

Newsletter

Transport, Shipping and Logistics

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International Chamber of Commerce issues New Rules on Interpreting National and International Trade Terms (INCOTERMS 2010)

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The INCOTERMS of the Paris International Chamber of Commerce are some of the most well-known abbreviations in national and international trade. Throughout the world businesspeople use abbreviations such as „EXW“, „FOB“ and „DDP“ as a uniform indication of the obligations being entered into by the seller and the buyer in sales agreements. As of January 1, 2011 the recently published INCOTERMS 2010 will enter into force.

The aim of the INCOTERMS is to facilitate national and international trade through the use of standardized delivery terms. The trade clauses behind the three-letter abbreviations regulate the division of costs and the passing of risk with regard to the delivery of goods from a seller to a buyer. By contrast, the INCOTERMS do not cover payment terms, transfer of title or legal consequences of a breach of contract. These legal issues must be decided on the basis of explicit provisions in the contract according to the law applicable to the contract, including as the case may be the Convention on International Sale of Goods (CISG).

The new INCOTERMS 2010, the seventh edition since its first appearance in 1936, take into account changes in freight-transport technology which have made some of the clauses meaningless, the need of users for a clearer differentiation between rules for

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sea and inland waterway transport and rules for any mode of transport, the further extension of free-trade zones such as the EU, as well as the growing use of electronic communication in business. The four main changes can be summarized as follows:

I. Summary of Main Amendments

1. The clauses DAF, DES, DEQ and DDU from the INCOTERMS 2000 are abolished and replaced by two new clauses DAT (= delivered at terminal) and DAP (= delivered at place). This reduces the number of INCOTERMS from thirteen to eleven. Existing contracts containing the replaced clauses will remain effective, and it will still be possible after January 1, 2011 to apply the deleted clauses by explicit reference to the INCOTERMS 2000 or an even earlier version of the Incoterms. Where the two new clauses are used, delivery shall be made to the specified point; for DAT this means that the goods are to be made available to the buyer, „unloaded“ from the arriving means of transport at the terminal (as per the former DEQ); for DAP it means that the goods are to be placed at the disposal of the buyer on the arriving means of transport „ready for unloading“ at the specified place of destination (as per the former DAF, DES and DDU). Under these new rules – as was the case under the old rules - „delivered“ means that the seller bears all costs (with the exception of any import permit costs) and all risks of transport up to the specified place of destination.

2. The eleven INCOTERMS are divided into two categories. Whereas in the FAS, FOB, CRF and CIF a port is both the place of delivery and the place of destination and these terms shall thus apply solely in sea and inland water transport, the terms EXW, FCA, CPT, CIP, DAT, DAP and DDP shall cover all (other) modes of transport and may also be used for multimodal transports, even where they include transport by ship.

3. The INCOTERMS 2010 may now also apply to national trade, meeting the desire of those in practice who have wanted to use the terms in national trade for a long time. Whereas in the past it has occasionally been unclear whether terms such as those regulating all export and import issues might not apply in do-

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mestic or free-trade zone (EU) contracts, the new INCOTERMS provide that such obligations only exist in cases in which they are actually necessary.

4. Finally, the new version of the INCOTERMS enables the parties to process important freight documentation by electronic means rather than in paper form, taking into account the realities of modern trade and guaranteeing quicker flow of information.

II. Consequences

Contracts using INCOTERMS from now on should clearly state the version, i.e. the year of issue of the Incoterms referred to. The INCOTERMS 2010 for instance would be referred to in a sales contract as „FOB [specified point] ICC INCOTERMS 2010.“ The changes further entail that in future the parties must examine more closely whether the term used is proper for the type of transport chosen. In particular, it is important to specify the point of delivery as closely as possible. Although for truck transportation it always has been the practice to designate a specific address with the INCOTERM („DAP Rothenbaumchaussee 35, Hamburg, Germany“), anyone who merely relies in future on „DDP Hamburg“ in the case of a ship transport may find himself in dispute with the contractual partner if the goods for instance are expected at Burchardkai in the port of Hamburg, but are instead unloaded a few kilometres upriver at the container terminal Tollerort and can only be transported to the place of destination at great expense. Finally, in view of the many possible methods for electronic communication (e-mail, text messaging, etc.), it is recommended that the contractual agreement contains explicit provisions as to what kind of electronic notifications may take the place of paper documentation.

When referring to INCOTERMS in a delivery contract, both the version of the INCOTERMS meant as well as the exact place of delivery should be specified.

This Newsletter does not constitute legal advice. While the information contained in this Newsletter has been carefully researched, it only offers a partial reflection of the law and its developments. It can be no substitute for individual advice appropriate to the facts of an individual case.

If you have any further questions,
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