

RELEVANT TO ACCA QUALIFICATION PAPER F4 (GLO)

## ICC introduces new International Commercial Terms

'Incoterms' is an abbreviation of International Commercial Terms. These terms have been published by the International Chamber of Commerce (ICC) since 1936 and have been subject to review and updating since that date. The most recent updates were announced in Paris by the ICC on 16 September 2010. Although earlier versions of Incoterms may still be incorporated into future contracts if the parties agree, it is likely that most contracts made now will refer to this latest edition of Incoterms. In order to avoid the possibility of confusion, contracts should refer specifically to the 'Incoterms 2010' rather than just Incoterms, if the parties wish the new terms to apply. This will avoid any subsequent dispute as to which set of rules apply. The assumption is that the new version of the ICC terms will apply to Paper F4 (GLO).

The Incoterms are often to be found in international contracts, and they seek to provide a common set of rules for the most frequently used international terms of trade with the aim of removing confusion over their interpretation. For example, the terms set out exactly who is under the obligation to take control of and/or insure goods at a particular point in the shipping process. The terms also deal with the obligation for the clearance of the goods for export or import, and requirements on the packing of items.

### Classes of terms

Among the changes made in the 2010 rules is the reduction in the overall number from 13 to 11. This is the result of the removal of four previous terms and the inclusion of two new ones. In effect, this is a replacement of four previous rules, DAF, DES, DEQ and DDU, by two new rules that may be used irrespective of the agreed mode of transport. These new rules are DAT (Delivered at Terminal), and DAP (Delivered at Place) (see below for more details).

Changes have also been made to better deal with cargo security and insurance, and the language has been changed to reflect the modern usage in international trade.

The new rules have been separated into two classes rather than the previous four categories. The current two classes of terms are:

#### ***(i) rules for use in relation to any mode or modes of transport***

These can be used in cases where either maritime transport is not involved in the carriage of the goods, or where maritime transport is used for only part of the carriage. This first class includes the following seven Incoterms that can be used irrespective of the mode of transport selected and irrespective of whether one – or more than one – mode of transport is employed:

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EXW	Ex Works
FCA	Free Carrier
CPT	Carriage Paid To
CIP	Carriage and Insurance Paid To
DAT	Delivered at Terminal
DAP	Delivered at Place
DDP	Delivered Duty Paid

Most of the terms retain their former meanings, so no further explanation will be provided. However, as DAT and DAP are new and replace previous delivery terms, they need some, if brief, explanation.

DAT replaces the more specific DEQ (Delivered ex Quay). It requires the seller to pay for carriage to the terminal, except for costs related to import clearance, and to assume all risks up to the point that the goods are unloaded at the terminal. The seller delivers when the goods, having been unloaded from the arriving means of transport, are placed at the buyer's disposal at a named terminal at the named port or place of destination. As indicated, DAT requires the seller to clear the goods for export where applicable but the seller has no obligation to clear the goods for import, pay any import duty or carry out any import customs formalities.

DAP (Delivered at Place) replaces DAF (Delivered at Frontier), DES (Delivered ex Ship) and DDU (Delivered Duty Unpaid). Under DAP, a seller bears all the costs, other than import clearance costs and risks involved in bringing the goods to the named destination. Consequently, the seller assumes all risks and costs prior to the point that the goods are ready for unloading by the buyer at the agreed destination.

It should be emphasised that although all the terms listed apply when there is no maritime transport, they can be used in cases where a ship is used for part only of the carriage.

### ***(ii) rules for sea and inland waterway transport***

These rules apply where the point of delivery and the place to which the goods are carried to the buyer are both ports. There are four substantive rules:

FAS	Free Alongside Ship
FOB	Free on Board
CFR	Cost and Freight
CIF	Cost Insurance and Freight

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None of these rules has been changed in practice, although in relation to the last three – FOB, CFR and CIF – reference to the ‘ship's rail’ as the point of delivery has now been deleted and this has been replaced with the goods being delivered when they are ‘on board’ the vessel. This is clearly done in the pursuit of updating language and as the ICC’s own introduction to the new rules states: ‘This more closely reflects modern commercial reality and avoids the rather dated image of the risk swinging to and fro across an imaginary perpendicular line.’

### **Sphere of application**

A further change and recognition of existing practice is that the new rules apply to domestic as well as international trade, whereas previous Incoterms applied to international sale contracts. As a result, the new rules state that the obligation to comply with export/import formalities exists only where applicable. This alteration is in recognition of the fact that some trade blocs, such as the European Union, have minimised – if not removed – the significance of border formalities. It is also expected that this particular alteration should lead to greater use of the Incoterm rules within the US.

### **Sale of goods in transit**

Reflecting the fact that commodities may be sold several times over during transit, through a string of sale contracts, the new rules have been amended to indicate that in reality a purchaser/seller in the middle of the string of contracts does not actually ship the commodities, as they are already on board when they acquire title over them. Consequently, under the new the rules, only the first seller will be responsible for shipping the goods and subsequent sellers will be under the obligation to ‘procure goods shipped’. This is not a major change but it does tidy up the rules.

### **Security**

Given the context of uncertainty regarding potential terrorism and the need for heightened security, many countries have introduced security checks in relation to goods crossing their boundaries. The new Incoterm rules now require both sellers and buyers to provide sufficient information to one another so that export/import clearance can be obtained.

### **Terminal handling charges**

The new rules look to clarify responsibility for costs arising at the end of the journey. Under the old Incoterms rules CPT, CIP, CFR, CIF, DAT, DAP, and DDP, the seller was required to make arrangements for the carriage of the goods to the agreed destination but it was actually the buyer who actually paid the costs, as these were included in the total selling price. This gave rise to problems where the carrier or terminal operator charged further handling costs to the buyer/receiver of the goods. The new Incoterms rules seek to avoid this eventuality by clearly allocating such costs between the parties.

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### **Electronic documentation**

The previous rules provided for the use of electronic data interchange, where the parties had agreed its use. The new rules provide for the use of paper communications or 'equivalent electronic record or procedure' where agreed or customary, with customary indicating recognition of current practice in this regard.

### **Conclusion**

Incoterms are a core constituent of international contracts and have frequently formed the basis for questions in the Paper F4 Global exam. Although in the manner of an updating exercise, the new Incoterms 2010 do introduce significant new rules for students of the Paper F4 Global syllabus to take into consideration in their preparation for future exams.

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