again, it is impossible to know the insurance cover suitable to such subsequent buyers and, therefore, the minimum cover under CIF has traditionally been chosen with the possibility for the buyer to require the seller to take out additional insurance. Minimum cover is however unsuitable for sale of manufactured goods where the risk of theft, pilferage or improper handling or custody of the goods would require more than the cover available under Clause C. Since CIP, as distinguished from CIF, would normally not be used for the sale of commodities, it would have been feasible to adopt the most extended cover under CIP rather than the minimum cover under CIF. But to vary the seller's insurance obligation under CIF and CIP would lead to confusion and both terms therefore limit the seller's insurance obligation to the minimum cover. It is particularly important for the CIP-buyer to observe this: should additional cover be required, he should agree with the seller that the latter could take out additional insurance or, alternatively, arrange for extended insurance cover himself. There are also particular instances where the buyer may wish to obtain even more protection than is available under Institute Clause A, for example insurance against war, riots, civil commotion, strikes or other labour disturbances. If he wishes the seller to arrange such insurance he must instruct him accordingly in which case the seller would have to provide such insurance if procurable.

DAF

DELIVERED AT FRONTIER

(... named place)

"Delivered at Frontier" means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport not unloaded, cleared for export, but not cleared for import at the named point and place at the frontier, but before the customs border of the adjoining country. The term "frontier" may be used for any frontier including that of the country of export. Therefore, it is of vital importance that the frontier in question be defined precisely by always naming the point and place in the term.

However, if the parties wish the seller to be responsible for the unloading of the goods from the arriving means of transport and to bear the risks and costs of unloading, this should be made clear by adding explicit wording to this effect in the contract of sale[1].

This term may be used irrespective of the mode of transport when goods are to be delivered at a land frontier. When delivery is to take place in the port of destination, on board a vessel or on the quay (wharf), the DES or DEQ terms should be used.

[1] Refer to Introduction paragraph 11.

VARIANTS OF INCOTERMS

(11 of the Incoterms 2000 Introduction)

In practice, it frequently happens that the parties themselves by adding words to an Incoterm seek further precision than the term could offer. It should be underlined that Incoterms give no guidance whatsoever for such additions. Thus, if the parties cannot rely on a well-established custom of the trade for the interpretation of such additions they may encounter serious problems when no consistent understanding of the additions could be proven.

If for instance the common expressions "FOB stowed" or "EXW loaded" are used, it is impossible to establish a world-wide understanding to the effect that the seller's obligations are extended not only with respect to the cost of actually loading the goods in the ship or on the vehicle respectively but also include the risk of fortuitous loss of or damage to the goods in the process of stowage and loading. For these reasons, the parties are strongly advised to clarify whether they only mean that the function or the cost of the stowage and loading operations should fall upon the seller or whether he should also bear the risk until the stowage and loading has actually been completed. These are questions to which Incoterms do not provide an answer: consequently, if the contract too fails expressly to describe the parties' intentions, the parties may be put to much unnecessary trouble and cost.

Although Incoterms 2000 do not provide for many of these commonly used variants, the preambles to certain trade terms do alert the parties to the need for special contractual terms if the parties wish to go beyond the stipulations of Incoterms.

EXW — the added obligation for the seller to load the goods on the buyer's collecting vehicle;

CIF/CIP — the buyer's need for additional insurance;

DEQ — the added obligation for the seller to pay for costs after discharge.

In some cases sellers and buyers refer to commercial practice in liner and charter party trade. In these circumstances, it is necessary to clearly distinguish between the obligations of the parties under the contract of carriage and their obligations to each other under the contract of sale. Unfortunately, there are no authoritative definitions of expressions such as "liner terms" and "terminal handling charges" (THC). Distribution of costs under such terms may differ in different places and change from time to time. The parties are recommended to clarify in the contract of sale how such costs should be distributed between themselves.

Expressions frequently used in charterparties, such as "FOB stowed", "FOB stowed and trimmed", are sometimes used in contracts of sale in order to clarify to what extent the seller under FOB has to perform stowage and trimming of the goods onboard the ship. Where such words are added, it is necessary to clarify in the contract of sale whether the added obligations only relate to costs or to both costs and risks.

As has been said, every effort has been made to ensure that Incoterms reflect the most common commercial practice. However in some cases – particularly where Incoterms 2000 differ from Incoterms 1990 – the parties may wish the trade terms to operate differently. They are reminded of such options in the preamble of the terms signalled by the word "However".

DES

DELIVERED EX SHIP

(... named port of destination)

"Delivered Ex Ship" means that the seller delivers when the goods are placed at the disposal of the buyer on board the ship not cleared for import at the named port of destination. The seller has to bear all the costs and risks involved in bringing the goods to the named port of destination before discharging. If the parties wish the seller to bear the costs and risks of discharging the goods, then the DEQ term should be used.

This term can be used only when the goods are to be delivered by sea or inland waterway or multimodal transport on a vessel in the port of destination.

DEQ

DELIVERED EX QUAY

(... named port of destination)

"Delivered Ex Quay" means that the seller delivers when the goods are placed at the disposal of the buyer not cleared for import on the quay (wharf) at the named port of destination. The seller has to bear costs and risks involved in bringing the goods to the named port of destination and discharging the goods on the quay (wharf).The DEQ term requires the buyer to clear the goods for import and to pay for all formalities, duties, taxes and other charges upon import.

THIS IS A REVERSAL FROM PREVIOUS INCOTERMS VERSIONS WHICH REQUIRED THE SELLER TO ARRANGE FOR IMPORT CLEARANCE.

If the parties wish to include in the seller's obligations all or part of the costs payable upon import of the goods**,** this should be made clear by adding explicit wording to this effect in the contract of sale[1].

This term can be used only when the goods are to be delivered by sea or inland waterway or multimodal transport on discharging from a vessel onto the quay (wharf) in the port of destination. However if the parties wish to include in the seller's obligations the risks and costs of the handling of the goods from the quay to another place (warehouse, terminal, transport station, etc.) in or outside the port, the DDU or DDP terms should be used.

[1] Refer to Introduction paragraph 11.

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Expressions frequently used in charterparties, such as "FOB stowed", "FOB stowed and trimmed", are sometimes used in contracts of sale in order to clarify to what extent the seller under FOB has to perform stowage and trimming of the goods onboard the ship. Where such words are added, it is necessary to clarify in the contract of sale whether the added obligations only relate to costs or to both costs and risks.

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DDU

DELIVERED DUTY UNPAID

(... named place of destination)

"Delivered duty unpaid" means that the seller delivers the goods to the buyer, not cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear the costs and risks involved in bringing the goods thereto, other than, where applicable[1], any "duty" (which term includes the responsibility for and the risks of the carrying out of customs formalities, and the payment of formalities, customs duties, taxes and other charges) for import in the country of destination. Such "duty" has to be borne by the buyer as well as any costs and risks caused by his failure to clear the goods for import in time.

However, if the parties wish the seller to carry out customs formalities and bear the costs and risks resulting therefrom as well as some of the costs payable upon import of the goods, this should be made clear by adding explicit wording to this effect in the contract of sale[2].

This term may be used irrespective of the mode of transport but when delivery is to take place in the port of destination on board the vessel or on the quay (wharf), the DES or DEQ terms should be used.

[1] Refer to Introduction paragraph 14.
[2] Refer to Introduction paragraph 11.

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If for instance the common expressions "FOB stowed" or "EXW loaded" are used, it is impossible to establish a world-wide understanding to the effect that the seller's obligations are extended not only with respect to the cost of actually loading the goods in the ship or on the vehicle respectively but also include the risk of fortuitous loss of or damage to the goods in the process of stowage and loading. For these reasons, the parties are strongly advised to clarify whether they only mean that the function or the cost of the stowage and loading operations should fall upon the seller or whether he should also bear the risk until the stowage and loading has actually been completed. These are questions to which Incoterms do not provide an answer: consequently, if the contract too fails expressly to describe the parties' intentions, the parties may be put to much unnecessary trouble and cost.

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DEQ — the added obligation for the seller to pay for costs after discharge.

In some cases sellers and buyers refer to commercial practice in liner and charter party trade. In these circumstances, it is necessary to clearly distinguish between the obligations of the parties under the contract of carriage and their obligations to each other under the contract of sale. Unfortunately, there are no authoritative definitions of expressions such as "liner terms" and "terminal handling charges" (THC). Distribution of costs under such terms may differ in different places and change from time to time. The parties are recommended to clarify in the contract of sale how such costs should be distributed between themselves.

Expressions frequently used in charterparties, such as "FOB stowed", "FOB stowed and trimmed", are sometimes used in contracts of sale in order to clarify to what extent the seller under FOB has to perform stowage and trimming of the goods onboard the ship. Where such words are added, it is necessary to clarify in the contract of sale whether the added obligations only relate to costs or to both costs and risks.

As has been said, every effort has been made to ensure that Incoterms reflect the most common commercial practice. However in some cases – particularly where Incoterms 2000 differ from Incoterms 1990 – the parties may wish the trade terms to operate differently. They are reminded of such options in the preamble of the terms signalled by the word "However".

CUSTOMS CLEARANCE

(14 of the Incoterms 2000 Introduction)

The term "customs clearance" has given rise to misunderstandings. Thus, whenever reference is made to an obligation of the seller or the buyer to undertake obligations in connection with passing the goods through customs of the country of export or import it is now made clear that this obligation does not only include the payment of duty and other charges but also the performance and payment of whatever administrative matters are connected with the passing of the goods through customs and the information to the authorities in this connection. Further, it has – although quite wrongfully - been considered in some quarters inappropriate to use terms dealing with the obligation to clear the goods through customs when, as in intra-European Union trade or other free trade areas, there is no longer any obligation to pay duty and no restrictions relating to import or export. In order to clarify the situation, the words "**where applicable**" have been added in the A2 and B2, A6 and B6 clauses of the relevant Incoterms **in order for them to be used without any ambiguity where no customs procedures are required.**

It is normally desirable that customs clearance is arranged by the party domiciled in the country where such clearance should take place or at least by somebody acting there on his behalf. Thus, the exporter should normally clear the goods for export, while the importer should clear the goods for import.

Incoterms 1990 departed from this under the trade terms EXW and FAS (export clearance duty on the buyer) and DEQ (import clearance duty on the seller) but in Incoterms 2000 FAS and DEQ place the duty of clearing the goods for export on the seller and to clear them for import on the buyer respectively, while EXW – representing the seller's minimum obligation – has been left unamended (export clearance duty on the buyer). Under DDP the seller specifically agrees to do what follows from the very name of the term – **D**elivered **D**uty **P**aid – namely to clear the goods for import and pay any duty as a consequence thereof.

DDP

DELIVERED DUTY PAID

(... named place of destination)

"Delivered duty paid" means that the seller delivers the goods to the buyer, cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear all the costs and risks involved in bringing the goods thereto including, where applicable[1], any "duty" (which term includes the responsibility for and the risks of the carrying out of customs formalities and the payment of formalities, customs duties, taxes and other charges) for import in the country of destination.

Whilst the EXW term represents the minimum obligation for the seller, DDP represents the maximum obligation.

This term should not be used if the seller is unable directly or indirectly to obtain the import licence.

However, if the parties wish to exclude from the seller's obligations some of the costs payable upon import of the goods (such as value-added tax : VAT), this should be made clear by adding explicit wording to this effect in the contract of sale[2].

If the parties wish the buyer to bear all risks and costs of the import, the DDU term should be used.

This term may be used irrespective of the mode of transport but when delivery is to take place in the port of destination on board the vessel or on the quay (wharf), the DES or DEQ terms should be used.

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