



Trade Finance Newsletter #2 **Nordea is ready for Incoterms® 2020**

In September 2019 the International Chamber of Commerce (ICC) published a new version of Incoterms known as Incoterms® 2020. The new publication is the result of a process that began three years ago with the first Drafting Group meeting held in October 2016.



Incoterms are a collection of three-letter trade terms that make up the best known and most widely used rules in international and domestic trade. Incoterms® 2020 is the 9th version of the Incoterms rules. The international commercial (Inco) terms were first introduced in 1936 with the aim of creating a way of clearly stating the costs, tasks and risks related to the global and domestic transportation and delivery of goods. Incoterms have since been revised in 1953, 1967, 1976, 1980, 1990, 2000 and 2010, each time in order to support changes in international trade practices.

Changes to Incoterms® 2020 compared to Incoterms® 2010

The main changes in Incoterms® 2020 compared to Incoterms® 2010 are as follows:

1. Under FCA (Free Carrier), the buyer can instruct its carrier to issue an “on-board” bill of lading to the seller after the loading of the goods. The background for this is that when payment is managed via a documentary credit, there often is a need to have an on-board bill of lading.
2. CIP (Carriage and Insurance Paid) now requires the seller to obtain cargo insurance cover for the minimum cover as provided by the Institute Cargo Clauses (A) of the Institute Cargo Clauses (LMA/IUA) or any similar clauses.
3. For the purpose of FCA (Free Carrier), DAP (Delivered at Place), DPU (Delivered at Place Unloaded) and DDP (Delivered Duty Paid) it is now allowed that carriage is arranged with the seller’s or the buyer’s own means of transport.
4. Change in the three-letter initials for DAT (Delivered at Terminal) to DPU (Delivered at Place Unloaded).
5. Security related costs in connection with the carriage is now reflected in A9/B9 instead of previously A10/B10.
6. Explanatory Notes introduced and replaced by Guidance Notes to each Incoterms rule.

Structure of Incoterms® 2020

Incoterms® 2020 includes the following trade terms:

Rules for any mode or modes of transport
EXW – Ex Works [place of delivery] Incoterms® 2020
FCA – Free Carrier [place of delivery] Incoterms® 2020
CPT – Carriage Paid to [place of destination] Incoterms® 2020
CIP – Carriage and Insurance Paid to [place of destination] Incoterms® 2020
DAP – Delivered at Place [place of destination] Incoterms® 2020
DPU – Delivered at Place Unloaded [place of destination] Incoterms® 2020
DDP – Delivered Duty Paid [place of destination] Incoterms® 2020

Rules for sea and inland waterway transport
FAS – Free Alongside Ship [port of shipment] Incoterms® 2020
FOB – Free on Board [port of shipment] Incoterms® 2020
CFR – Cost and Freight [port of destination] Incoterms® 2020
CIF – Cost Insurance and Freight [port of destination] Incoterms® 2020

In addition, Incoterms® 2020 describes 10 obligations for each of the Seller and the Buyer:

Obligations for the Seller (A) / Obligations for the Buyer (B)
(A1 / B1) General Obligations
(A2 / B2) Delivery / Taking Delivery
(A3 / B3) Transfer of Risks
(A4 / B4) Carriage
(A5 / B5) Insurance
(A6 / B6) Delivery / Transport Document
(A7 / B7) Export / Import Clearance
(A8 / B8) Checking / Packaging / Marking
(A9 / B9) Allocation of Costs
(A10 / B10) Notices

Incoterms® 2020 versus documentary credits

The Introduction to Incoterms® 2020 includes the following wording:

If parties want the Incoterms® 2020 rules to apply to their contract, the safest way to ensure this is to make that intention clear in their contract, through words such as

“[the chosen Incoterms® rule] [named port, place or point] Incoterms® 2020.

This means that Incoterms® 2020 is part of the agreement between the seller and the buyer – and as such has no direct link to the documentary credit. The UCP 600 even states that “a credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit...”

However, more often than not the documentary credit will include a reference to the agreed trade terms. When a trade term is stated as part of the goods description in the documentary credit, then the presented invoice must indicate that trade term, and when the source of the trade term is stated (e.g. Incoterms® 2020), the same source must be indicated in the invoice. Two examples:

Example 1:

Documentary credit requirement (invoice):

“CIF Singapore Incoterms® 2020”

Presented invoice:

“CIF Singapore Incoterms®”

Conclusion:

This is not acceptable, because the full source (as required by the documentary credit) – “2020” is not indicated in the invoice.

Example 2:

Documentary credit requirement (invoice):

“CIF Singapore Incoterms®”

Presented invoice:

“CIF Singapore Incoterms® 2020”

Conclusion:

This is acceptable, because the documentary does not mention the full source (“2020”) but the presented invoice does.

Just as the agreed Incoterms Rule has an indirect effect on the documentary credit (as is illustrated above), it also has an effect on the contract of carriage – thereby the information that is indicated on the transport document. This in turn may also have an effect on the documentary credit, and there are some problems that could be identified already when the documentary credit is being issued. Some examples to that effect are:

Goods description in the documentary credit:

“500 cases of machine tools as per PO 123456. FOB Heathrow Incoterms® 2020!”

This may be a problem, because the Incoterms® Rule “FOB” is to be used for sea and inland waterway transport – and not air transport which most likely is the case here.

Goods description in the documentary credit:

“500 cases of machine tools as per PO 123456. CFR Kuala Lumpur Incoterms 2020”

Bill of lading requirement:

“Full set on board bill of lading made out to the order of the issuing bank notify applicant showing freight collect”.

This may be a problem, because the Incoterms® Rule “CFR” indicates that the seller must pay the freight to the agreed port of discharge – i.e. in CFR freight will often be prepaid.

Need more information?

For more information about the new Incoterms® 2020 – or how to include the Incoterms into the agreement, please consult the local ICC (International Chamber of Commerce) or seek legal guidance.

For more information about how the trade term mentioned in the documentary credit will be regarded as part of the document examination please contact your local Trade Finance department.