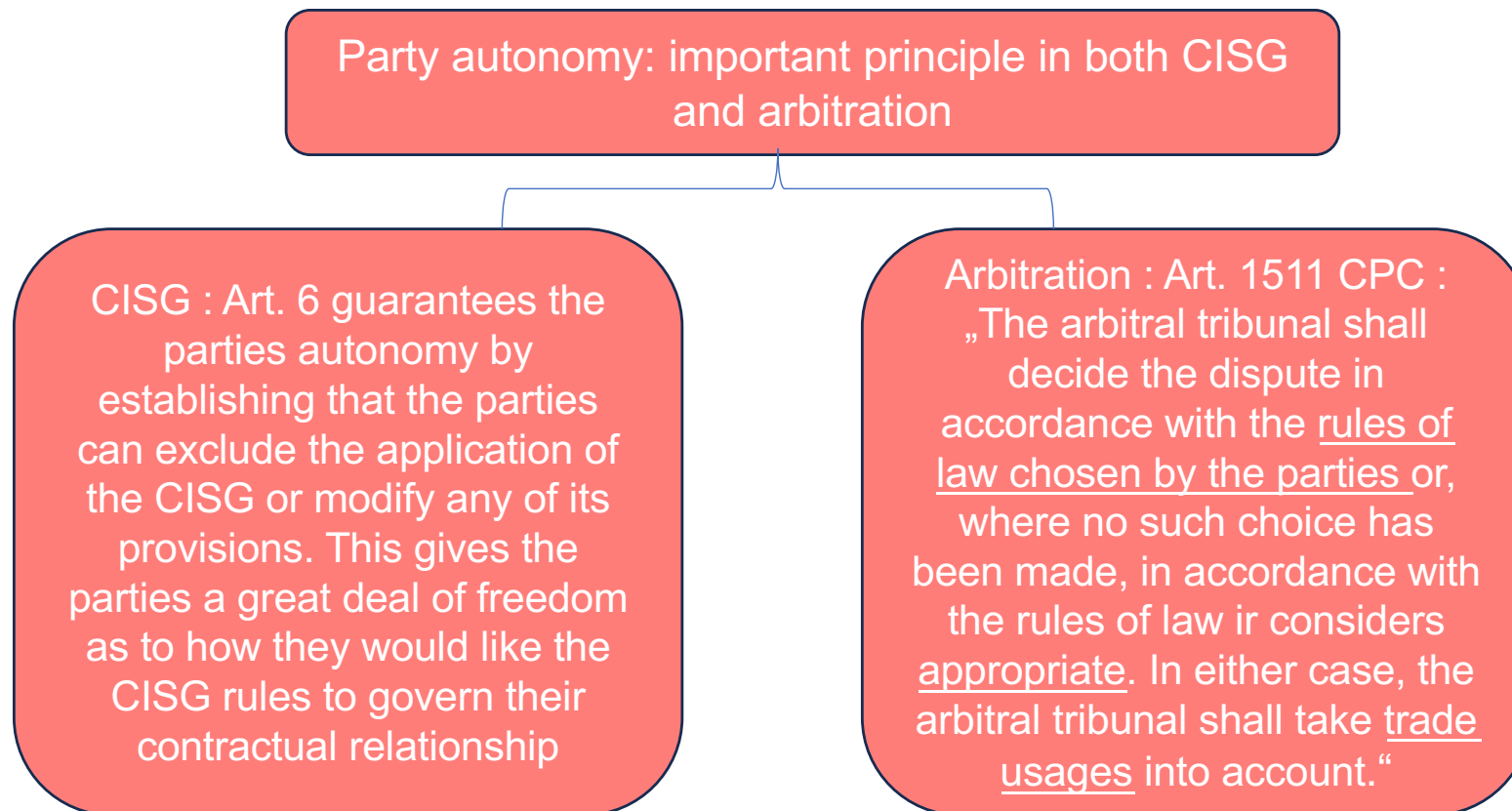


E. The principle of party autonomy in practice

- **The principle of party autonomy**
- **Some practical aspects of party autonomy**
 - (1) The battle of the forms (CISG's legal design : "last shot rule")
 - (2) Opting in of CISG by parties (of non-Contracting States)

E. The principle of party autonomy in practice

- The principle of party autonomy



E. The principle of party autonomy in practice

- The principle of party autonomy
 - Party autonomy used by arbitrators as an interpretive standard for filling contractual gaps
 - Filling of contractual gaps for matters not governed by the CISG (**external gaps** in the sense of **article 4**) in the absence of a choice of law
 - Filling of contractual gaps for matters governed by the CISG, but not expressly settled (**internal gaps** in the sense of **art. 7**)

E. The principle of party autonomy in practice

- The principle of party autonomy

Filling of contractual gaps for matters not governed by the CISG (external gaps in the sense of article 4) in the absence of a choice of law



According to **article 4 CISG**, the Convention is not concerned with the validity of the contract, its provision or usage and the effect, which the contract would have on the property in the goods sold.

- In this case **subsidiary national law applies**, which must be **interpreted by the light of the CISG**
- If the parties have **not chosen a subsidiary national law**, the question arises of **how the State Court or the arbitral tribunal will determine the applicable law.**

E. The principle of party autonomy in practice

- The principle of party autonomy

Filling of contractual gaps for matters not governed by the CISG (external gaps in the sense of article 4) in the absence of a choice of law



Article 1511 CPC focuses on party autonomy in a triple way:

- This provision entitles the arbitrator in the case the parties have not chosen the applicable law to their contractual relationship **to apply the rules of law they consider “appropriate”**
- This provision gives the arbitrator a great deal of flexibility (rules of law -> lex mercatoria and UNIDROIT principles)
- The tribunal will always **try to act in accordance with the explicit, implicit or presumed will of the parties** (e.g. trade usages)

E. The principle of party autonomy in practice

- The principle of party autonomy

Filling of contractual gaps for matters governed by the CISG, but not expressly settled (**internal gaps** in the sense of art. 7)

- Article 7 CISG deals with the issue of (internal) gaps in the contract regarding matters governed by the Convention, but not expressly settled by the latter
- In this case, the gaps in the contract must be filled by referring to general principles of the Convention
- In absence of these principles, national law must be applied (e.g., amount of the interest for default interests)

E. The principle of party autonomy in practice

- **Practical aspects of party autonomy**
 - (1) The battle of the forms : Last shot rule
 - (2) Opting in of CISG by parties established in non-Contracting States

E. The principle of party autonomy in practice

- (1) The battle of the forms: definition

The definition of the battles of the forms

- In international transactions, the situation can arise in which the **parties use standard form contracts containing conflicting general conditions**
- Each party will **try to impose their general conditions** in order to ensure their applicability

- The legal framework of the CISG regarding the battle of the forms can be found under **article 19**
The first paragraph of article 19 CISG is based on the **mirror-image rule**.
- In order to conclude a contract, an offer and an acceptance must correspond in all aspects. When the latter contains additions or alterations it must be considered as a counter-offer and not an acceptance.
- **Article 19 (2) CISG** tries to soften the severity of the mirror-image rule by allowing additional or different terms when the offeree's communication was intended to be an acceptance, the terms of the acceptance do not materially alter the terms of the offer and the offeror does not orally object to the altered terms
- However additional or different terms relations to the essential terms of general conditions (e.g. jurisdiction or arbitration clause) are considered to alter the terms of the offer materially (**art. 19 (3) CISG**)

E. The principle of party autonomy in practice

- (1) The battle of the forms : legal conception
 - The last-shot rule as a complex legal conception:
 - It can be a complex challenge for the courts to determine what the exact terms of the contract are (**art. 8 (2) CISG**)
 - Both scholars and case law consider **that article 19 (2) CISG incorporates the so-called « last-shot rule »**
 - According to this rule, the **terms contained in the last submitted form must be applied to the contract**
 - The last-shot rule is based on the idea that if **no valid objection** has been made within a reasonable period of time, **the party has tacitly accepted the terms**
 - Consequently, **the last person who sends its form** is in control of the terms of the contract and **wins the battle of the forms**

E. The principle of party autonomy in practice

- **(1) The battle of the forms**
 - **The last-shot rule as an out-dated solution**
 - This legal solution is not appropriate for modern and international business, since it can give rise to legal insecurity
 - Therefore, in practice, this solution not only shall be criticized, but both parties and arbitrators should try to avoid it
 - The knock-out rule as the modern legal conception : the contract is concluded even in the case of minor modifications in the acceptance of e.g. court/arbitration clause, governing law clause.
 - Any diverging conditions e.g. court/arbitration clause, governing law clause are respectively knocked-out and shall be completed by the national applicable law.

E. The principle of party autonomy in practice

(1) The battle of the forms : remedies to the “last-shot rule”

Implicit and explicit exclusion by parties:

- The parties can **expressly** exclude the application of the last-shot rule under article 6 CISG;
However, the **problem** can arise that parties fail to realize that the CISG is applicable to their contract;
Consequently, they often do not provide for the exclusion of the last-shot rule.
- The parties can **implicitly** waive the application of the last-shot rule. However, they must have an exclusive conduct.

Presumption of the exclusion of the last shot rules as a business standard:

- We can consider that according to a **widely spread business standard and/or trade usages** the parties would have preferred the last-shot rule not to be applied to the contract (art. 6, 7, 8 CISG);
State judges are hesitant to presume the parties' common will to exclude its application;
Therefore, in case of doubt, **they prefer following the safe path** of what is **exactly stipulated** in the contract and applying the last-shot rule instead of the presumed will of the parties.
- In comparison with State judges, the **arbitrator have much more flexibility and margin of appreciation** (idea of art. 1511 CPC).

E. The principle of party autonomy in practice

- (2) Opting in the CISG

- The possibility of *opting in* the CISG by parties established in non-Contracting States
- No dot confuse:
 - PRINCIPLE of *Opting out*: according to article 6 CISG, the parties have the freedom to exclude the application of the CISG
 - EXCEPTION of *Opting in*: the parties (established in not-Contracting States) have the possibility to apply the CISG, even if the legal conditions of Art. 1 are not fulfilled

E. The principle of party autonomy in practice

- (2) Opting in the CISG
 - The different scope of the contractual clause
 - Before a State court
 - The clause will only have limited effectiveness
 - The CISG will not be applicable as the general law of the international sales of goods, because the contract is not within the scope of the CISG
 - Therefore, the national law of the State that would be considered as applicable (under the PIL rules / Rome I) will govern the contract as the « lex contractus »

E. The principle of party autonomy in practice

- (2) Opting in the CISG

- The different scope of the contractual clause

- Before a State court

- Only in the case the « *lex contractus* » allows derogations from the general provisions of the national applicable law, the State court will take the provisions of the CISG into account
 - Consequently, the CISG can only be applicable if the national applicable law (« *lex contractus* ») leaves certain matters to the discretion of the parties
 - In this case, CISG can be compared to soft law

E. The principle of party autonomy in practice

- (2) Opting in the CISG
 - The different scope of the contractual clause
 - Before an arbitral tribunal
 - The arbitrator (Art. 1511 French CPC) will give a great importance to the choice of law (« rules of law ») made by the parties
 - The arbitrator will consider CISG (opted in) as the *lex contractus*, i.e. the substantive law of the contractual relationship

E. The principle of party autonomy in practice

- (2) Opting in the CISG
 - The different scope of the contractual clause
 - Before an arbitral tribunal
 - The arbitrator will take national law only into account, if the parties have stipulated that it must be applied as subsidiarily applicable law or to fill in gaps not covered by the provisions of the contract
 - The arbitrator will also take into consideration the “rules of law” (law includes soft law!) which it considers appropriate (better-law approach) as well as trade usages (Art. 1511 French CPC)



Practical case

I. FACTS

A Chinese company ordered a vessel from a German company that shall be delivered in the port of Hamburg (Germany).

II. QUESTION

Is the CISG applicable to the contract?



Guiding questions

➤ Territorial scope

- **Art. 1(1)(a) CISG** : Where is the place of business of the parties ?
- **Art. 1(1)(b) CISG** : Are there rules that lead to the application of the law of a contracting state ?

➤ Material scope

- **Art. 2 CISG** : Do the goods fall under any exclusion?



Practical case

I. FACTS

An Austrian department store is selling products to a consumer domiciled in Slovakia.

II. QUESTION

Is the CISG applicable to the contract?



Guiding questions

➤ Territorial scope

- **Art. 1(1)(a) CISG** : Where is the place of business of the parties ?
- **Art. 1(1)(b) CISG** : Are there rules that lead to the application of the law of a contracting state ?

➤ Material scope

- **Art. 2(a) CISG** : Is this a sale of goods to a consumer for personal use?



Practical case

I. FACTS

A Colombian company ordered an aircraft from a Greek company that shall be delivered in Greece.

II. QUESTION

Is the CISG applicable to the contract?



Guiding questions

➤ Territorial scope

- **Art. 1(1)(a) CISG** : Where is the place of business of the parties ?
- **Art. 1(1)(b) CISG** : Are there rules that lead to the application of the law of a contracting state ?

➤ Material scope

- **Art. 2(e) CISG** : Do the goods fall under any exclusion?



Practical case

I. FACTS

A German purchaser orders a machine and provides a Turkish seller with the technical schemes and plans on the basis of which the machine shall be manufactured.

II. QUESTION

Is the CISG applicable to the contract?



Guiding questions

➤ Territorial scope

- **Art. 1(1)(a) CISG** : Where are the places of business of the parties?
- **Art. 1(1)(b) CISG** : Are there rules that lead to the application of the law of a contracting state?

➤ Material scope

- **Art. 3(1) CISG** : Is this a contract for the sale of goods or mainly a contract for services/labor?
- Does the buyer undertake to supply a substantial part of the materials necessary for the manufacture or production?



Practical case

I. FACTS

A company established in the USA is selling products to a Mexican company. The contract does not contain any clause of choice of the law.

II. QUESTION

Is the CISG applicable to the contract?



Guiding questions

➤ Territorial scope

- **Art. 1(1)(a) CISG** : Where are the places of business of the parties?
- **Art. 1(1)(b) CISG** : Are there rules that lead to the application of the law of a contracting state?

➤ Opting-in vs. Opting out

- Is the CISG applicable without a choice-of-law rule ?
- **Art. 6** : Can the CISG be excluded by the parties ?

III. Soft law in international practice

A. Incoterms

B. The notion of Lex Mercatoria

C. UNIDROIT Principles of international Commercial Contracts

A. Incoterms

- **General aspects**
- **Incoterms classification**
- **Structure of Incoterms 2020**
- **Examples of Incoterms**
- **Relationship with CISG and contracts**

A. Incoterms

- **General aspects**
 - Non-binding terms by ICC – only apply if included in contract by parties
 - Clarify roles of seller/buyer : obligations, costs, risk
 - Additional aspects: packaging, customs formalities, invoicing, documentary credits, VAT, cost allocation

A. Incoterms

- **General aspects**

- Must specify the exact location (e.g., "*FCA Warehouse Paris*" or "*DAP Hamburg Port*")
- Should be aligned with contract documents and transport arrangements
- Do not govern:
 - Transfer of title/ownership
 - Contract formation or dispute resolution
 - Payment terms (unless otherwise stated)

A. Incoterms

- **General aspects**
 - Regulated aspects :
 - Export packaging
 - Loading charges
 - Delivery to Port/Place
 - Export Duties, Taxes and Customs Clearance

A. Incoterms

- **General aspects**
 - Regulated aspects :
 - Origin Terminal Charges
 - Loading on Carriage
 - Carriage Charges
 - Transfer of risk (vs. transfer of title / ownership / property)

A. Incoterms

- **General aspects**
 - Regulated aspects :
 - Insurance
 - Destination Terminal Charges
 - Delivery to destination
 - Unloading on destination
 - Import Duties, Taxes and Customs Clearance

A. Incoterms

- **General aspects**
 - Groups of Terms
 - Maritime transport only : FAS, FOB, CFR, CIF
 - Multimodal transport : EXW, FCA, CPT, CIP, DAP, DPU, DDP

A. Incoterms

- **General aspects**
 - Most frequently used Incoterm-clauses
 - EXW (Ex Works): buyer assumes all responsibilities from seller's premises
 - FOB (Free On Board): seller delivers to ship; risk passes at loading
 - CIF (Cost, Insurance, Freight): seller covers transport + basic insurance
 - DAP/DDP: seller delivers in buyer's country (incl. customs clearance)

A. Incoterms

- Structure of Incoterms 2020

Incoterms® 2020 Rules Responsibility Quick Reference Guide											
IncoDocs											
		Freight Collect Terms					Freight Prepaid Terms				
Groups	Any Mode or Modes of Transport	Sea and Inland Waterway Transport					Any Mode or Modes of Transport				
Incoterm	EXW Ex Works (Place)	FCA Free Carrier (Place)	FAS Free Alongside Ship (Port)	FOB Free On Board (Port)	CFR Cost and Freight (Port)	CIF Cost Insurance & Freight (Port)	CPT Carriage Paid To (Place)	CIP Carriage & Insurance Paid to (Place)	DAP Delivered at Place (Place)	DPU Delivered at Place Unloaded (Place)	DDP Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Obligations & Charges:											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller
*CIP requires at least an insurance with the minimum cover of the Institute Cargo Clause (C) (Number of listed risks, subject to itemized exclusions) **CIP now requires at least an insurance with the minimum cover of the Institute Cargo Clause (A) (All risk, subject to itemized exclusions) Copyright © 2020 Incoterms Pty Ltd. All Rights Reserved. This is general information for guidance purposes only. Incoterms Pty Ltd is not responsible for these contents nor do the contents listed above contain all details. For a full and complete description, refer to the full version of Incoterms® 2020 by the International Chamber of Commerce at the ICC website.											
IncoDocs		Create your Sales & Shipping Documents at www.incodocs.com									

Incoterms® 2020 Rules Responsibility Quick Reference Guide



	Freight Collect Terms						Freight Prepaid Terms				
Groups	Any Mode or Modes of Transport		Sea and Inland Waterway Transport				Any Mode or Modes of Transport				
Incoterm	EXW Ex Works (Place)	FCA Free Carrier (Place)	FAS Free Alongside Ship (Port)	FOB Free On Board (Port)	CFR Cost and Freight (Port)	CIF Cost Insurance & Freight (Port)	CPT Carriage Paid To (Place)	CIP Carriage & Insurance Paid to (Place)	DAP Delivered at Place (Place)	DPU Delivered at Place Unloaded (Place)	DDP Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Obligations & Charges:											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller



Create your Sales & Shipping Documents at www.incodocs.com

*CIF requires at least an insurance with the minimum cover of the Institute Cargo Clause (C) (Number of listed risks, subject to itemized exclusions)

**CIP now requires at least an insurance with the minimum cover of the Institute Cargo Clause (A) (All risk, subject to itemized exclusions)

Copyright © 2020 IncoSolutions Pty Ltd. All Rights Reserved.

This is general information for guidance purposes only. IncoSolutions Pty Ltd is not responsible for these contents nor do the contents listed above contain all details. For a full and complete description, refer to the full version of Incoterms® 2020 by the International Chamber of Commerce at the ICC website.

A. Incoterms

- **Structure of Incoterms 2020**
 - Maritime-only terms (for sea and inland waterway transport) :
 - FAS (Free Alongside Ship)
 - FOB (Free On Board)
 - CFR (Cost and Freight)
 - CIF (Cost, Insurance, and Freight)



Groups	Freight Collect Terms						Freight Prepaid Terms				
	Any Mode or Modes of Transport						Any Mode or Modes of Transport				
Incoterm	EXW	FCA	Sea and Inland Waterway Transport				CPT	CIP	DAP	DPU	DDP
	Ex Works (Place)	Free Carrier (Place)	FAS Free Alongside Ship (Port)	FOB Free On Board (Port)	CFR Cost and Freight (Port)	CIF Cost Insurance & Freight (Port)	Carriage Paid To (Place)	Carriage & Insurance Paid to (Place)	Delivered at Place (Place)	Delivered at Place Unloaded (Place)	Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller



Create your Sales & Shipping Documents at www.incodocs.com

*CIF requires at least an insurance with the minimum cover of the Institute Cargo Clause (C) (Number of listed risks, subject to itemized exclusions)

**CIP now requires at least an insurance with the minimum cover of the Institute Cargo Clause (A) (All risk, subject to itemized exclusions)

Copyright © 2020 IncoSolutions Pty Ltd. All Rights Reserved.

This is general information for guidance purposes only. IncoSolutions Pty Ltd is not responsible for these contents nor do the contents listed above contain all details. For a full and complete description, refer to the full version of Incoterms® 2020 by the International Chamber of Commerce at the ICC website.

A. Incoterms

- **Structure of Incoterms 2020**

- Multimodal terms (suitable for all modes of transport, including air, road, rail, and combined transport) :
 - EXW (Ex Works)
 - FCA (Free Carrier)
 - CPT (Carriage Paid To)
 - CIP (Carriage and Insurance Paid To)
 - DAP (Delivered At Place)
 - DPU (Delivered at Place Unloaded) – *new in 2020, replaces DAT*
 - DDP (Delivered Duty Paid)



Groups	Sea and Inland Waterway Transport						Any Mode or Modes of Transport				
	Any Mode or Modes of Transport		Sea and Inland Waterway Transport				Any Mode or Modes of Transport				
Incoterm	EXW Ex Works (Place)	FCA Free Carrier (Place)	Free Alongside Ship (Port)	FOB Free On Board (Port)	CFR Cost and Freight (Port)	CIF Cost Insurance Freight (Port)	CPT Carriage Paid To (Place)	CIP Carriage & Insurance Paid to (Place)	DAP Delivered at Place (Place)	DPU Delivered at Place Unloaded (Place)	DDP Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Obligations & Charges											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

A. Incoterms

- **Structure of Incoterms 2020**
 - Key elements defined by each Incoterm :
 - The point at which risk transfers from seller to buyer
 - The allocation of transportation and insurance costs
 - Responsibilities for customs export/import formalities

Incoterms® 2020 Rules Responsibility Quick Reference Guide



Freight Collect Terms

Freight Prepaid Terms

Groups	Any Mode or Modes of Transport		Sea and Inland Waterway Transport				Any Mode or Modes of Transport				
Incoterm	EXW Ex Works (Place)	FCA Free Carrier (Place)	FAS Free Alongside Ship (Port)	FOB Free On Board (Port)	CFR Cost and Freight (Port)	CIF Cost Insurance & Freight (Port)	CPT Carriage Paid To (Place)	CIP Carriage & Insurance Paid to (Place)	DAP Delivered at Place (Place)	DPU Delivered at Place Unloaded (Place)	DDP Delivered Duty Paid (Place)

Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
------------------	---------------------	----------------------	----------------	-----------------	-----------------	-----------------	------------	------------	----------------	-------------------------	----------------

Obligations & Charges

Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller



Create your Sales & Shipping Documents at www.incodocs.com

*CIF requires at least an insurance with the minimum cover of the Institute Cargo Clause (C) (Number of listed risks, subject to itemized exclusions)

**CIP now requires at least an insurance with the minimum cover of the Institute Cargo Clause (A) (All risk, subject to itemized exclusions)

Copyright © 2020 IncoSolutions Pty Ltd. All Rights Reserved.

This is general information for guidance purposes only. IncoSolutions Pty Ltd is not responsible for these contents nor do the contents listed above contain all details. For a full and complete description, refer to the full version of Incoterms® 2020 by the International Chamber of Commerce at the ICC website.

A. Incoterms

- **Incoterms classification**

- **E-Class - EXW (*Ex Works*):**

- The most suitable Incoterm clause for the exporter (seller)
 - The seller has duly delivered the goods as soon as they have been made available to the buyer at seller's own premises (*ex works*)
 - The seller only bears the risks related to the packaging of the goods
 - The transfer of risk occurs when the goods are made available to the buyer at the seller's premises (*ex works*) and the buyer has been informed
 - Transport is at the expense and risk of the buyer
 - Recommended clause for intra-EU trade (no customs export formalities!)



Freight Collect Terms							Freight Prepaid Terms				
Groups	Any Mode or Modes of Transport	Sea and Inland Waterway Transport					Any Mode or Modes of Transport				
Incoterm	EXW Ex Works (Place)	FCA Free Carrier (Place)	FAS Free Alongside Ship (Port)	FOB Free On Board (Port)	CFR Cost and Freight (Port)	CIF Cost Insurance & Freight (Port)	CPT Carriage Paid To (Place)	CIP Carriage & Insurance Paid to (Place)	DAP Delivered at Place (Place)	DPU Delivered at Place Unloaded (Place)	DDP Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Obligations & Charges:											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

A. Incoterms

- **Incoterms classification**

- **Class F: FCA (*free carrier*), FAS (*free along the ship*), FOB (*free on board*)**
 - The seller must deliver the goods to the carrier or another person appointed by the buyer, at the seller's premises or at any other duly designated place
 - The seller bears the risk of loss or damage that the goods may suffer until they have been delivered to the carrier (ship / board)
 - Customs formalities are the responsibility of the seller, the buyer chooses the mode of transport and the carrier
 - The FAS and FOB clauses are only used in maritime and inland waterway transport



		Freight Collect Terms			Freight Prepaid Terms						
Groups	Any Mode of Transport	Sea and Inland Waterway Transport			Any Mode or Modes of Transport						
Incoterm	EXW Ex Works (Place)	FCA Free Carrier (Place)	FAS Free Alongside Ship (Port)	FOB Free On Board (Port)	FR Free on Rail (Port)	CIF Cost Insurance & Freight (Port)	CPT Carriage Paid To (Place)	CIP Carriage & Insurance Paid to (Place)	DAP Delivered at Place (Place)	DPU Delivered at Place Unloaded (Place)	DDP Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Objections & Charges:											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

A. Incoterms

- **Incoterms classification**
 - **Class C : CFR (Cost and freight), CIF (*Cost insurance and freight*), CPT (*Carriage paid to*), CIP (*Carriage insurance paid*) or**
 - The seller must conclude a contract of transport at his own expense in order to ensure the transport of the goods to the agreed place
 - The seller fulfils its delivery obligation when he delivers the goods to the carrier
 - CPT and CIP: the transfer of risk takes place at the time when the goods have been handed over to the carrier designated in the contract (to the first carrier in the case of multiple carriers)
 - CFR and CIF: the transfer of risk occurs when the goods are delivered on board the ship to the port of shipment



Freight Collect Terms									
Groups	Any Mode or Modes of Transport		Sea and Inland Waterway		All Modes of Transport				
Incoterm	EXW	FCA	FAS	FOB	CFR	CIF	CPT	CIP	DDP
	Ex Works (Place)	Free Carrier (Place)	Free Alongside Ship (Port)	Free Board (Port)	Cost and Freight (Port)	Cost Insurance & Freight (Port)	Carriage Paid To (Place)	Carriage & Insurance Paid to (Place)	Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place
Charges & Charges:									
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

of listed risks, subject to itemized exclusions)
(risk, subject to itemized exclusions)

These contents nor do the contents listed above contain all
national Chamber of Commerce at the ICC website.

A. Incoterms

- **Incoterms classification**
 - **Class D: DAP (*Delivered at place*), DPU (*Delivered at place unloaded*), and DDP (*Delivered duty paid*)**
 - The seller is responsible for and bears the risk of all operations related to transport until delivery to the buyer at the agreed place of delivery
 - Unloading at the agreed destination is at the seller's expense
 - DDP: the seller is also responsible for all import formalities and the resulting duties and taxes
 - DDP: most favorable clause for the importing company



Freight Collect Terms

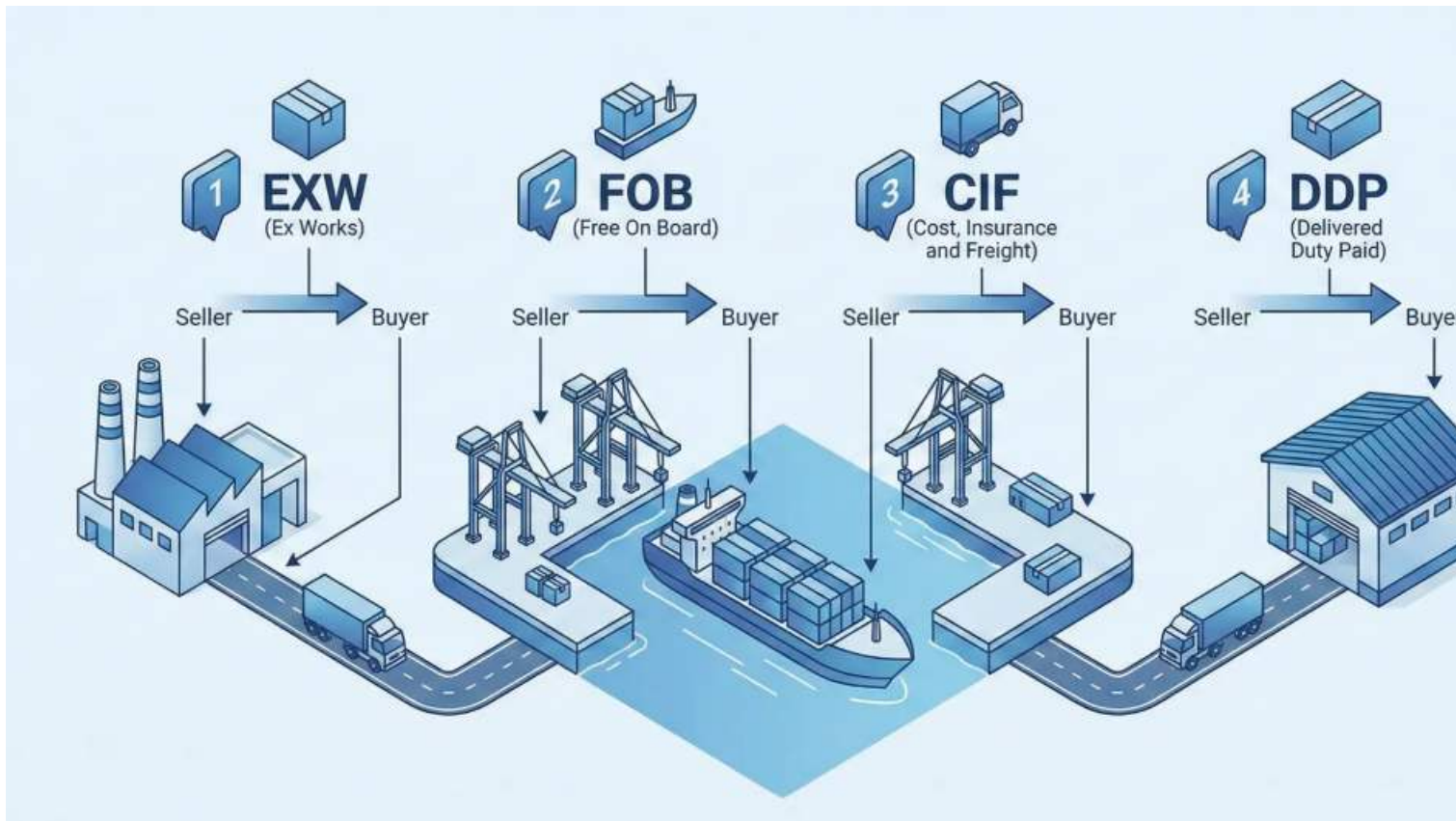
Freight Prepaid Terms

Groups	Any Mode or Modes of Transport		Sea and Inland Waterway Transport					Any Mode or Modes of Transport			
Incoterm	EXW Ex Works (Place)	FCA Free Carrier (Place)	FAS Free Alongside Ship (Port)	FOB Free On Board (Port)	CFR Cost and Freight (Port)	CIF Cost Insurance & Freight (Port)	CPT Carriage Paid To (Place)	CIP Carriage Insurance to (Place)	DAP Delivered at Place (Place)	DPU Delivered at Place Unloaded (Place)	DDP Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Obligations & Charges:											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

Create your Sales & Shipping Documents at www.incodocs.com

*CIF requires at least an insurance with the minimum cover of the Institute Cargo Clauses (C) (ICC (C)).
 **CIP now requires at least an insurance with the minimum cover of the Institute Cargo Clauses (C) (ICC (C)).
 Copyright © 2020 IncoSolutions Pty Ltd. All Rights Reserved.
 This is general information for guidance purposes only. IncoSolutions Pty Ltd. does not accept responsibility for these conditions and any other conditions which may apply to the use of Incoterms® 2020 by the International Chamber of Commerce at the ICC website.

Most important INCOTERMS :



UNDERSTANDING INCOTERMS 2026: EXW, FOB, CIF, DDP
20/01/2026 [HTTPS://XILINKGLOBALTRADE.COM/UNDERSTANDING-INCOTERMS-2026-EXW-FOB-CIF-DDP/](https://xilinkglobaltrade.com/understanding-incoterms-2026-exw-fob-cif-ddp/)

A. Incoterms

- **Relationship with CISG and contracts**
 - Incoterms complement the CISG and are often integrated into international sale of goods contracts governed by CISG
 - They help to fill gaps regarding delivery, risk, and cost allocation not detailed in the CISG
 - If both are used, they must be harmonized to avoid inconsistencies



Practical case

I. FACTS

A Nigerian seller agrees to sell machinery to a Canadian buyer. The contract provides that the goods will be delivered under the CIF rule. During the sea voyage, the goods are damaged.

II. QUESTIONS

- 1) When does the risk pass from the seller to the buyer?
- 2) Who is responsible for the costs of carriage and insurance?

Groups	Any Mode or Modes of Transport		Sea and Inland Waterway Transport				Any Mode or Modes of Transport				
Incoterm	EXW	FCA	FAS	FOB	CFR	CIF	CPT	CIP	DAP	DPU	DDP
	Ex Works (Place)	Free Carrier (Place)	Free Alongside Ship (Port)	Free On Board (Port)	Cost and Freight (Port)	Cost Insurance & Freight (Port)	Carriage Paid To (Place)	Carriage & Insurance Paid to (Place)	Delivered at Place (Place)	Delivered at Place Unloaded (Place)	Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Obligations & Charges:											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

II. QUESTIONS

- 1) When does the risk pass from the seller to the buyer?
- 2) Who is responsible for the costs of carriage and insurance?



Practical case

I. FACTS

A company established in Ecuador sells goods to a company established in Chile under an EXW Incoterm.

The contract provides for the goods to be collected at the seller's premises in Ecuador and transported to Chile.

II. QUESTIONS

- 1) When does the risk pass from the seller to the buyer?
- 2) Who is responsible for the export duty, taxes & customs clearance under the EXW Incoterm?

Groups	Any Mode or Modes of Transport		Sea and Inland Waterway Transport				Any Mode or Modes of Transport				
Incoterm	EXW	FCA	FAS	FOB	CFR	CIF	CPT	CIP	DAP	DPU	DDP
	Ex Works (Place)	Free Carrier (Place)	Free Alongside Ship (Port)	Free On Board (Port)	Cost and Freight (Port)	Cost Insurance & Freight (Port)	Carriage Paid To (Place)	Carriage & Insurance Paid to (Place)	Delivered at Place (Place)	Delivered at Place Unloaded (Place)	Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Obligations & Charges:											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

II. QUESTIONS

- 1) When does the risk pass from the seller to the buyer?
- 2) Who is responsible for the export duty, taxes & customs clearance under the EXW Incoterm?