

**AN INKLING OF INCOTERMS® 2020**  
**Robert A. James, Pillsbury Winthrop Shaw Pittman LLP**

Term, Mode <sup>⚓</sup>	Meaning (must insert [place])	2 Seller's Delivery Obligation	3 Risk in Transit	4/5 Carriage Obligation/ Insurance Choice	6 Delivery Documents	7 Customs Clearance	9 Transportation Cost Allocation	10 Notices
<b>EXW</b>	Ex works <u>[delivery place]</u>	Place at B's disposal at named place, ready for loading by B or its carrier	B	B may arrange for carriage/B	B: evidence of taking goods	S: Assist B: Exp/Tran/Imp	S: None B: All	S: If needed for B to take goods
<b>FCA</b>	Free carrier <u>[delivery place]</u>	S premises: Load on B's transport Elsewhere: place at B's disposal on S's carrier, ready for unloading by B or its carrier	B	B/B	S: evidence of delivery <b>Option:</b> B: bill of lading when risk passes, not when loaded	S: Exp B: Tran/Imp	S: Exp, loading if S premises B: loading if elsewhere, Tran/Imp	S: delivered, or carrier failed to take timely
<b>FAS</b> <sup>⚓</sup>	Free alongside ship <u>[shipment port]</u>	Place alongside B's nominated ship at named port—e.g., on quay or barge—or procure goods there	B	B/B	S: evidence of delivery	S: Exp B: Tran/Imp	S: Exp B: Tran/Imp, other	S: delivered, or vessel failed to take timely
<b>FOB</b> <sup>⚓</sup>	Free on board <u>[shipment port]</u>	Place on board B's nominated ship at named port or procure goods there	B	B/B	S: evidence of delivery	S: Exp S: Tran/Imp	S: Exp B: Tran/Imp, other	S: delivered or vessel failed to take timely
<b>CFR</b> <sup>⚓</sup>	Cost [and] freight <u>[destination port]</u>	Place on board ship at <u>origin</u> port (name it) or procure goods there	B	S/B	S: transport document (e.g., bill of lading)	S: Exp B: Tran/Imp	S: Freight, Exp B: Tran/Imp, other	S: if needed for B to receive goods
<b>CIF</b> <sup>⚓</sup>	Cost, insurance [and] freight <u>[destination port]</u>	Place on board ship at <u>origin</u> port (name it) or procure goods there	B	S/S <b>must</b> buy <u>clause C</u> LMA/IUA insurance	S: transport document and policy or evidence of insurance	S: Exp B: Tran/Imp	S: Freight, Insurance, Exp B: Tran/Imp, other	S: if needed for B to receive goods
<b>CPT</b>	Carriage paid to <u>[destination place]</u>	Hand over to carrier at <u>origin</u> place (name it)	B	S/B	S: transport document	S: Exp B: Tran/Imp	S: Freight, Exp B: Tran/Imp, other	S: delivered, and if needed for B to receive goods
<b>CIP</b>	Carriage [and] insurance paid [to] <u>[destination place]</u>	Hand over to carrier at <u>origin</u> place (name it)	B	S/S <b>must</b> buy <u>clause A</u> LMA/IUA insurance (CIP 2010 clause C)	S: transport document and policy or evidence of insurance	S: Exp B: Tran/Imp	S: Freight, Insurance, Exp B: Tran/Imp, other	S: delivered, and if needed for B to receive goods
<b>DAP</b>	Delivered at place <u>[destination place]</u>	Place at B's disposal at named place, ready for unloading by B	S	S/S or B	S: as needed for B to receive goods	S: Exp/Tran B: Imp	B: Unloading, Imp S: Exp/Tran, other	S: if needed for B to receive goods
<b>DPU</b> (2010's DAT)	Delivered [at] place unloaded <u>[destination place]</u>	Unload at named place for B's disposal	S	S/S or B	S: as needed for B to receive goods	S: Exp/Tran B: Imp	B: Imp S: Unloading, Exp/Tran, other	S: if needed for B to receive goods
<b>DDP</b>	Delivered duty paid [to] <u>[destination place]</u>	Place at B's disposal at named place on S's transport beyond import customs, ready for unloading by B	S	S/S or B	S: as needed for B to receive goods	S: Exp/Tran/Imp B: Assist	B: Unloading S: Exp/Tran/Imp, other	S: if needed for B to receive goods

See explanatory notes on page 2.

*For educational purposes. Many details, exceptions and alternates omitted. Not legal advice.*

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### HOW TO USE THIS INKLING

INCOTERMS® 2020 is a registered trademark of the International Chamber of Commerce for what it calls “trade terms,” but which might be called “delivery terms”—shorthand incorporation of clauses defining what a seller must do to complete its responsibilities; which party bears which responsibilities and costs associated with transport, customs clearance and delivery; which party bears the risk of loss of or damage to goods in transit; and which party must provide transportation or delivery notices or documents. That means that if you include ***both*** an INCOTERMS term ***and*** clauses on the foregoing subjects, you may have introduced a conflict into your contract!

On the other hand, INCOTERMS terms do not define when and how payment is made and against what documents of title. (“COD” may be three letters, but it is not part of INCOTERMS.) They do not set out requirements for inspection, or conditions for tender, rejection, acceptance or revocation. They do not provide excuses for force majeure, impracticability, frustration or similar contingencies.

Contrary to popular impression, of and by themselves, INCOTERMS do not define the point where and when title passes. The contract may specify that point, which may be different from the point of delivery or the point of risk passage. But the contract or the governing law may provide that if not otherwise specified, title passes at the delivery point or completion of the seller’s delivery obligations—and ***that*** subject ***is*** addressed by INCOTERMS.

The preferred style is “XXX [named place] INCOTERMS® 2020.” If a contract states FOB, FAS or CIF without “INCOTERMS® 2020,” there is some risk that the older INCOTERM editions, or less complete definitions in the Uniform Commercial Code, may apply. The clause should always include the named port or place, not just the three letters. For the C terms (CFR, CIF, CPT and CIP) the named point is the ***destination***, not the earlier ***origin*** when and where S completed its delivery obligations. That origin should also be mentioned in the contract.

The bookends, EXW and DDP, are increasingly rare in international trade, where both S and B must provide or sign documents. DAT was renamed DPU this year, while DAF, DES, DEQ and DDU were retired in 2010.

The terms may be grouped in four categories:

**E TERMS:** S makes available to B or B’s carrier from **(EX)** S’s works.

**F TERMS:** S delivers **FREE** (without B cost) to the designated delivery point to B or B’s carrier.

**C TERMS:** S delivers to S’s carrier where risk passes, but still pays **CARRIAGE COSTS** to the named destination.

**D TERMS:** S or S’s carrier delivers to the named **DESTINATION**.

All the INCOTERMS apply to all modes (vessel, rail, truck, air) except those marked with ⚓—the FAS, FOB, CFR and CIF terms are intended only for transport of goods by vessel outside of containers via sea or inland waterway. So for goods shipped in containers, even if by sea, use FCA, CPT or CIP instead.

CIF and CIP require S to procure insurance in the contract currency for 110% of the contract price, with “underwriters of good repute.” CIF requires Clause (C) of the Institute Cargo Clauses (LMA/UIA) or equivalent, which covers enumerated risks. New for 2020, CIP requires Clause (A) insurance, so-called “all risks” with broader coverage and higher premiums. Parties could elect to specify CIP INCOTERMS 2010 and procure Clause (C) insurance instead. The texts of the clauses are available at

[https://www.lmalloyds.com/lma/underwriting/marine/JCC/JCC\\_Clauses\\_Project/Cargo\\_Clauses.aspx](https://www.lmalloyds.com/lma/underwriting/marine/JCC/JCC_Clauses_Project/Cargo_Clauses.aspx).

Abbreviations used in this Inkling include S (Seller), B (Buyer), Exp (Export), Imp (Import), Tran (customs in countries through which goods transit).

This Inkling is only a summary—“it is one thing to put a case like *Shelley’s* in a nutshell and another to keep it there” (*Van Grutten v Foxwell* (1897)). It omits discussion of consequences of breach or delay, duties to assist, inspection, weighing, packing, processing of electronic documents, and safety and security clearances. Only rely on the actual provisions, found in INCOTERMS® 2020 (ICC Publication No. 723E). The numbers in the Inkling columns track those in INCOTERMS applicable to the seller (A) or buyer (B). So for the actual text on the parties’ customs clearance obligations for FCA, refer to clauses A7 and B7 under FCA.