



Incoterms® 2010

by the International Chamber of Commerce (ICC)

Incoterms 2010

Incoterms 2000 - Best Practices

Viet Nam, December 2010

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WELCOME

VCCI

Seminar on



Incoterms® 2010

by the International Chamber of Commerce (ICC)



HISTORY OF INCOTERMS

- A Trade Terms Committee with the assistance of the ICC National Committees developed the first six rules in 1923: FOB, FAS, FOT, FOR, Free Delivered CIF and C&F.
- First Incoterms® rules in 1936
- Revisions: 1953, 1967, 1976, 1980, 1990, 2000
- **INCOTERMS® 2010** will enter into force on
1 January 2011



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CONTRACT OF SALE




We need to specify above all:


- Identification of parties;
- Description of goods;
- Price of the goods (what is included?);
- Inspection of the goods – obligations and limitations;
- Quantity and quality variations in the products delivered
- Delivery periods, conditions (contract of carriage?!);
- Where exactly the goods will be delivered to the Buyer;
- Transfer of risk (Insurance?);
- Reservation of title and passing of property rights;




Contract of sale also should cover:

- Who will be responsible for export clearance and who for import clearance and the cost (duty, VAT);
- Who will pay what in relation to the delivery of the goods;
- How the payment is to be done by the Buyer;
- What documents must be surrendered by the Seller;
- Seller's warranties and buyer's complains;
- Assignment of rights;
- Force majeure clause;
- Requirements re. amendments or modifications;
- Controlling language of the contract;
- Choice of law and dispute resolution mechanism.







Vienna CISG 1980

INCOTERMS 2010 help a lot!:

- Price of the goods (what is included?);
- Inspection of the goods – obligations and limitations;
- Delivery periods, conditions (contract of carriage?!);
- Where exactly the goods to be delivered to the Buyer;
- Transfer of risk (Insurance?);
- Who will be responsible for export clearance and who for import clearance and the cost (duty, VAT);
- Who will pay what in relation to the delivery of goods;
- What documents must be surrendered by the Seller;

INCOTERMS 2010

FCA Thunovska 12, Prague 6, Czech Republic, Incoterms 2010

- General obligations of seller and buyer;
- Export licence, official authorization for export, customs formalities for export;
- Import licence, official authorization for import, customs formalities for import;
- Contract of carriage and insurance;
- Delivery of goods - Taking of Delivery;
- Transfer of risks;
- Allocation of costs;
- Notices to seller/buyer;
- Delivery documents;
- Checking/inspection, packaging, marking;
- Assistance with information and related cost.



INCOTERMS 2010

- **13 Incoterms**
- Stepladder of increasing responsibility from Seller's premises to Buyer's premises
- From minimum responsibility of the Seller to his maximum responsibility.

REMINDER!: Remember to clearly incorporate them into contract of sale – referring to Incoterms 2000

FOB New Orleans, USA?

(national legal meaning, RAFTD)





Incoterms 2010

- Should be explicitly incorporated into contracts of sale:
 - FOB Mumbai, Incoterms 2010
- govern certain responsibilities btw Seller and Buyer under contract of sale
- **CAREFULL!** Do not confuse with responsibilities btw Shipper, Carrier and Consignee under contract of carriage or with other contractual relationships!



Incoterms 2010

Incoterms – contract terms not law

- They apply as incorporated
- They could be applied **even** if there is no specific mention in the contract of sale:
...as trade customs, commercial usages recognized by the applicable law



INCOTERMS 2000 – what is (not) covered?

Incoterms do not cover everything!

They do not cover:

- How the Seller is to deliver the goods to the agreed point of delivery
- What the Seller or Buyer should do as matter of precaution in his own favour – e.g. take out insurance (except CIF and CIP)
- Transfer of property/title to the goods – matter of applicable law – which may allow for specific provision in the sale contract (retention of title clause)
- Breach of contract, loss, damages caused by insufficient packaging, marking, etc.

CLASSIFICATION OF INCOTERMS 2010

- **E – terms: EXW**
 - Seller places the goods at the disposal of the Buyer at his own premises/warehouse
- **F – terms: FCA, FAS, FOB**
 - Seller delivers the goods to the first carrier, Buyer responsible for the cost and risk of main carriage
- **C – terms: CFR, CIF, CPT, CIP**
 - The Seller arranges and pays for the main carriage, but does not bear the risk of the carriage.
- **D – terms: DAT, DAP, DDP**
 - The Seller bears all transport costs and risks up to the delivery - destination point.

CLASSIFICATION OF INCOTERMS 2010

RULES FOR **ANY MODE** OR MODES OF TRANSPORT:

EXW	EX WORKS
FCA	FREE CARRIER
CPT	CARRIAGE PAID TO
CIP	CARRIAGE & INSURANCE PAID TO
DAT	DELIVERED AT TERMINAL
DAP	DELIVERED AT PLACE
DDP	DELIVERED DUTY PAID



CLASSIFICATION OF INCOTERMS 2010

RULES FOR **SEA AND INLAND WATERWAY** TRANSPORT:


FAS	FREE ALONGSIDE SHIP
FOB	FREE ON BOARD
CFR	COST AND FREIGHT
CIP	COST INSURANCE AND FREIGHT




MAIN CHANGES INCOTERMS 2010

- a) 11 Incoterms – called Incoterms 2010 rules
- b) Content
 - a) General introduction – main explanations
 - Guidance notes before each Incoterm rule
 - Update of all 10 „A“ and „B“ rules





- Text A1 to A10 and B1 to B10 – revised to be clear as possible and facilitate translation
- Short introduction – every user to read!
- **b) Content**
- **Obligations regarding security clearance:**
 - Cargo clearance for security reasons
 - Incoterms also reflect the duty of each party re. information obligations and allocation of cost
 - A2/B2 and A10/B10 – information or assistance



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Security concerns – Incoterms 2010

- **9/11/2001**
- increased concern regarding security in movement of goods
- National cargo security regulations – not fully harmonized

EU: Safety and Security Amendment to Customs Code

- From 1st July 2009, security data has to be provided **before** arrival or departure of the goods into or out of the Community customs territory.



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http://ec.europa.eu/ecip/security_amendment/procedures/index_en.htm

- **The Entry Summary Declaration (ENS)**

US.: On March 1, 2003, U.S. Customs and Border Protection - agency of the Department of Homeland Security - www.cbp.gov

Container Security Initiative -

http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/csi_strategic_plan.ctt/csi_strategic_plan.pdf

C-TPAT – Customs-Trade Partnership Against Terrorism – government –private sector partnership as of Nov. 2001



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CHANGES OF THE „D“ TERMS

- international transport - containerisation
- Place of delivery, terminal handling charges
- Incoterms 2010: **DAF, DES, DEQ, DDU** – DAP, DAT, DDP
- Simplification
- DAF – problems in practice – goods delivered at frontier (not examined)
- **DAP – Delivered at Place** – replaces them – Seller delivers the goods to the Buyer on the arriving means of conveyance **not unloaded**, replaces DES, DDU, DAF



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CHANGES OF THE „D“ TERMS

- **DAT – Delivered at Terminal** – replaces DEQ, DDU – seller delivers the goods to the buyer at the place of destination **unloaded**
- Incoterms 2000 – no solution for situation when goods delivered unloaded from the arriving means of conveyance in a terminal
- Changes in transport – disappearance of liner terms negotiated by the maritime conferences btw shipping companies – freely negotiated freight conditions



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CHANGES OF THE „D“ TERMS

- Freight conditions include more and more the entire handling charges – negotiated by transport companies and port authorities – „terminal in-terminal out“
- Reflected in a new DAT rule. FCA and DAT tailored rules for container transport.
- Other changes related to:
 - Use of Incoterms in custom-free or free trade zones and in domestic markets
 - Use of electronic communication



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MAIN RULES HOW TO USE INCOTERMS 2010 RULES

1. Incorporate **Incoterms 2010** rule into your contract of sale
2. Choose the appropriate Incoterm rule
3. Specify the delivery place/port and place of destination as precisely as possible
4. Incoterms 2010 do not cover everything, other contract conditions





5. Possible to use for domestic trade as well
6. Insurance – Incoterms 2010 – revision of Institute Cargo Clauses (2009)
7. Be aware of THC – are their part of the contract of carriage (freight)?
8. String sales – seller in the middle „procures shipped goods“
9. Be aware of risk of using **Variants of Incoterms rules** (costs and also point of risk transfer?!!!)





TERMS USED IN INCOTERMS 2010 RULES

- Carrier
- Customs formalities
- **Delivery**
- **Delivery document**
 - transport document or receipt
 - or equivalent electronic record





TERMS USED IN INCOTERMS 2010 RULES

Packaging:

- Packaging of goods as per contract;
- Packaging of goods so that they are fit for transportation;
- Stowage of the packaged goods within a container or other means of transport.



Packaging

- Protection of the goods when in transit against damage, loss, theft;
- Suitable usage of transport units, savings,
- Marking, Marketing
- Dangerous goods – regulations:
 - Air: IATA DGR
 - Ocean: IMDG
 - Rail: RID
 - Road: ADR

A The Seller's obligations	B The Buyer's obligations
A1 General obligations of the seller	B1 General obligations of the buyer
A2 Licences, authorizations security clearances and other formalities	B2 Licences, authorizations security clearances and other formalities
A3 Contract of carriage and insurance	B3 Contract of carriage and insurance
A4 Delivery	B4 Taking delivery
A5 Transfer of risks	B5 Transfer of risks
A6 Allocation of costs	B6 Allocation of costs
A7 Notices to the Buyer	B7 Notices to the Seller
A8 Delivery document	B8 Proof of delivery
A9 Checking, packing, marking	B9 Inspection of goods
A10 Assistance with information and related costs	B10 Assistance with information and related costs

EXW (named place of delivery) Incoterms® 2010



Carriage of goods

Risks

Costs

Export Clearance

Import Clearance

EXW named place of delivery KEY POINTS

- Delivered **at disposal** of Buyer at the Seller's premises or another named place (warehouse, factory)
- **not cleared** for export
- **not loaded** on any collecting vehicle!

EXW – Guidance Note

- Suitable for domestic trade, not for international
- Clear specification of the point within delivery place – agreed point – if not – Seller can choose
- On the agreed date or within agreed period

Main Issues:

- No obligation to load the goods, if does – at Buyer's risk and expense
- No export clearance, only assistance
- Limited obligation of Buyer to provide information re. export (taxation, reports)
- Assistance in obtaining export licence, official authorisation, security clearance – at Buyer's request

EXW – Main points

Risks transfer:

- when delivered at disposal of Buyer at agreed point, if any, at place of delivery

• Notices:

- **Seller to Buyer** – notice to enable Buyer to take delivery of goods
- **Buyer to Seller** – if entitled to determine time and/or the point of taking delivery – sufficient notice thereof
- **In case of failure** – transfer of risk from agreed date or expiry date of the agreed period for delivery – goods clearly identified as contract goods!!!

EXW – Main points

Allocation of Cost:

The buyer must

- a) pay all costs relating to the goods from the time they have been delivered;
- b) **pay any additional costs incurred by failing** either to take delivery of the goods when they have been placed at its disposal, or to give appropriate notice, provided that the goods have been clearly identified as the contract goods;
- c) pay where applicable, all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon export; and
- d) reimburse all costs and charges incurred by the seller in providing assistance.

EXW – Main points

Checking – packaging - marking:

- Package goods unless usual to sell unpacked
- In the manner appropriate for their transport – unless Buyer has notified Seller of the specific packaging requirements before contract of sale is concluded
- Marked appropriately

Assistance with information, costs:

- Seller – provide or render assistance in obtaining, at Buyer's request, risk and cost, any documents and information needed for export/import and transport to final destination

FCA (named place of delivery) Incoterms® 2010



FCA named place of delivery KEY POINTS

Seller delivers the goods **cleared** for export **to the Carrier** or another person **nominated by the Buyer** at the agreed point, if any, at the named place on agreed date or withing agreed period

- Chosen delivery place has impact on loading/unloading obligations of Seller!

FCA named place of delivery KEY POINTS

Chosen delivery place:

- at Sellers premises – Seller is **responsible** for loading!
- any other place Seller **not responsible** for loading and even unloading – deliveres at disposal of the Carrier on Seller 's means of transport ready for unloading!



FCA – Guidance Note



- Suitable for both domestic and international trade
- Clear specification of the point within delivery place – agreed point – if not – seller can choose
- On the agreed date or within agreed period

Main Issues:

- Export clearance, licency, official authorisation, custom formalities for export
- Contract of carriage – Seller no obligation
- if requested by Buyer or commercial practice and Buyer does not give contrary instruction – Seller may contract for carriage on usual terms at Buyer's risks and expense
- in either case Seller can decline contract for carriage

Risks transfer:

- when delivered at disposal of carrier at agreed point, if any, at place of delivery:
 - Seller's premises – loaded
 - Other place – on Seller's means of transport ready for unloading
- **Buyer fails** to notify the nomination of Carrier (another person) or to give notice
- **Carrier fails to take the goods into its charge** transfer of risk from agreed date, if not agreed date
- from date notified by Seller within agreed period, if no such date notified,
- from the expiry date of any agreed period for delivery – goods clearly identified as contract goods!!!

Delivery document:

- usual proof goods were delivered at Seller's expense
- Seller to provide Buyer assistance in obtaining a transport document (at Buyer's request, risk, cost)

Notices:

- **Seller to Buyer** – sufficient notice at Buyer's risk and expense – goods delivered or Carrier nominated by Buyer has failed to take goods within time agreed
- **Buyer to Seller** – **Name of carrier** (another person) within sufficient time
- where necessary, **Selected time** within period agreed for delivery
- **Mode of transport** to be used
- **Point of taking delivery** within named place

CPT (named place of destination) Incoterms® 2010



Carriage of goods

Risks

Costs

Export Clearance

Import Clearance

CPT named place of delivery KEY POINTS

Seller delivers the goods

- **cleared** for export
- **to the Carrier or another person nominated by himself, arranges and pays for the carriage up to** the named place of destination
- risk to the goods transfers from the Seller to the Buyer when goods so delivered to the first Carrier
- **Two critical points** – delivery (risk), destination



CPT – Guidance Note



- Clear specification of the point within delivery place – agreed point – if not – Seller can choose
- On the agreed date or within agreed period
- Clear specification of the point within place of destination – agreed point. If Seller accrues unloading cost under contract of carriage – not entitled to recover from Buyer unless agreed.

Main Issues:

- Export clearance, licency, official authorisation, custom formalities for export
- **Contract of carriage** – Seller must contract (or procure) for carriage – from the agreed point at place of delivery to agreed point at the place of destination

CIP (named place of destination) Incoterms® 2010



CIP named place of delivery KEY POINTS

Seller delivers the goods

- **cleared** for export
- **to the Carrier or another person nominated by himself, arranges and pays for the carriage up to** the named place of destination
- risk to the goods transfers from the Seller to the Buyer when goods so delivered to the first Carrier, **Seller contracts for insurance**
- **Two critical points** – delivery (risk), destination



CIP – Guidance Note



- Clear specification of the point within delivery place – agreed point – if not – Seller can choose
- On the agreed date or within agreed period
- Clear specification of the point within place of destination – agreed point. If Seller incurs unloading cost under contract of carriage – not entitled to recover from Buyer unless agreed.

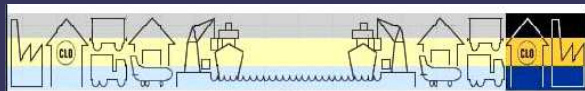
Main Issues:

- Contract of carriage – Seller must contract (or procure) for carriage – from the agreed point at place of delivery to agreed point at the place of destination
- Contract of Insurance – minimum cover

Contract of insurance:

- at least with the minimum cover as provided by Clauses (C) of the Institute Cargo Clauses (LMA/IUA) or any similar clauses
- underwriters or an insurance company of good repute and entitle the Buyer, or any other person having an insurable interest in the goods, to claim directly from the insurer
- When required by the Buyer, the seller shall, subject to the buyer providing any necessary information requested by the Seller, provide at the Buyer's expense any additional cover, if procurable, such as cover as provided by Clauses (A) or (B) of the Institute Cargo Clauses (LMA/IUA) or any similar clauses, and/or cover complying with the Institute War Clauses and/or Institute Strikes Clauses (LMA/IUA) or any similar clauses.

DAT (named terminal at port/place of destination) Incoterms®2010



DAT named terminal at port or place of destination

Seller delivers the goods

- **cleared** for export
- **unloaded from the arriving means of transport placed at disposal of Buyer at a named terminal at named port/place of destination**
- **"Terminal"** includes any place, whether covered or not, such as a quay, warehouse, container yard, or road, rail or air cargo terminal.



DAT – Guidance Note

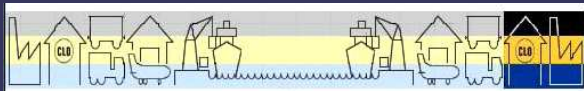


- Clear specification of the terminal, and if possible, a specific point within that terminal (delivery place)
- On the agreed date or within agreed period

Main Issues:

- Export clearance, licency, official authorisation, custom formalities for export
- Contract of carriage – Seller must contract for carriage to the named terminal at the agreed port or place of destination.
- If no terminal is agreed or determined by practice, Seller may choose



DAP (named place of destination) Incoterms®2010



DAP named place of destination

Seller delivers the goods

- **cleared** for export
- **on the arriving means of transport placed at disposal of Buyer ready for unloading at a named place of destination**


DAP – Guidance Note

- Clear specification of the point within the agreed place of destination
- On the agreed date or within agreed period

Main Issues:

- Export clearance, licency, official authorisation, custom formalities for export
- Contract of carriage – Seller must contract for carriage to the named place of destination
- If no specific point is agreed or determined by practice, Seller may choose
- If the Seller incurs costs under its contract of carriage related to unloading at the place of destination, **not entitled to recover such costs from Buyer** unless otherwise agreed between the parties.

DDP (named place of destination) Incoterms®2010



Carriage of goods
Risks
Costs


Export Clearance

Import Clearance


DDP named place of destination

Seller delivers the goods

- **cleared** for export and import
- **placed at the disposal of the Buyer, cleared for import on the arriving means of transport, ready for unloading at the named place of destination.**
- The Seller has to bear all the costs and risks involved in bringing the goods to that place and has an obligation to clear the goods **not only for export but also for import**, to pay any duty for both export and import and to carry out all customs formalities.



DDP – Guidance Note




- Clear specification of the point within the agreed place of destination
- On the agreed date or within agreed period

Main Issues:

- Export and import clearance, licency, official authorisation, custom formalities for export and import
- Contract of carriage – Seller must contract for carriage to the named place of destination
- If no specific point is agreed or determined by practice, Seller may choose
- If the Seller incurs costs under its contract of carriage related to unloading at the place of destination, **not entitled** to recover such costs from Buyer unless otherwise agreed between the parties.

FAS (named port of shipment) Incoterms®2010



Carriage of goods	
Risks	
Costs	


Export Clearance
Import Clearance

FAS named port of shipment

Seller delivers the goods

- cleared** for export
- placed alongside the vessel (e.g. on a quay or a barge) nominated by Buyer at the named port of shipment.**

The Seller is required either to deliver the goods alongside the ship or to procure goods already so delivered for shipment. The reference to 'procure' here caters for multiple sales down a chain ('string sales'), particularly common in the commodity trades.




FAS – Guidance Note

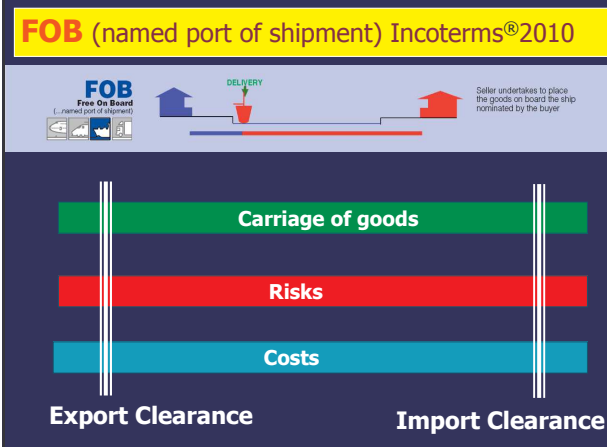
- Clear specification of the loading point at the named port of shipment
- On the agreed date or within agreed period

Main Issues:

- Export clearance, licency, official authorisation, custom formalities for export
- **Contract of carriage** – no obligation
- However, if requested by the Buyer or if it is commercial practice and the Buyer does not give an instruction to the contrary in due time, the Seller may contract for carriage on usual terms at the Buyer's risk and expense.
- **In either case, the Seller may decline** to make the contract of carriage and, if it does, shall promptly notify the Buyer.



FOB (named port of shipment) Incoterms®2010





FOB named port of shipment

Seller delivers the goods

- **cleared** for export
- **on board the vessel nominated by Buyer at the named port of shipment.**

The Seller is required either to deliver the goods on board the ship or to procure goods already so delivered for shipment. The reference to 'procure' here caters for multiple sales down a chain ('string sales'), particularly common in the commodity trades.

FOB – Guidance Note

- **FOB** may not be appropriate for use where goods are handed over to the carrier before they are on board the vessel, for example goods in containers, which are typically delivered at a terminal. In such situations, the **FCA** rule should be used.

Main Issues:

- Export clearance, licency, official authorisation, custom formalities for export
- **Contract of carriage** – no obligation
- However, if requested by the Buyer or if it is commercial practice and the Buyer does not give an instruction to the contrary in due time, the seller may contract for carriage on usual terms at the Buyer's risk and expense.
- **In either case, the Seller may decline** to make the contract of carriage and, if it does, shall promptly notify the Buyer.

Transfer of risks:

- when goods delivered placed on board the ship nominated Buyer at the loading point at the named port of shipment ...except when **Buyer fails** to give notice or the ship nominated by the Buyer fails to arrive on time, is unable to take the goods, or closes for cargo earlier than the time notified.

Notices:

Seller to Buyer:

- at the Buyer's risk and expense, give the Buyer sufficient notice either that the goods have been delivered or that the vessel has failed to take the goods within the time agreed.

Buyer to Seller:

- sufficient notice of the vessel name, loading point and, where necessary, the selected delivery time within the agreed period.

CFR (named port of destination) Incoterms®2010

Main carriage paid by seller

CFR
Cost and Freight
(named port of destination)

DELIVERY

Seller pays for contract of carriage to the named place (point of destination)

Seller contracts for carriage

Carriage of goods

Risks

Costs

Export Clearance

Import Clearance

CFR named port of destination

Seller delivers the goods

- **cleared** for export
- **on board the vessel at the named port of shipment.**

The Seller is required either to deliver the goods on board the ship or to procure goods already so delivered for shipment. The reference to 'procure' here caters for multiple sales down a chain ('string sales'), particularly common in the commodity trades.

CFR – Guidance Note

- This rule has two critical points because **risk passes and costs** are transferred **at different places**. While the contract will always specify a destination port, it might not specify the port of shipment and that is the place at which risk passes to the Buyer. If the shipment port is of particular interest to the buyer, the parties are well advised to identify it as precisely as possible in the contract.
- **CFR** may not be appropriate for use where goods are handed over to the carrier before they are on board the vessel, for example goods in containers, which are typically delivered at a terminal. In such circumstances, the **CPT** rule should be used.

CFR – Guidance Note

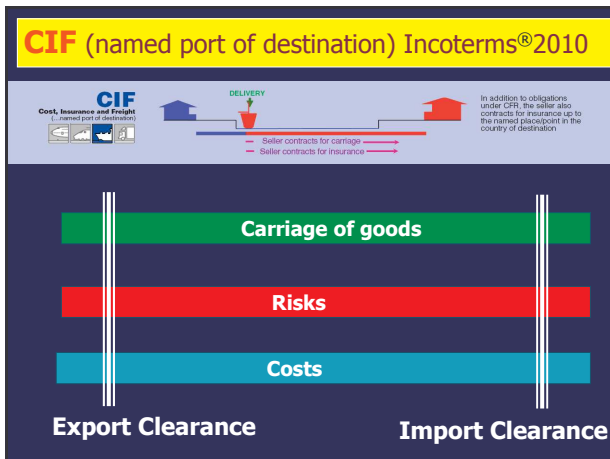
The parties are well advised to identify as precisely as possible the point at the agreed port of destination, as the costs to that point are for the account of the Seller.

Main Issues:

- Export clearance, licency, official authorisation, custom formalities for export

Contract of carriage

- The Seller must contract or procure a contract for the carriage of the goods from the agreed point of delivery, if any, at the place of delivery to the named port of destination or, if agreed, any point at that port.
- The contract of carriage must be made on usual terms at the Seller's expense and provide for carriage by the usual route in a vessel of the type normally used for the transport of the type of goods sold.



CIF named port of destination

Seller delivers the goods

- **cleared** for export
- **on board the vessel at the named port of shipment & insurance cover**

The Seller is required either to deliver the goods on board the ship or to procure goods already so delivered for shipment. The reference to 'procure' here caters for multiple sales down a chain ('string sales'), particularly common in the commodity trades.

CIF – Guidance Note

- This rule has two critical points because **risk passes and costs** are transferred **at different places**. While the contract will always specify a destination port, it might not specify the port of shipment and that is the place at which risk passes to the Buyer. If the shipment port is of particular interest to the Buyer, the parties are well advised to identify it as precisely as possible in the contract.
- **CIF** may not be appropriate for use where goods are handed over to the Carrier before they are on board the vessel, for example goods in containers, which are typically delivered at a terminal. In such circumstances, the **CIP** rule should be used.



CIF – Guidance Note



The parties are well advised to identify as precisely as possible the point at the agreed port of destination, as the costs to that point are for the account of the Seller.

Main Issues:

- Export clearance, licency, official authorisation, custom formalities for export

Contract of carriage

- The Seller must contract or procure a contract for the carriage of the goods from the agreed point of delivery, if any, at the place of delivery to the named port of destination or, if agreed, any point at that port.
- The contract of carriage must be made on usual terms at the Seller's expense and provide for carriage by the usual route in a vessel of the type normally used for the transport of the type of goods sold.

Contract of insurance:

- at least with the minimum cover as provided by Clauses (C) of the Institute Cargo Clauses (LMA/IUA) or any similar clauses
- underwriters or an insurance company of good repute and entitle the Buyer, or any other person having an insurable interest in the goods, to claim directly from the insurer
- When required by the Buyer, the Seller shall, subject to the Buyer providing any necessary information requested by the Seller, provide at the Buyer's expense any additional cover, if procurable, such as cover as provided by Clauses (A) or (B) of the Institute Cargo Clauses (LMA/IUA) or any similar clauses, and/or cover complying with the Institute War Clauses and/or Institute Strikes Clauses (LMA/IUA) or any similar clauses.
