

Changes to International Sales Contracts Coming with the Release of Incoterms® 2020

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WHAT ARE INCOTERMS?

The International Chamber of Commerce ("ICC") released Incoterms® 2020 this week, which will replace the prior version, Incoterms® 2010, when they go into effect on January 1, 2020.

Existing since 1936, Incoterms are a set of internationally recognized contractual provisions which govern freight delivery and allocate risk and responsibilities between commercial buyers and sellers of goods. The ICC updates the Incoterms approximately once every ten years with input from practitioners worldwide. As a best practice, Incoterms should be used in all international commercial contracts involving the sale of goods, and they may also be used for domestic business transactions.

WHAT IS NEW?

With Incoterms® 2020, the ICC seeks to make it easier for importers and exporters to choose the correct Incoterm for each transaction and to provide better alignment with the practical realities facing international traders. Key changes in Incoterms® 2020 are:

1. **DPU replaces DAT but in name only.** DAT (delivered at terminal) under the prior version has been changed to "DPU," which stands for "delivered at place unloaded." The change is in reference to goods being deemed delivered when they are unloaded at a specified location, not just a terminal.
2. **Insurance requirements in CIP (Carriage and Insurance Paid to) are increased.** CIP is an intermodal term which is often used when shipping expensive manufactured goods, so the ICC decided to raise the insurance requirements to a level more reflective of this reality. The insurance requirements for CIF (same as CIP but only used for waterway freight) remain at the same minimal level, under the rationale that most products shipped CIF are commodities.
3. **An option is added for parties to specify that onboard bills of lading may be used with FCA (Free Carrier).** An onboard bill of lading is usually necessary when a seller is securing payment with a letter of credit for a shipment sent by sea, but as a matter of practice, onboard bills of lading are not typically provided when FCA is used. Under the prior version, the alternative was for a seller to use the Incoterm FOB (Free on Board), but this left the seller exposed to risks associated with the time between a shipment's arrival at the port and its loading onto a ship. Accordingly, the revision serves as a stop-gap to give sellers the ability to receive an onboard bill of lading in order to satisfy letter of credit requirements when goods are shipped FCA.

Incoterms® 2020 also provides clarity regarding allocation of costs, making it easier for practitioners to understand which party is responsible for each phase of a shipment through better graphics and improved explanatory notes throughout the text. The ICC's update also makes greater mention of transport security requirements by specifying

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which party is responsible for the mandatory screening of shipments, which can be costly and time-consuming if not completed in accordance with the relevant jurisdiction's requirements. Finally, Incoterms® 2020 also makes clear that parties may use their own transport, rather than a third-party carrier, in applicable contexts.

NEXT STEPS

If your commercial contracts involve Incoterms, now is a good time to check those provisions to confirm that the correct term is being used and also to determine whether they are impacted by Incoterms® 2020. Alternatively, if you import or export goods and your contracts do not specify Incoterms, you should consider asking your Miller Canfield attorney to help you review and revise them in order to provide your business with better risk allocation and protection through the use of an appropriate Incoterm.

Should you have any questions about Incoterms or the applicability of this e-alert to your business, please contact your Miller Canfield attorney.