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## New Incoterms® 2010 rules

### *Main changes and practical reminders*

We are pleased to provide you with our latest briefing note, on the new Incoterms® rules.

Kind regards,  
Fabien Aepli

On 1 January 2011, a new version of the ICC's Incoterms® rules came into force. The new rules take into consideration developments in international trade over the past ten years, since the ICC published its last version of the rules. This briefing provides an overview of changes since the last version of the rules and highlights the key characteristics and practical impacts of the new version.

### **Main changes**

#### **Classification of the rules**

Before: no classification of the rules contingent upon the mode(s) of transport (e.g. sea, land, etc.)

Now: distinction between:

- Rules for any mode(s) of transport (i.e. EXW, FCA, CPT, CIP, DAT, DAP, DDP)
- Rules for sea and inland waterway transport only (i.e. FAS, FOB, CFR, CIF)

#### **New rules**

Before: DAF, DES, DEQ, DDU

Now: Replacement of the above rules by DAT (Delivered at Terminal) and DAP (Delivered at Place)

Both new rules can be used for any mode(s) of transport. Under these rules, delivery occurs at a named destination (in DAT: at the buyer's disposal unloaded from the arriving vehicle at a delivery terminal; in DAP: likewise at the buyer's disposal, but ready for unloading).

#### **Domestic trade**

The new rules expressly state that they may apply both to international and domestic trade.

#### **Insurance**

The new rules specify duties relating to the provision of insurance information (see: articles A3/B3).

### **Security-related clearance**

Obligations between the buyer and the seller to render assistance in obtaining security-related clearance of goods are specified in the new rules (e.g. chain-of-custody information) (see: articles A2/B2, A10/B10).

### **Terminal handling charges**

Terminal handling charges may be included in global carriage costs. The new rules allocate such costs for each relevant rule (CPT, CIP, CFR, CIF, DAT, DAP, and DDP) (see: articles A6/B6).

### **String sales**

The new rules include an obligation to "*procure goods shipped*" as an alternative to the obligation to "*ship goods*" (i.e. with regard to a seller in the middle of a string who does not undertake the physical shipment himself).

### **E-communications**

The new rules permit the use of electronic communications to perform obligations (where agreed by the parties or used as a matter of custom).

### **Practical reminders**

#### **Incorporation**

The Incoterms rules only apply where incorporated by the parties into their contracts.

For example: "*FCA, [address], Hamburg, Germany, Incoterms® 2010*".

The wording should specify the version of the incorporated rule (e.g. Incoterms® 2010). The incorporated version of the rules will apply irrespective of subsequent amendments (this means that if a party wishes to incorporate the new rules into an existing agreement, he must amend the previous agreement and refer to the new rules).

#### **Obligations covered by the rules**

Only selected obligations (such as carriage costs, transfer of risk, shipping modalities) are covered by the rules.

The following issues are not covered, for example: transfer of ownership, payment terms, warranties, applicable law and jurisdiction.

#### **Classification of the rules**

The Incoterms® 2010 rules are classified into 4 groups:

E – Departure

F – Main carriage unpaid

C – Main carriage paid

D – Arrival

In general, the terms of sale and delivery become less seller-friendly and more buyer-friendly as the list of Incoterms® rules below descends (i.e. EXW is the most seller-friendly and DDP the most buyer-friendly rule, in terms of obligations on seller/buyer).

For each rule: buyer's obligations A1 to A10, seller's obligations B1 to B10.

### **Overview and summary meaning**

**EXW** (Ex Works): The seller makes the goods available at his premises; the buyer is responsible for all charges.

**FCA** (Free Carrier): The seller hands over the goods, cleared for export, into the custody of the first carrier (named by the buyer) at the named place.

**FAS** (Free Alongside Ship): The seller places the goods alongside the ship at the named port and clears the goods for export (for sea and inland waterway transports only).

**FOB** (Free On Board): The seller loads the goods on board the ship nominated by the buyer, cost and risk being divided at ship's rail; the seller clears the goods for export (for sea and inland waterway transports only).

**CFR** (Cost And Freight): The seller pays the costs and freight to bring the goods to the port of destination; however, risk is transferred to the buyer once the goods have crossed the ship's rail (for sea and inland waterway transports only).

**CIF** (Cost, Insurance and Freight): As for CFR, except that the seller in addition procures and pays for insurance for the buyer (for sea and inland waterway transports only).

**CPT** (Carriage Paid To): The seller pays for carriage to the named point of destination, but risk passes when the goods are handed over to the first carrier (multimodal equivalent to CFR).

**CIP** (Carriage And Insurance Paid To): The seller pays for carriage and insurance to the named destination point, but risk passes when the goods are handed over to the first carrier (multimodal equivalent to CIF).

**DAT** (Delivered At Terminal): The seller pays for transportation to the named place of delivery at the frontier; the buyer arranges for customs clearance and pays for transportation from the frontier to his factory; the passing of risk occurs at the frontier.

**DAP** (Delivered At Place): The seller delivers the goods by placing them at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination.

**DDP** (Delivered Duty Paid): The seller pays for all transportation costs and bears all risk until the goods have been delivered and pays the duty.

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