

(1) Incoterms

Prepared by the International Chamber of Commerce (ICC)

Not law – terms that can be incorporated into contract by agreement

- to settle terms of contract
- parties expectations of liability at different points of the sale
- can adopt and vary as wanted

Incoterms set out:

- legal place of delivery of goods
- who has obligation to ship the goods
- who pays insurance
- who undertakes the risk

FOB (FREE ON BOARD)

- Main carriage unpaid (Main carriage paid for by BUYER)
- More obligations on the buyer

FOB – Free on Board (named port of shipment)

**Not meant for container shipments - FCA for container shipment
Term is greatly misused - Incoterms 1980 explained that FCA should be used for container shipments.

Seller delivers the goods by placing them on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered.

SELLER	BUYER
Provide goods and documents in conformity with contract	Pay the price of contract
Obtain necessary export licence and customs clearance at own expense	Obtain necessary import licence and customs clearance, and approval for transit through third country at own risk and expense
- No obligation to make contract of carriage but may at buyer's request/risk/expense - No obligation to insure goods but may at buyer's request/risk/expense	- Contract at own expense for carriage of goods from named place of delivery - Consider insurance
- Deliver goods by placing on board nominated vessel at specific loading point - Or procure goods so delivered - If no specific loading point indicated, select point in named port of shipment that suits them	Take delivery of goods
Risk passes at delivery	Bear risk after delivery

- or if buyer causes delay, the original agreed time/place	Bear risk caused by - failure to give notice of vessel name, loading point - Failure nominated vessel to take delivery
Pay all costs relating to goods before delivery except those payable by buyer	Pay all costs after delivery plus cost of - failure to give notice of vessel name, loading point - Failure nominated vessel to take delivery
Give sufficient notice of completion or failure of delivery	Give seller notice of vessel name, loading point, time of delivery if necessary
- Give buyer usual proof of delivery at seller's expense. - Assist at buyer's request/risk/expense to get transport document (eg Bill of Lading)	Accept usual proof of delivery
- Responsible necessary checking, measuring, weighing, counting, mandatory pre-shipment inspection - appropriately marking and packaging goods	Responsible for costs of mandatory pre-shipment inspection (except those mandated in export country)
Assist buyer in obtaining necessary documents and security-related information for importing at buyer's expense	- Advise seller of security-related information required - Reimburse seller for costs of that

- As soon as goods are over the ships rail become the responsibility/liability of the buyer
 - Now replaced by stowing on board – must be physically stowed/locked in place
- If seller has goods on board ship, seller's responsibility finished.
- Buyer's responsibility to have contracted in advance the terms of carriage – should have insurance etc.

Cost and risk are divided when the goods are actually on board of the vessel.

The term is applicable for maritime and inland waterway transport only but not for multimodal sea transport in containers.

FOB Seller pays for:

- Packing suitable for maritime transport
- Loading charges
- Delivery to the terminal
- Customs clearance for export
- Export taxes and duties

- Terminal charges departure
- Loading on board
- Insurance until goods are on board

FOB Buyer pays for:

- Freight charges
- Terminal charges destination
- Customs clearance for import
- Import taxes and duties
- Delivery to final destination

FOB Variants

- Particular port or trade
 - FOB in Oil trade – buyer has to give seller timely notice of loading (nature of product)
 - FOB in Stockholm – buyer has to bear loading costs into vessel (usually seller would under Incoterms) – FOB in Stockholm is actually FAS (Free Along Side)
- Prevailing usage/customs of trade
- UK and Commonwealth – usually say FOB (vessel name) rather than FOB (Brisbane)
- US commonly FOB (place of destination)

Use of: "UCC FOB" – unless otherwise agreed the term FOB and the named place, even though used in connection with stated price, is a delivery term under which

- when term of FOB is place of shipment then...
- when term of FOB is place of destination then...

UCC FOB can mean different things depending on whether use place of shipment or destination

Three types of FOB

1. Classic
2. With additional services
 - 'additional services' as get additional services...eg seller has to arrange marine insurance to benefit Buyer
3. Simple

Which one of these the FOB is matters as it differs whether buyer or seller has to nominate ship, place on board, bill of lading, marine insurance

Nominating a suitable ship

J and J Cunningham v Robert Monroe 1922

It was duty of purchasers to provide vessel at place and time that would enable vendors to bring goods alongside ship

- Usual practice under contract is for B to nominate vessel and to send notice of her arrival to vendor.
- Suitable ship: A ship is suitable if ready, willing and able to carry the goods. Must be able to load the goods at the specified port.

Failure to nominate a ship

- Seller can treat contract as repudiated if B fails to nominate ship in specified time or if unsuitable ship.
- Unsuitable ship – artificial and fanciful nomination (*Texaco v The Eurogulf Shipping Co (1987)*)

Nomination of substitute vessel

- Where unsuitable ship, B must propose substitute ship and bear costs with finding/nominating the second ship

CIF (CONTRACT INSURANCE FREIGHT)

- Main carriage paid (Main carriage paid for by SELLER)
- More obligations on the seller

CIF – Cost, Insurance and Freight (named port of destination)

Seller delivers the goods on board the vessel or procures the goods already so delivered.

- Seller pays the costs and freight, and minimum insurance, to bring the goods to the port of destination.
- However, risk is transferred to the buyer once the goods are loaded on the vessel.
- Maritime transport only included.

Costs transfer after risk

- Whilst goods are still on water, seller gets paid

and unloading - Pay insurance costs - Pay costs for clearing export and transit through third country	notice on time for shipping or place of destination - Costs for clearing goods for import - Costs for requesting additional insurance
Give sufficient notice to allow buyer to take delivery	Give sufficient notice of time for shipping goods and place of destination
- Give buyer usual transport document (eg Bill of Lading) - Enable buyer to claim goods from carrier or sell goods in transit	Accept conforming documents
- Responsible necessary checking, measuring, weighing, counting, mandatory pre-shipment inspection - appropriately marking and packaging goods	Responsible for costs of mandatory pre-shipment inspection (except those mandated in export country)
Assist buyer in obtaining necessary documents and security-related information for importing at buyer's expense	- Advise seller of security-related information required - Reimburse seller for costs of that

CIF Seller pays for:

- Packing suitable for maritime transport
- Loading charges
- Delivery to the terminal
- Customs clearance for export
- Export taxes and duties
- Terminal charges departure
- Freight charges
- Insurance until port of destination

CIF Buyer pays for:

- Terminal charges destination
- Customs clearance for import
- Import taxes and duties
- Delivery to final destination
- Unloading at destination
- Insurance from port of destination

NOTES RELATING TO BOTH FOB AND CIF

Comptoir d'Achat v Luis de Ridder

- The obligation imposed on S under CIF well known
 - tending to Bill of lading, insurance policy, an invoice with price, deduction of freight which B pays before delivery at port of discharge
- Against tender of these documents, B must pay the price
- Risk passes on shipment

PJ van der Zijgen

- Contract called for Chinese rabbits CIF
- “Obligation was to tender documents, not to ship the rabbits themselves”
- If the documents are in order and the goods aren't delivered, short of fraud, the B still has to pay
 - Risk passes after 'delivery' onto ship

Arnold Karberg v Blyth, Green Jourdain & Co

- Not a contract that goods shall arrive, but to ship goods specified in contract, and to tender documents against payment of contract price
- Goods could be sold ten times before the goods arrive by dealing with the Bill of Lading – can trade in the goods while they're still being shipped

Right to reject documents vs right to reject goods

Kwei Tek Caho v British Traders (1954)

Right to reject documents arises when documents are tendered, and right to reject goods arises when they are landed when after examination they are found not to be in conformity with contract

- Could recover some of purchase price or if fundamental breach then more
- Full payment may have been made before goods landed

Panchaud frères v Etablissements General (1970)

- Right to reject docs lost when buyer or bank advising a letter of credit takes up documents – even if inaccurate they pay without objection – precluded from afterwards complaining of defects in docs
- Loss of right to reject docs doesn't mean buyer precluded from rejecting goods when they arrive if goods don't conform with the documents
 - Loss could arise if eg. car dealer orders 100 red cars, get 100 black cars and for the buyer of the goods those aren't as marketable – make a loss

Comptoir d'Acaht

- Sellers sold on CIF reserved right to substitute a delivery order for bill of lading at port of destination
- B accepted delivery order instead of bill of lading - Couldn't onsell goods

Bill of lading

- Ship captain/master signs document that they received goods in apparent good condition (don't necessarily check)
- Whoever has bill of lading has ownership/right of title to the goods
- Either seller has to get it to the buyer or the buyer has to get it directly

SELLER	BUYER
Provide goods and documents in conformity with contract	Pay the price of contract
Clear goods for export at own expense	Clear goods for import at own risk and expense
- Arrange contract to carry goods from agreed place delivery to agreed place of destination - Insure goods with reputable insurer for minimum cover (at least 110% contract price) - Buyer may request seller get additional insurance at B expense	- Provide seller upon request necessary information for additional insurance
- Deliver goods by placing on board the vessel - Or procure goods so delivered	Take delivery of goods
Risk passes at delivery - or if buyer causes delay, the original agreed time/place	Bear risk after delivery Bear risk caused by - failure to give notice of time for shipping or place of destination
- Pay all costs relating to goods before delivery except those payable by buyer - Pay freight and all costs for carrying goods, including loading	- Pay all costs after delivery - Any costs for unloading goods not included in seller's contract of carriage - Plus costs due to failure to give