



Incoterms® 2020

An updated version of the Incoterms of the International Chamber of Commerce (ICC) enters into force

Introduction

In the contracts for the sale and purchase of goods it is very important to precisely define the rights and obligations of the parties. Where and when risk transfers from seller to buyer, and the allocation of costs, are also relevant matters that should be properly regulated. The lack of clarity regarding such aspects may lead to difficulties in interpreting the contracts and increases the possibilities for misunderstandings and even for costly judicial disputes. Incoterms rules were created as a tool to assist contracting parties on the regulation of the commercial terms applicable to their contracts.

Incoterms are predefined three-letters trade terms (e.g. EXW, DAP) which are available for the parties and ready to be incorporated in their contracts. As soon as they are incorporated in a contract, they are fully applicable between the seller and the purchaser as any other contractual obligation. Incoterms are approved and periodically updated by the ICC.

Incoterms® 2010 vs 2020

Incoterms® 2020 include many changes with respect to the 2010 version. On the one hand, their presentation has been enhanced to steer users towards the right Incoterm rule: more emphasis is given to the introduction of the set of rules, guidance notes have been upgraded, and sections have been re-ordered giving delivery and risk more prominence. On the other hand, substantial changes have also been

made such as the redenomination of the Incoterm DAT (which is now called DPU), the inclusion of a specific option allowing the carriage to be made directly by the seller or the purchaser (rather than by a third party carrier), or the inclusion of new alternatives regarding on-board notations.

Tips

If parties want the Incoterms rules to apply to their contract, the safest way to ensure this is to make that intention clear in the contract. It is recommended to use the last available version of the Incoterms (i.e. Incoterms® 2020).

Contracts that include prior Incoterm versions (e.g. Incoterms 2010) remain valid and they will be governed by the Incoterm version chosen by the parties. It is not advisable to alter Incoterm rules, for example by including in the contract matters already regulated by the chosen Incoterm such as the allocation of costs or the terms of the risk transfer, because such alterations may lead to inconsistencies that may be difficult to solve.

Finally, regarding the relationship between the Incoterms and the contracts ancillary to the sale, it is important to note that the Incoterms are only binding for the seller and the purchaser, and they do not form part of those ancillary contracts such as the carriage or insurance agreements. For this reason it is highly recommended to review the ancillary agreements and ensure that they are aligned with the chosen Incoterm.