

THE CONDITIONS OF DELIVERY IN THE INTERNATIONAL TRADE - INCOTERMS 2020

Elena, Enache¹
Sorin, Enache²
Cristian, Moroza³

Abstract:

The conditions of delivery issued by the International Chamber of Commerce control the essential obligations of the buyer and of the seller in the international trade, such as the transfer of goods to the buyer, transport costs, the liability for the loss and damage of goods and the insurance costs.

The delivery conditions (INCOTERMS) apply to the parties of a sale contract (national or international) and refer to - but are not limited to - special rights and obligations under this contractual relationship. Based on a guaranteed constant definition in this way, subsequent problems of interpretation or discrepancies between the parties of the sale contract must be avoided.

These conditions do not represent legal dispositions and thus they become legally binding only if they have been effectively agreed between sale contract parties by means of an appropriate reference. Regardless, in individual cases, conflicting legal dispositions still have priority over an INCOTERMS clause.

Keywords: export-import, trade, commercial terms, goods

JEL Classification: F13, L81

The delivery is an important component of foreign trade activity. The parties involved in the sale-purchase contract (exporter and importer) are interested in determining the place and time of the transfer of the goods, but with this activity there is a transfer of costs and risks involved in delivery. This can be done with the help of delivery conditions.

The delivery conditions are regulated by the prudences of the sale-purchase contract, by international laws and by international commercial practices.

The reference to an INCOTERMS delivery condition in a commercial contract expressly defines the obligations of the parties regarding: risks, costs, transport and customs clearance, thus reducing potential complications from a legal point of view.

1. General elements regarding the delivery conditions

In 1936, the International Chamber of Commerce in Paris published a series of international rules known as INCOTERMS 1936 (International Commercial Terms), which were revised several times, respectively in 1953, 1967, 1976, 1980, 1990, 2000, 2010 and in 2020.

The possibility of using INCOTERMS facilitates the trade of goods, especially for imports and exports, as it unifies the rules that the law of different jurisdictions may regulate differently. These rules have established forever that:

- the exporter is obliged to deliver the goods;
- the importer is obliged to pay the value of the goods;
- the carrier is any person who under the transport contract has to perform or ensure the execution of transport by rail, road, water (sea, river), air or multimodal.
- the seller / exporter is responsible for the costs up to delivery, and the buyer / importer is responsible after this point.

The content of the delivery clauses must be known both by companies' employees who operate in the departments of export, import, sales, marketing, legal, financial-accounting, as

¹ Ph.D. Professor, "Constantin Brâncoveanu" University from Pitești, Faculty of Management-Marketing in the Economic Affairs Brăila, ebe59830@gmail.com

² Ph.D. Associate Professor, "Danubius" University from Galați, Economic Sciences Faculty, enache_sorin_2005@yahoo.com

³ Ph.D. Associate Professor, „Constantin Brâncoveanu” University from Pitești, Faculty of of Management-Marketing in the Economic Affairs Brăila

well as by the staff from transport and logistics companies, insurance companies, customs declarants, etc. The clauses also concern the banking staff in the departments of external payments, guarantees, international trade financing, the legal department, but also by network employees who interact with IMM customers and corporations.

2. The need to perfect the delivery rules in INCOTERMS 2010

As international economic exchanges have evolved, it has become increasingly necessary to amend and refine the rules regarding the delivery of goods and keeping up with the trade. Thus, INCOTERMS 2010 brought a series of changes:

- The first major change was to reduce the number of terms / delivery conditions from 13 to 11.
- Substantial changes occurred in the former D class:
 - the DEQ (Delivered Ex Quay) condition was replaced by the DAT (Delivered at Terminal);
 - the delivery condition DAF (Delivered at Frontier), DES (Delivered Ex Ship) and DDU (Delivered Duty Unpaid) have been replaced by a single delivery condition DAP (Delivered at Place).

Since then, since 2010, delivery conditions have been rearranged in only two groups, compared to four (how many they were in INCOTERMS 2000), namely:

- Clauses applied to all modes of transport:
 - EXW - EX Works
 - FCA - Free Carrier
 - CPT - Carriage Paid To
 - CIP- Carriage and Insurance Paid To
 - DAT - Delivered At Terminal
 - DAP - Delivered At Place
 - DDP - Delivered Duty Paid
- Clauses that apply only to maritime and inland waterway transport:
 - FAS - Free Along Side
 - FOB - Free On Board
 - CFR - Cost and Freight
 - CIF - Cost Insurance and Freight

3. Particularities and novelties brought by INCOTERMS 2020

The new version of the delivery conditions entered on the 1st of January 2020 and includes a number of changes. With the adaptation of INCOTERMS 2020 to current global business practices, they are updated and practice-oriented.

The purpose of the review was to make the INCOTERMS clauses easier to use. For example, their presentation has been revised to facilitate the selection of the appropriate clause for users. In addition, the order of the clauses has been changed and the instructions to the user have been revised and added to each clause.

Delivery clauses are recognized worldwide and are used in more than 30 different languages, being reviewed by 500 experts from more than 40 countries.

In terms of content, the INCOTERMS 2020 clauses come with significant changes:

- *Different levels of coverage in CIF and CIP*

As in the past, the seller is still obliged to take out transport insurance at his own expense under the CIF (Cost Insurance Freight) and CIP (Carriage Insurance Paid) clauses. The two clauses now predict different minimum coverages.

The minimum rate which must be respected when the CIF clause is agreed upon remains unchanged. The transport insurance to be concluded by the seller must correspond at

least to the coverage in accordance with clauses (C) of the Cargo Institute Clauses or similar clauses (insurance of the named risks).

If the CIP clause is agreed upon, the seller must now provide insurance coverage in accordance with clauses (A) of the Cargo Institute Clauses (risk coverage).

Both the CIF clause and the CIP clause allow the parties of the contract to agree on the degree of insurance coverage that derives from them.

- *Including security requirements*

The security requirements for the carriage of goods have now been included in Rules A4 and A7 of each INCOTERMS 2020 clause. Just like in the case of other Incoterms clauses, it should be noted that these apply directly to the parties of the sale contract and are not the subject of the transport contract.

- *INCOTERMS 2020 contain regulations regarding personal means of transport in FCA, Delivery at Place (DAP), Delivery at Place Unloaded (DPU) and Delivered Duty Paid (DDP)*

For goods sold in accordance with the FCA (Free Carrier) clause and intended for sea transport (such as containerized goods), the FCA sees a new option in the future. The buyer and the seller can agree that the buyer will instruct the carrier to issue a bill of lading to the seller after the goods have been loaded. At the same time, the seller is obliged to hand over the bill of lading to the buyer. This is usually done through the participating banks.

- *The redenomination DAT to Delivered at Place Unloaded (DPU)*

According to the DAT clause of INCOTERMS 2010, the seller delivered the goods as soon as they were unloaded from the means of transport to a "terminal". However, according to the notes included in Incoterms 2010, the term 'terminal' was not to be understood from a technical point of view, but it actually meant any location of unloading. This was taken into account in the Incoterms 2020 rules by renaming the DAT clause as DPU (Delivered at Place Unloaded) for clarity. This means that, in the future, any (agreed) place can be the place of destination.

Table no. 1. The content of INCOTERMS 2020

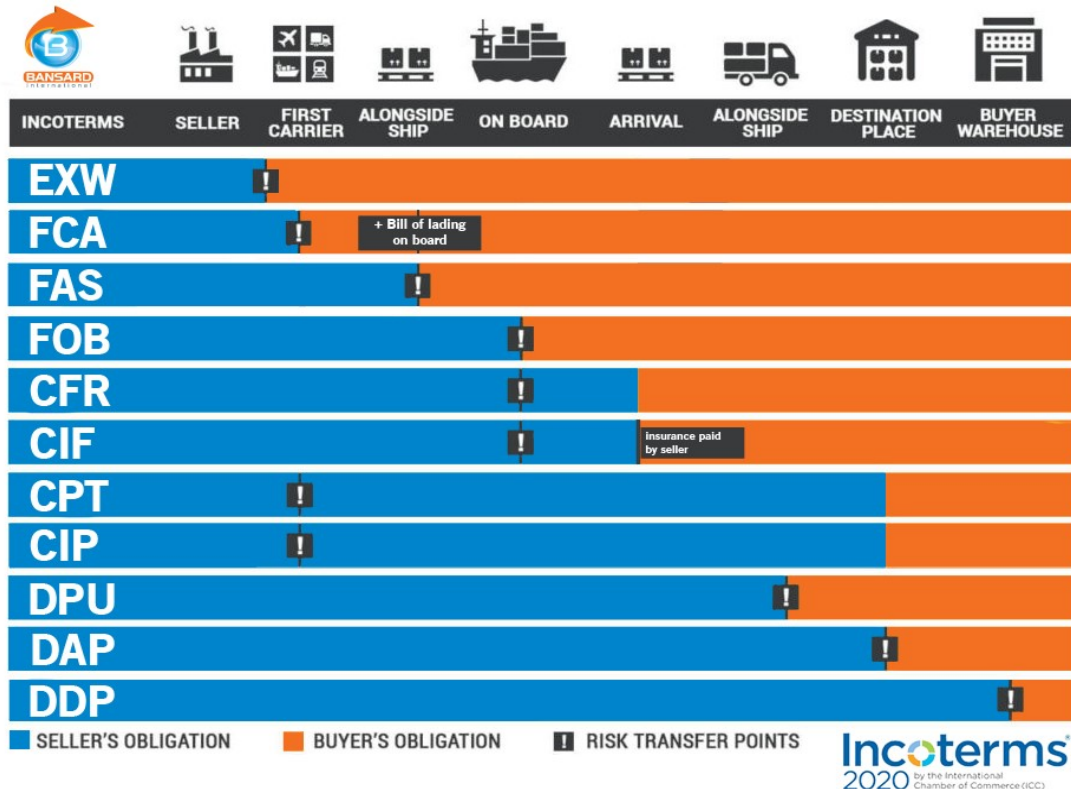
CLASS (CONDITIONS)	DELIVERY CONDITION	EXPLANATION
RULES FOR ANY MODE OR MODES TRANSPORT	EXW	EX Works
	FCA	Free Carrier
	CPT	Carriage Paid To
	CIP	Carriage and insurance paid to
	DPU	Delivered at place unloaded
	DAP	Delivered at place
	DDP	Delivered duty paid
RULES FOR SEA AND INLAND WATERWAY TRANSPORT	FAS	Free Along Side Ship
	FOB	Free On Board
	CFR	Cost and Freight
	CIF	Cost Insurance and Freight

Source: created by the authors

4. Obligations of the parties under INCOTERMS 2020

In summary, the obligations of the seller and the buyer, as well as the time of transfer of risks from one to the other, can be found in the figure below.

Figure no. 1. Obligations and risks in INCOTERMS 2020



Source: <https://www.bansard.com/en/news/incoterms-2020>

EXW - Ex Works

- It constitutes the minimum obligation for the exporter who is obliged to provide the goods to the importer, in his places or in other designated places. The place of delivery must be clearly determined;

- It is used regardless of the selected means of transport or in the case of multi-modal transport;

- The exporter is not obliged to load the goods in any means of transport, the exporter does not carry out export formalities, but all are the responsibility of the importer;

- No express obligation is provided for in the insurance contract, each party of the sale-purchase contract has obligations only towards himself, the insurance covering the risks only when the goods are in his possession.

FCA - Free Carrier (named place)

The exporter and the importer consider using their own transport instead of using a third party. It also allows invoices to be issued after the loading.

In the case of this delivery condition there are no express obligations regarding the insurance of the goods.

CPT - Carriage Paid To (named place of destination)

The exporter shall pay the transport costs to the agreed destination.

The risks borne by the exporter shall be transferred when the goods are handed over to the first carrier or to another person nominated by the exporter.

The exporter does not guarantee that the goods will arrive at the place of destination in good condition, in the mentioned quantity or not at all.

The exporter bears the customs clearance of the goods for export.

There are no express obligations regarding the insurance contract.

CIP - Carriage and Insurance Paid To (named place at destination)

The exporter has the same obligations as in the case of the CPT delivery condition, but he/she must pay in addition the insurance of the goods to the destination.

DPU - Delivered at Place Unloaded (named place at destination)

The exporter shall deliver the goods and transfer the risks to the importer when the goods, once unloaded from the arriving means of transport, are made available to the importer at a designated place of destination or at the agreed point.

The exporter assumes all risks involved in bringing and unloading the goods at the place of destination. Thus, the exporter must ensure that he is able to organize the unloading at the agreed location.

In this delivery condition, the delivery and the arrival at destination are identical terms.

DAP - Delivered at Place (delivered place at destination)

The exporter shall deliver the goods when they are placed at the disposal of the importer on the means of transport, ready for unloading, at the designated place of destination.

The exporter assumes all risks involved in bringing the goods to the designated place of destination or to the agreed point, without unloading the goods.

It should be noted that the exporter and the importer arrange their own transport instead of using a third party.

In this delivery condition, the delivery and the arrival at destination are identical terms.

DDP - Delivered Duty Paid (named place at destination)

The exporter fulfilled his obligation to deliver the goods when they were at the disposal of the importer, and they were cleared through customs, at the agreed place in the importer's country.

We also mention that the exporter and the importer arrange their own transport instead of using a third party.

Under this condition of delivery, the costs are maximum for the exporter and minimum for the importer.

There are no express specifications regarding the insurance, either party can end it.

FAS - Free Alongside Ship (named port of shipment)

The exporter has fulfilled his contractual obligations when the goods are placed along the vessel (on a quay or in a barge), a place determined by the importer.

Customs clearance for export and insurance of the goods are the responsibility of the importer.

It is a delivery condition which is specific to maritime and river transport.

In the case of the transport of goods in containers, the exporter will deposit the goods to the carrier at a container terminal and not along the vessel.

FOB - Free On Board (named port of shipment)

The exporter fulfilled his delivery obligation when the goods were passed without the hull (railing) of the ship, in the port where it is anchored.

The importer shall bear all the costs of customs clearance for export and insurance of the goods.

It is also a delivery condition specific for the sea and river transport.

The FOB delivery condition does not apply to the transport of goods in containers.

CFR - Cost and Freight (named port of destination)

The exporter shall bear all costs until the moment the goods arrive on board of the ship. He clears the goods for export and, regarding the insurance, he only communicates the

necessary data and information to the importer. Therefore, the insurance of the goods is an obligation of the importer.

The risk of losing or damaging the goods from the time of the transshipment to the destination is the responsibility of the importer.

CIF - Cost Insurance Freight (named port of destination)

The difference from CFR is that, in addition, the exporter also bears the cost of insuring the goods up to the destination port.

5. Conclusions

The INCOTERMS 2020 edition pays increased attention to the security of the goods circulation, to the flexibility of insurance coverage depending on the nature of the goods and the transport modality, as well as the requirement of banks to present a bill of lading on board in the case of financing goods delivered under FCA.

INCOTERMS 2020 also offers a simpler and clearer presentation of the delivery conditions, with a revised language, an extended introduction and explanatory notes, and the items are rearranged to better reflect the logic of a sales transaction.

The current version of the delivery clauses is the first edition that includes a "horizontal" presentation, grouping similar articles in order to allow users to clearly see the differences in dealing with the particular problems of each of the 11 INCOTERMS rules.

6. Bibliography

Caraiani, Gh., Georgescu, C-tin, 2012. *Transporturi și expediții internationale*. Universitară, Bucharest

Potecea, V., Caraiani, Gh., Surdu, D.-G., 2017. *Transporturi și expediții internationale. Clasic versus electronic*. Economică, Bucharest

*** <https://www.dachser.ro/ro/mediaroom/Incoterms-2020-2932>

*** <https://ccir.ro/event/incoterms-2020-noutati-provocari-si-opportunitati/>

*** <https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-rules-2010/>

*** <http://www.euroavocatura.ro>

*** <https://www.intermodal-logistics.ro/norme-incoterms-2020-sunt-aici-care-este-impactul-lor>