



## Incoterms 2020: what has changed in the rules for delivery of goods

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Русская версия 

On 1 January 2020, a new version of Incoterms – the Incoterms 2020 rules (ICC publication No. 723) – came into force. This version contains important changes to the rules for the international supply of goods.

The main goal of this new edition is to make these rules as clear and easy to use as possible. The structure of the document and the organisation of tables with the parties' obligations have changed. Each delivery condition is now illustrated with graphic diagrams.

In addition to "cosmetic" and structural changes, there have also been substantive changes, which are outlined below.

### **FCA – the bill of lading can now be issued after loading**

In accordance with the term FCA (Free Carrier), a seller's obligations will be deemed fulfilled when the seller transfers the goods to the carrier engaged by the buyer. However, in the case of sea transportation and when settlements are made under a letter of credit, banks often require a bill of lading with an on-board record which is issued after the goods are loaded onto the ship.

The parties can now agree that the buyer has to instruct its carrier to issue a bill of lading with an on-board record to the seller after loading the goods. The seller will then be required to provide the bill of lading to the buyer, usually through a bank. This does not affect the transfer of risks which is determined by the general rules of the FCA term.

### **DPU replaces DAT**

The term DAT (Delivered at Terminal) has been replaced by DPU (Delivered Named Place Unloaded). Under the new term, the seller is responsible for unloading the goods at the destination point.

Accordingly, it is recommended to select the DPU condition only if the seller knows where and how to unload the goods at the destination point (i.e. when it is familiar with the local set-up). Otherwise, it is better to choose the term DAP (Delivered at Place).

### **Transportation document requirements under CPT**

In accordance with CPT (Carriage Paid To), the transport document must:

- be dated within the agreed shipping period;
- cover all the goods under a contract; and
- provide the buyer with the opportunity to demand the goods from the carrier at the named place of destination and allow the buyer to sell the goods during the transit period by transmitting the document to the subsequent buyer or by notifying the carrier.

If the transport document is negotiable and issued in several originals, the complete set of documents must be handed over to the buyer.

If there are defects in the transport document, the seller must correct them. Otherwise, there will be a delay in the

delivery.

### Insurance coverage under CIP and CIF

The terms CIP (Carriage and Insurance Paid To) and CIF (Cost Insurance and Freight) now set different levels of insurance coverage in favour of the buyer.

In accordance with CIP, the scope of insurance must comply with reservation A of the Institute of London Underwriters. Previously, there was less coverage for this term.

Reservation A of the Institute of London Underwriters provides for the largest scope of insurance coverage. In particular, protection is provided against all risks of damage, destruction or loss of property with certain exceptions (e.g. if the insured person, through intentional actions, contributed to the damage; or if the damage was caused by the inherent defects of the product or its properties).

The CIF term still provides for minimum insurance coverage (as under reservation C of the Institute of London Underwriters), since it is more often used for the supply of raw materials.

In particular, Reservation C of the Institute of London Insurers provides insurance coverage only against a limited range of risks, such as fire, explosion or collision of a vessel with an external object.

### Other changes

In addition to the above, Incoterms 2020 include:

- situations where goods are transported by the seller's own transport means (i.e. FCA, DAP, DPU, DDP or Delivered Duty Paid);
- a list of all the costs for each term in articles A9 / B9 "Allocation of costs";
- a more precise determination of the party responsible for customs clearance: export, transit and import; and
- a new obligation for the seller to comply with safety requirements related to transport to the delivery point or to provide the buyer with information required to arrange transportation.

### What is not regulated by Incoterms 2020?

As before, Incoterms do not replace the contract of sale. In particular, Incoterms do not determine the legal nature of the contract, **the moment of transfer of ownership of the goods**, the applicable law and a number of other significant issues that the parties should agree on when concluding a contract. In this regard, it remains crucial to carefully draft the text of the contract.

### What does this mean?

Incoterms 2020 are designed to eventually replace the previous 2010 version. At the same time, parties to supply contracts are not obliged to change the terms of already concluded agreements. They also have the right to continue to refer to the version of Incoterms 2010 (or to any earlier version of Incoterms) in new delivery contracts concluded after 1 January 2020, if any of these suits them better.

In the light of the new changes, it is possible for uncertainties to arise between counterparties. Do Incoterms 2010 or 2020 apply to your contract? To resolve this uncertainty, you should expressly agree on the Incoterms version applicable to your contract.

We also advise that you analyse existing supply contracts to determine whether the transition to the Incoterms 2020 edition is beneficial to you.

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If you have any questions on this eAlert, do not hesitate to contact CMS Russia experts **Georgy Daneliya, Maxim Gubanov** or your regular contact at CMS Russia.



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