

Guide to Trading Internationally

Contracts and terms of trade

What's in this section?

This section provides all the practical information companies need to do business in the UK's top 100 export markets. For example: Do I need an important licence or a certificate of origin? What needs to be included on the invoice? Are there any specific insurance stipulations? Do they observe the same public holidays as we do?

For answers to all these questions, and many more, select the continent and country from the Table of Contents.

Commercial contracts

A commercial contract is a legally binding agreement between two or more parties concerning the purchase and sale of goods or services. It could be either a formal contractual arrangement, evidenced by a contract document, or in the form of a purchase order, sales note or sales proforma. The contents of these documents reflect the underlying deal. In purchases and sales within the UK for example, the majority are on the basis of invoices, sales notes etc.

As these documents may be used in a court action in the event of alleged non-performance, it is important that the seller's basic and overriding terms of trade are pre-printed on the back of the invoice or sales note. Where, for example, there is a guarantee or warranty stated or implied, it would be wise to include a restriction of liability as to the amount and the period of the liability.

Contracts in international trade

In the case of international sales and purchases, delivery and receipt of goods is across international borders and it is therefore vital that parties agree precisely who is responsible for freight, insurance and delivery, and up to what point in the transport and delivery of goods.

In international trade there is little face-to-face contact between the exporter and the buyer. Furthermore, the involvement of third parties that separate exporters from their customers (e.g. transporters, insurers, banks and national officials) affects the exporter's ability to control the receipt of sale proceeds of the goods. However, exporters can do a great deal to protect their own interests by making appropriate stipulations in their sales contracts, by choosing appropriate

methods of payment and by complying precisely with all the documentary requirements of the methods chosen.

Export sales contracts

In addition to details of the goods and prices, the sales contract will normally specify trade terms, i.e. such matters as insurance, transport, freight costs, etc. and payment details.

Trade terms determine whether the exporter or the buyer will bear the responsibility, cost and risk for each stage of the business transaction. Although many trade terms seem self-explanatory or easy to understand, they can easily become a source of disagreement between the exporter and the buyer unless they are carefully defined. Incoterms 2000, the trade terms promoted by the International Chamber of Commerce, are well recognised and defined and can be used as the basis for most agreements. The terms agreed in the contract will affect all subsequent documentation, principally the sales invoice, and all the documents must be consistent with the sales contract.

Payment details specify how exporters will be paid and what conditions they must meet in order to get their money. In addition, certain kinds of payment, known as Letters of Credit, require the exporter to present specified documents in order to get paid, and all these documents must also be consistent with the sales contract. All these details need to be considered carefully so that the goods do not pass into the hands of the buyer before the exporter is assured of getting paid for them.

Trade terms and incoterms

Trade terms set out the rights and obligations of the parties to a sales contract with respect to the delivery of goods. They define whether the customer (buyer) or the exporter (seller) will be responsible for arranging the transport and insurance necessary for the delivery of goods, and up to what point, and other related matters. The most commonly used terms, accepted by international practice since 1936, are published by the International Chamber of Commerce (ICC) as "Incoterms". The current edition is "Incoterms 2000".

The information in the following table appears in Section 17 of Incoterms 2000 (ICC Publication 560).

Mode of transport and the appropriate Incoterm 2000			
Any mode of transport			
Group E	EXW	Ex Works	(...named place)
Group F	FCA	Free Carrier	(...named place)
Group C	CPT	Carriage Paid to	(...named place of destination)
	CIP	Carriage and Insurance Paid To	(...named place of destination)
Group D	DAF	Delivered at Frontier	(...named place)
	DDU	Delivered Duty Unpaid	(...named place of destination)
	DDP	Delivered Duty Paid	(...named place of destination)
Maritime and inland waterway transport only			
Group F	FAS	Free Alongside Ship	(...named port of shipment)
	FOB	Free On Board	(...named port of shipment)
Group C	CFR	Cost and Freight	(...named port of destination)
	CIF	Cost Insurance and Freight	(...named port of destination)
Group D	DES	Delivered Ex Ship	(...named port of destination)
	DEQ	Delivered Ex Quay	(...named port of destination)

FAS	Maritime/ inland waterway only	Free Alongside Ship (...named port of shipment)	Your customer is responsible for carriage after delivery. In Incoterms 2000, FAS now means that you clear the goods for export. You deliver by placing the goods alongside the appropriate ship at the named port. Your customer bears all costs and risks from that moment on.
FOB	Maritime/ inland waterway only	Free On Board (...named port of shipment)	Your customer is responsible for carriage after delivery. You clear the goods for export. You deliver when you pass the goods across the ship's rail at the named port. Your customer bears all costs and risks from that moment on. "Across the ship's rail" will be interpreted according to current practice, in line with the nature of the goods and the facilities available to handle them. The term "FOB" should be coupled only with a maritime port (not "FOB works" or any other inland location). If no specific port is named (i.e. "FOB UK port"), the cost you quote should allow for delivery to any such port.

Incoterms are not law and have no direct force of law but by incorporating them in sales contracts, exporters and buyers do give them legal effect. Thus, if an Incoterm is shown in a pro forma invoice or sales contract, it is absolutely necessary that the exporter understands the term clearly, and also that the customer shares this understanding from the outset. Such shared understanding of the full implications for both cost and risk should prevent later disputes and resultant delays in receiving funds for goods exported.

Incoterms 2000

E-terms Departure EXW
F-terms Main carriage unpaid FCA FAS FOB
C-terms Main carriage paid CFR CIF CPT CIP
D-terms Arrival DAF DES DEQ DDU DDP

E-terms (Departure): The exporter merely makes the goods available to his/her customer at his/her (the exporter's) own premises.

EXW	Any transport mode	Ex Works (...named place)	You deliver by putting the goods at your customer's disposal, either at your own premises or at another named place. Your customer is responsible for loading and transporting the goods, and for clearing them through customs, etc. Your obligations are at a minimum, and your customer bears all costs and risk.
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F-terms (Main carriage unpaid): The exporter delivers the goods, cleared for export, to a carrier appointed by the customer.

FCA	Any transport mode	Free Carrier (...named place)	Your customer is responsible for carriage after delivery. You clear the goods for export. You deliver the goods to your customer's nominated carrier at the place named. (Your customer can also nominate someone other than a carrier, e.g. a freight forwarder, to receive the goods.) If the place named is your own premises, you are responsible for loading: delivery has taken place once you have loaded the goods on the nominee's vehicle. Otherwise, your customer is responsible for loading: delivery has taken place once you have made the goods available to your customer's nominee, even if they must still be unloaded from your own vehicle. After delivery, your customer bears all costs and risk.
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C-terms (Main carriage paid): The exporter contracts for carriage but the customer bears both the risk if goods are lost or damaged and the extra costs arising from any event that occurs after the exporter despatches or ships the goods. (The essence of C-terms is departure or shipment of the goods.) The named place or port of destination (which is in the destination country) is the point to which the exporter must pay the transport costs; exporters should think carefully before agreeing to extend their obligations beyond this critical point. CFR and CPT are mirrored by CIF and CIP, in which the exporter arranges and pays for minimum insurance cover for the benefit of the customer; additional insurance cover may be stipulated in the sales contract.

CFR	Maritime/ inland waterway only	Cost and Freight (...named port of destination)	You arrange carriage and clear the goods for export. You deliver when you pass the goods across the ship's rail at the shipment port. (If the goods will not actually be delivered across the ship's rail, CPT should be used.) You pay the costs of getting the goods to the named destination port (in the destination country), but your customer bears all risk from the moment of delivery. Your customer also pays any additional costs caused by events that happen after delivery. Avoid adding time restrictions to CFR: it transfers your customer's risk back to you (and is also unclear in meaning). Possible variation in sales contract: If you agree "liner terms", you pay for goods to be unloaded at the destination port. Avoid the non-standard term "CFR landed" (intended to mean the same thing), and spell out the requirement in the sales contract instead.
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CIF	Maritime/ inland waterway only	Cost, Insurance and Freight (...named port of destination)	You arrange carriage and clear the goods for export. You deliver when you pass the goods across the ship's rail at the shipment port. (If the goods will not actually be delivered across the ship's rail, CIF should be used.) You pay the costs of getting the goods to the named port of destination (in the destination country). Your customer bears all risk from the moment of delivery, and also pays any additional costs caused by events that happen after delivery. You, however, must take out and pay for marine insurance on minimum cover against the buyer's risk during transport. Avoid adding time restrictions to CIF: it transfers your customer's risk back to you (and is also unclear in meaning). The sales contract may specify "liner terms" to show that the goods are to be unloaded. Avoid the term "CIF landed" (intended to mean the same thing), and spell out the requirement in the sales contract instead. Possible variation in sales contract: The customer may request extra insurance (or take it out separately).
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CPT	Any transport mode	Carriage Paid to (...named place of destination)	You arrange carriage and clear the goods for export. You deliver when you pass the goods to your carrier (or the first carrier of several). You pay the costs of getting the goods to the named place of destination (in the destination country). Your customer bears all risk from the moment of delivery, and also pays any additional costs caused by events that happen after delivery. CPT should be used when goods are carried other than by sea transport.
CIP	Any transport mode	Carriage and Insurance Paid To (...named place of destination)	You arrange carriage and clear the goods for export. You deliver when you pass the goods to your carrier (or the first carrier of several). You pay the costs of getting the goods to the named place of destination (in the destination country). Your customer bears all risk from the moment of delivery, and also pays any additional costs caused by events that happen after delivery. You, however, must take out and pay for marine insurance on minimum cover against the buyer's risk during transport. CIP should be used when goods are carried other than by sea transport.

DDU	Any transport mode	Delivered Duty Unpaid (...named place of destination)	You arrange carriage and clear the goods for export. You deliver when you place the goods (still loaded on the means of transport by which they arrived and not cleared for import) at your customer's disposal at the named destination place. Your customer clears the goods for import and bears all associated costs and risk. Possible variation in sales contract: Your customer may ask you to carry out the customs' formalities and to bear the associated costs and risk. This may include some import dues (e.g. "duty unpaid, VAT paid"). DDU avoids any obligation for you to clear goods through customs in countries where this procedure risks unpredictable delays. In such countries, however, use of DDU presents a high risk, because your customer also faces such delays (even though they bear the cost and risk for them).
DDP	Any transport mode	Delivered Duty Paid (...named place of destination)	You arrange carriage and clear the goods for export. You deliver when you place the goods, cleared for import but still loaded on the means of transport by which they arrived, at your customer's disposal at the named destination place. You bear all costs and risk associated with clearing the goods for import. If you are unable to get the required import licence, do not use this term. If delivery is on board a vessel in a named destination port, use DES. Possible variation in sales contract: Your customer may agree to accept some of your import costs, e.g. import taxes. (If, however, your customer is prepared to accept all risk and costs of the import, use DDU instead.)

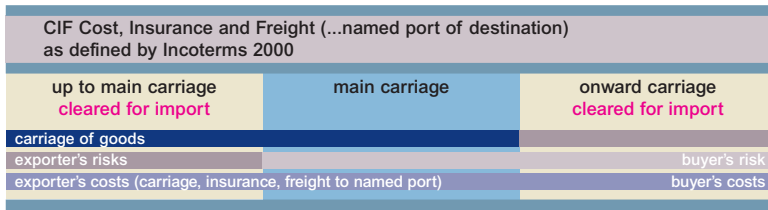
Minimum cover is defined by the Institute Cargo Clauses of the Institute of London Underwriters. The policy should cover 110 per cent of the contract price and provide such cover in the contract currency. If your customer asks for additional cover against risks of war, strikes, riots and civil commotion, you must arrange it (if you can), but your customer is liable to pay for it.

D-terms (Arrival): The exporter bears all the costs and risks in getting the goods to the named place in the customer's country. (The essence of D-terms is arrival of the goods at the frontier of the destination country or at a named place within it.)

DAF	Any transport mode	Delivered at Frontier (...named place at a land frontier)	You arrange carriage and clear the goods for export. You deliver when you place the goods (still loaded on the means of transport by which they arrived and not cleared for import) at your customer's disposal at the named frontier place but outside the customs' border of the importing country. The selection and precise specification of the named place are crucial: up to this point you bear cost and risk, but at this point both transfer to your customer. Your customer clears the goods for import. Possible variation in sales contract: The customer may ask you to arrange ongoing carriage of the goods at their own cost and risk. DAF (which applies if you bear the risk of transport to the named place) is more precise than the non-standard terms, "franco border", "franco frontiere" and "freie Grenze". (If your customer bears the risk, the more precise term for "franco border" etc. is CPT.)
DES	Maritime/ inland waterway only	Delivered Ex Ship (...named port of destination)	You arrange carriage and clear the goods for export.. You deliver when you place the goods (still loaded on board ship at the named destination port) at your customer's disposal, and you bear all cost and risk to this point. Your customer clears the goods for import and bears the cost and risk of unloading. If your customer wants you to bear the cost and risk of unloading, use term DEQ.
DEQ	Maritime/ inland waterway	Delivered Ex Quay (...named port of destination)	You arrange carriage and clear the goods for export. You deliver when you place the goods at your customer's disposal on the quay at the named destination port, and you bear all cost and risk to this point. In Incoterms 2000, the customer is now responsible for import customs clearance and associated charges. Likely variation in sales contract: Your customer may want you to meet part or all of the costs (duty, tax, fees) payable on import.

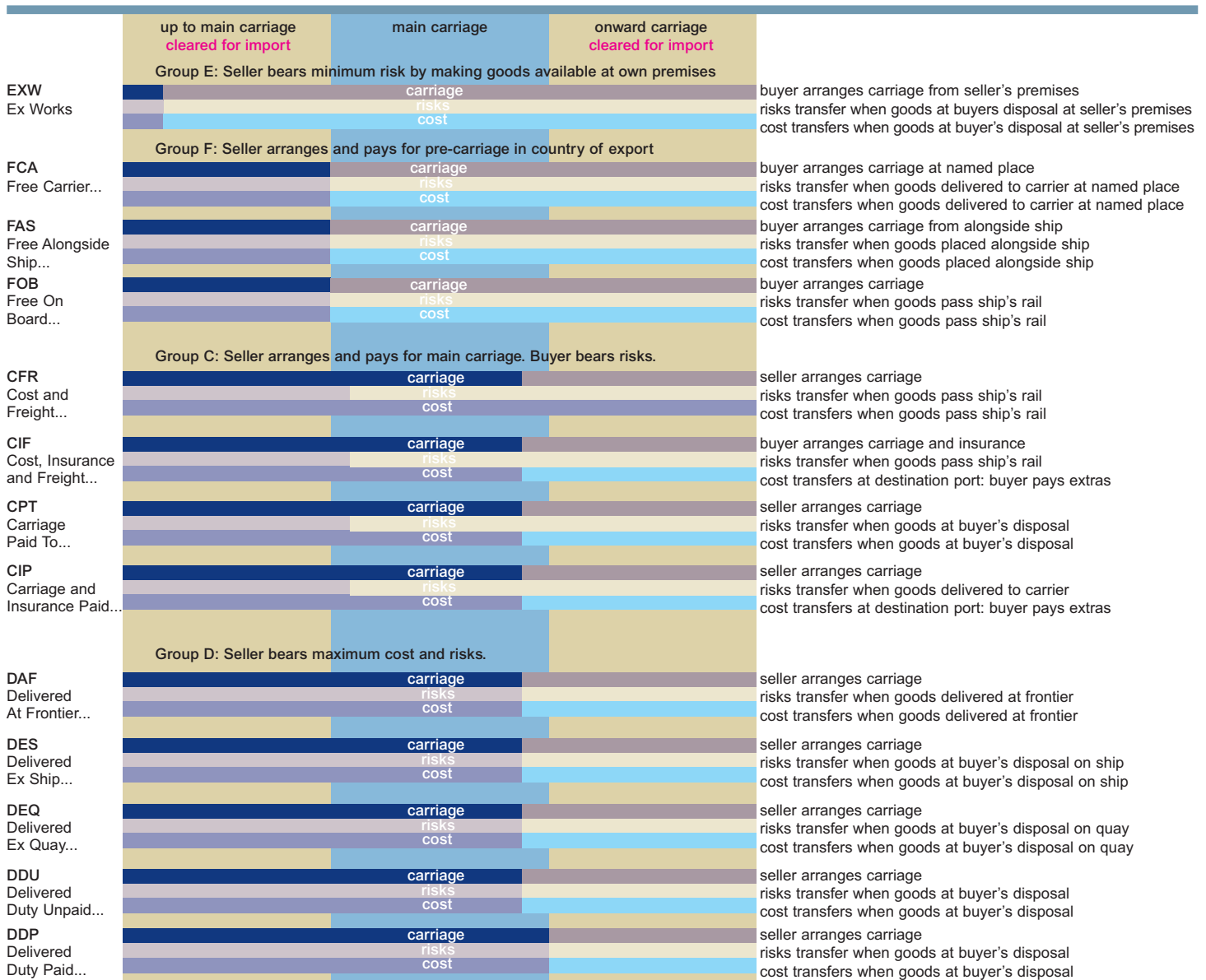
Differing distributions of responsibility, cost and risk

The following diagram illustrates divisions of responsibility for arranging and paying for insurance, shipping and packing under just one Incoterm, CIF Cost, Insurance and Freight (...named port of destination).



- The exporter arranges for carriage and insurance of the goods up to Critical Point 1. The buyer arranges for carriage of the goods from this point onwards.
 - The exporter's risk ends at Critical Point 2, when goods pass over the ship's rail.
 - The exporter incurs the cost of carriage and insurance of the goods up to Critical Point 3.
- The least onerous Incoterm is "EXW Ex Works (...named place)" because their own obligations are the least and the customer must bear all costs and risks involved in removing the goods from the exporter's premises at the place named.
 - The most onerous Incoterm is "DDP Delivered Duty Paid (...named place of destination)" because their own obligations are the greatest: they have to bear all the costs and risks of getting the goods to the destination named (including getting any import licence required and handling Customs' formalities and all associated payments)

Different Incoterms distribute responsibility, cost and risk differently between the exporter and his customer. The following chart illustrates how costs and risks are distributed for all 13 Incoterms. From the exporter's point of view:



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