

EFFECTIVE USE OF INCOTERMS® 2010 IN YOUR SALES CONTRACT



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ANY MODE

EXW...

FCA...

CPT...

CIP...

DAT...

DAP...

DDP...

OCEAN ONLY

FAS...

FOB...

CFR...

CIF...

Sales Contract

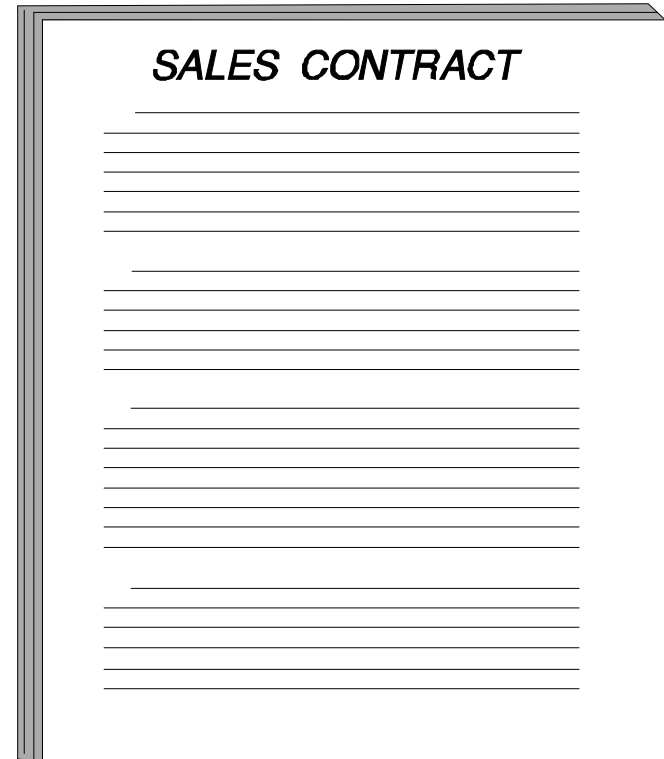
- Formal Contract
- Seller's Quotation/
Proforma Invoice and
Buyer's Purchase Order
- Order placed over the
phone or internet & was
shipped.



An Offer and an Acceptance

SALES CONTRACT

- Quantity, quality, and price of goods.
- Delivery time.
- Warranties.
- Acceptance procedures.
- Limits of Liability.
- Governing Law.



SALES CONTRACT - PAYMENT TERMS

- Cash in Advance
- Open Account (Net 30, 60, 180 days, etc.)
- Documentary Collection (Sight/Time Draft) - *ICC Uniform Rules for Collections (URC 522)*****
- Irrevocable Letter of Credit - *ICC Uniform Customs and Practices for Documentary Credits, 2007 Revision (UCP600)*****

****Talk to your international banker for more details.

CONTRACTS:

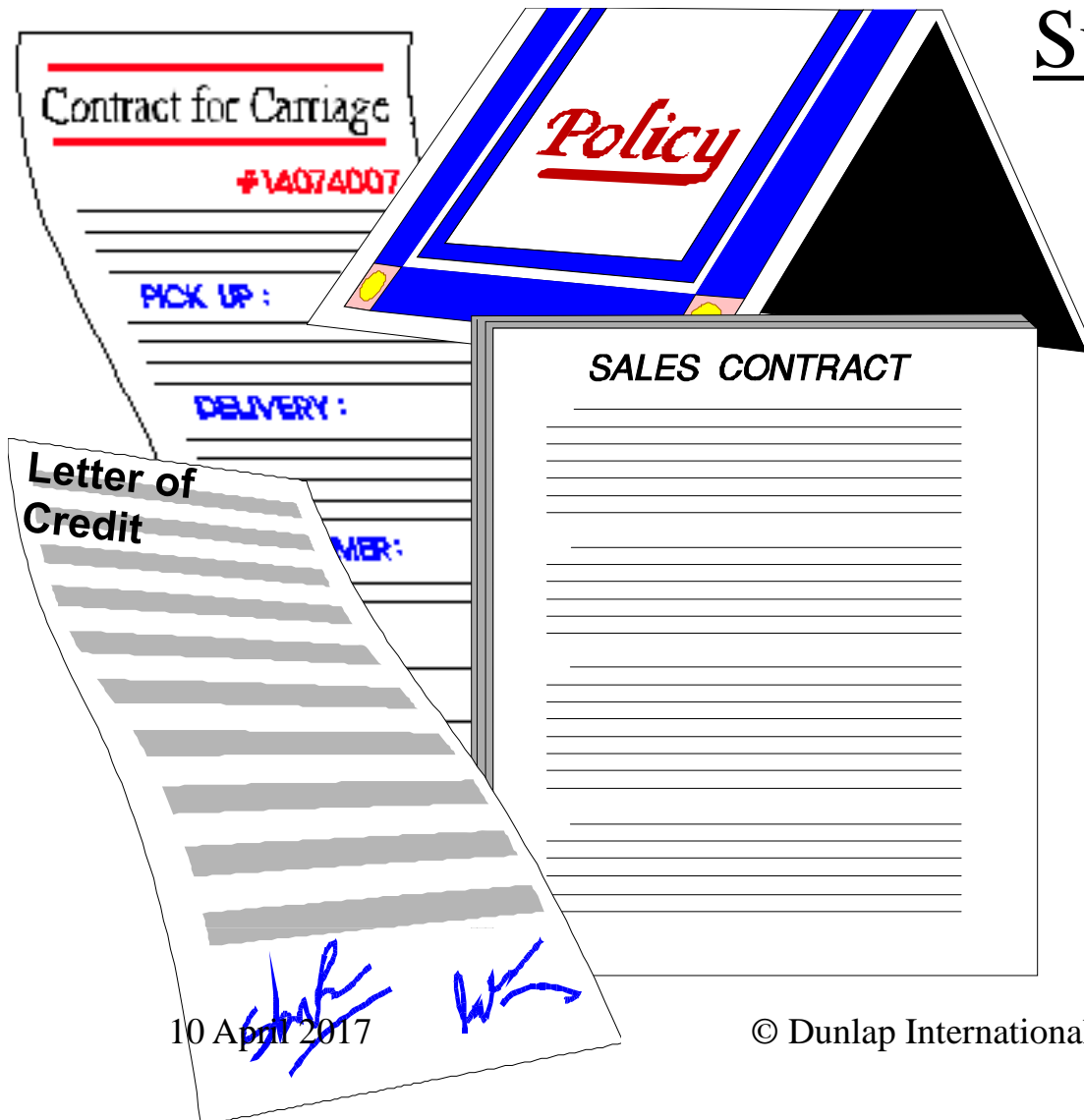
PRIMARY:

- Sale of Goods between Seller and Buyer

SECONDARY:

- Payment Contracts
- Shipment Contracts
- Insurance Contracts
- Installation Contracts
- Warranty Contracts

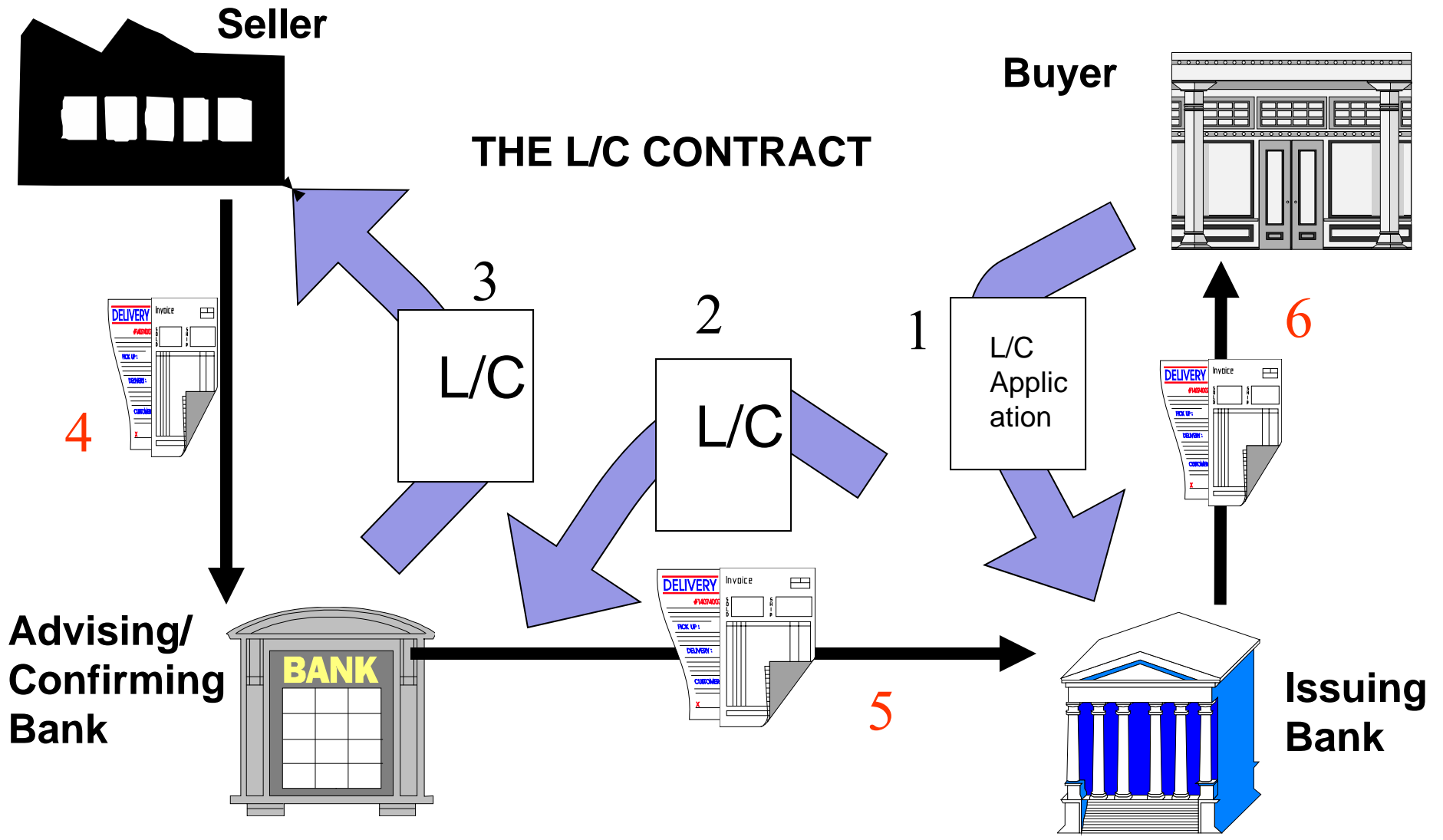
The “CONTRACTS” of the international sales transaction



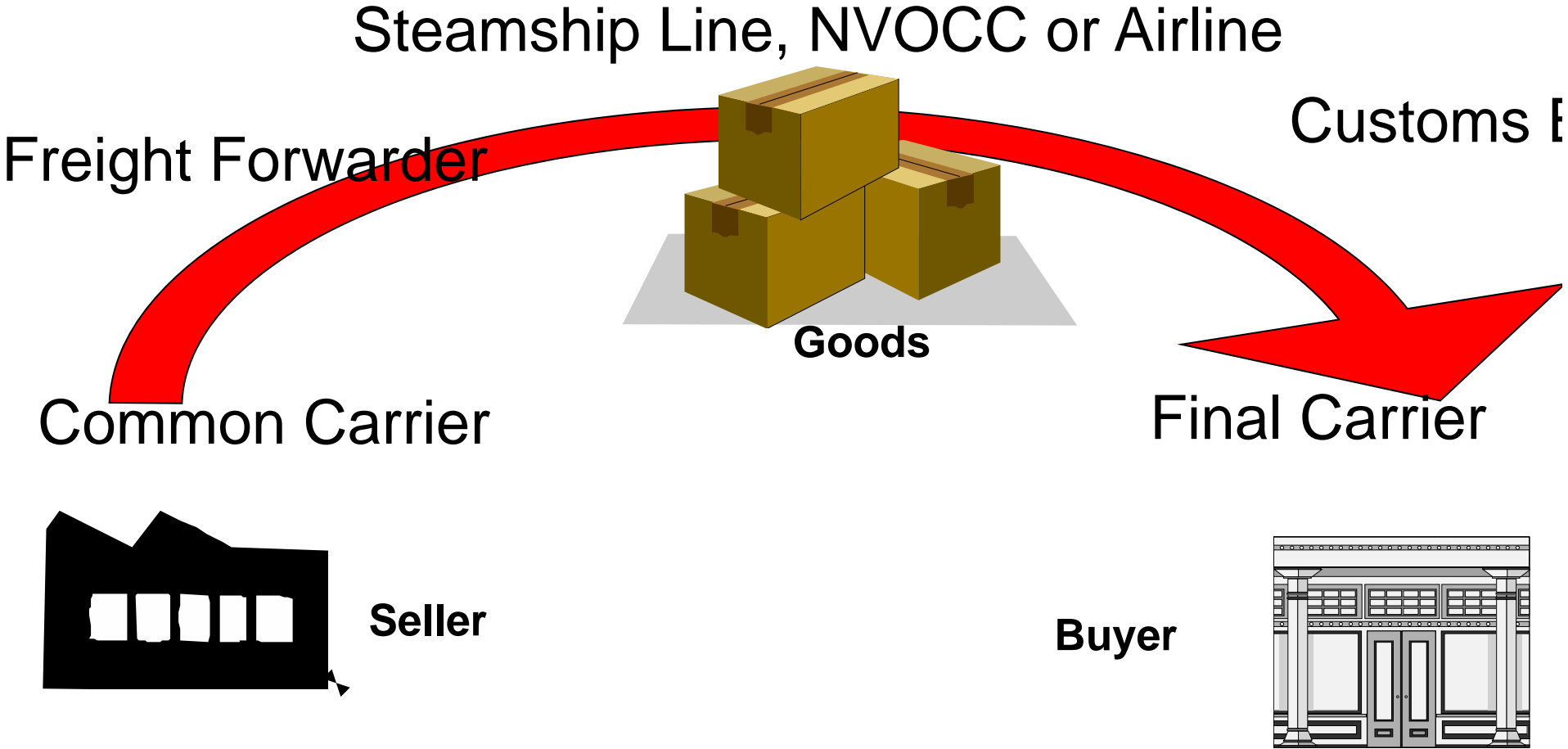
Subcontracts to the Contract of Sale:

- Contracts of Carriage
 - Pre-carriage, Main carriage, on-carriage
- Contract of Insurance
- Payment Contracts
 - Letter of Credit
 - Collections
- **Other Contracts**
 - Broker, Freight Forwarder

PAYMENT CONTRACT – Letter of Credit



SHIPMENT CONTRACTS



TRADE TERMS are **SHORTCUTS**
summarizing the DIVISION OF TASKS,
RISKS AND COSTS in the “DELIVERY”
of goods from seller to buyer in the
CONTRACT OF SALE!

**TRADE TERMS MUST MATCH WHAT
HAS BEEN AGREED UPON IN THE
SALES & SUB-CONTRACTS!**

Why Trade Terms are important

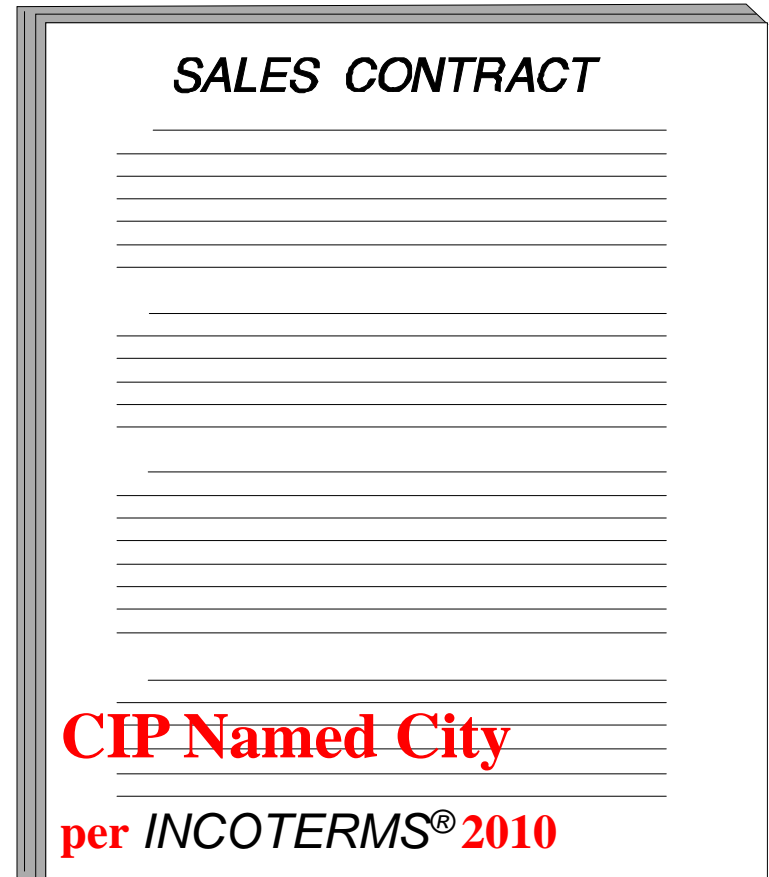
- Trade terms tell parties their obligations regarding:
 - Licenses, authorizations, security clearances and other formalities
 - Carriage of goods from seller to buyer
 - Insurance
 - Export and import clearance
- Trade terms explain divisions of **TASKS, COSTS** and **RISKS** between parties.

SALES CONTRACT

CIP Named City

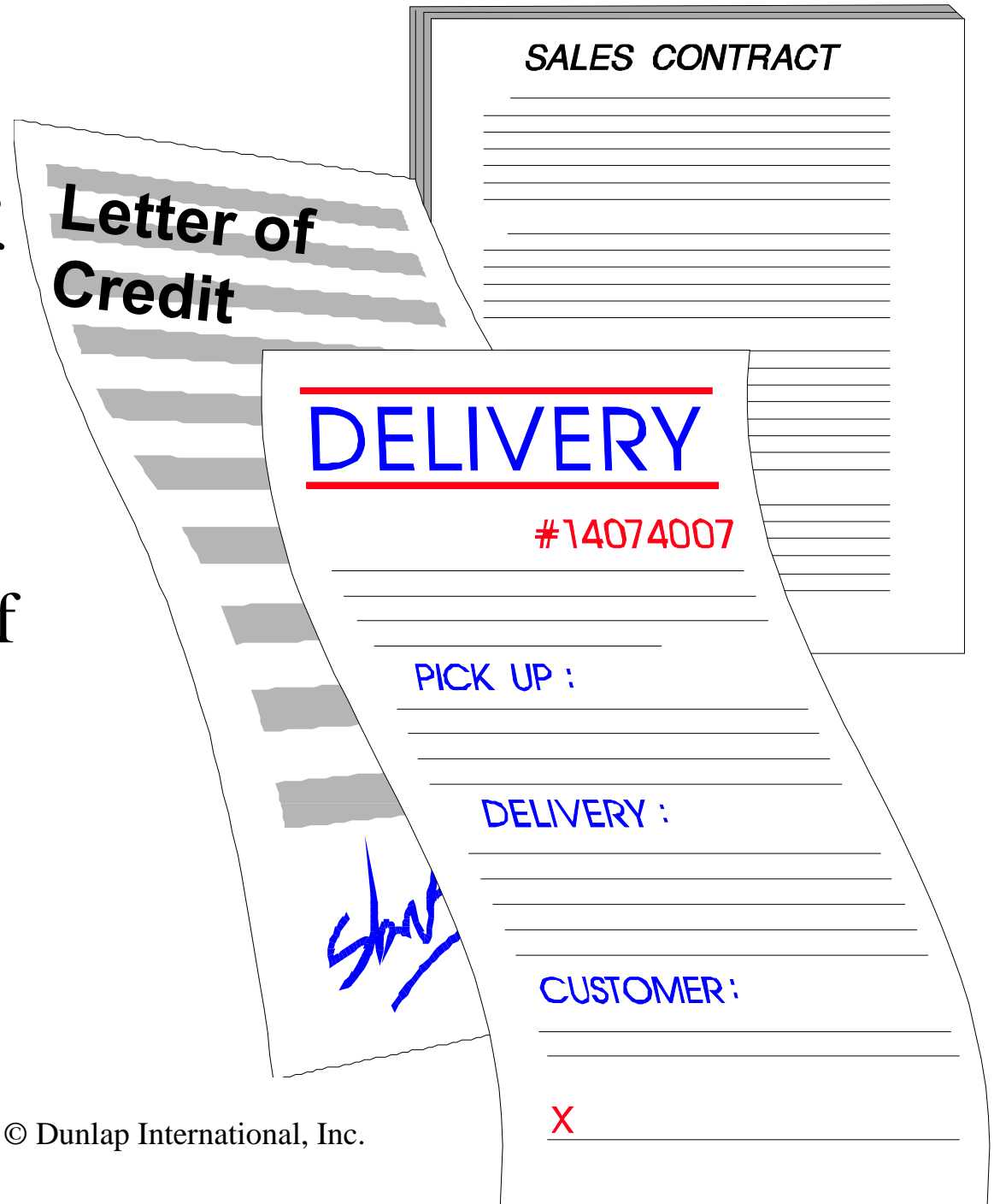
per **INCOTERMS® 2010**

TRADE
TERMS DO
NOT
CONVEY
TITLE TO
GOODS.



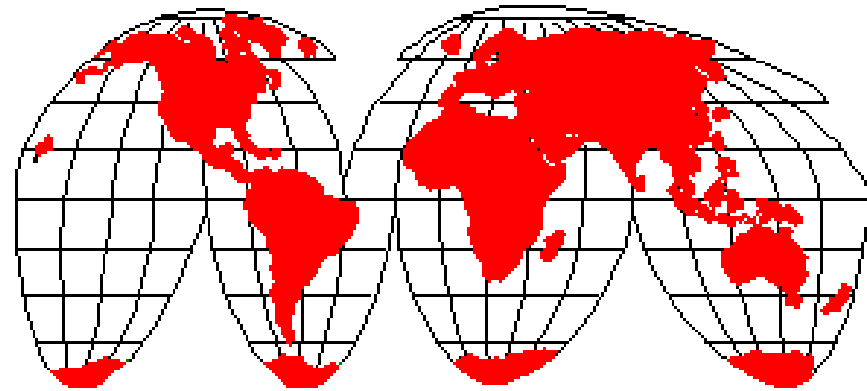
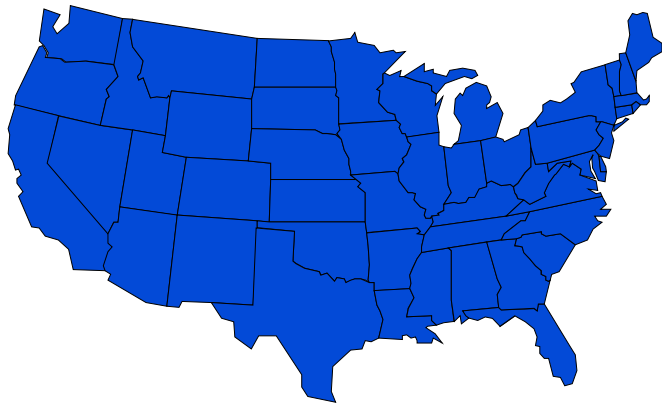
MUST BE SPELLED OUT IN CONTRACT!

✎ A failure to match the contract of sale, and subcontracts of carriage, insurance, and the letter of credit commonly lies at the bottom of misunderstandings which lead at best to delay and at worst to litigation!



FOB?

TRADE TERMS ARE UNDERSTOOD DIFFERENTLY IN VARIOUS COUNTRIES.



WHOSE INTERPRETATION APPLIES???

Uniform Commercial Code or **INCOTERMS®**?

Buyer and Seller must “**speak**” the same language!

Trade Terms

Uniform Commercial Code

- State Law only (49 of 50 states)
- Revised American Foreign Trade Definitions (RAFTD) of 1941
 - FOB Factory
 - FOB Port of Shipment
 - FOB Inland Point in Country of Importation
- May be freight prepaid or collect
- In 1941 air freight & ocean containerization didn't even exist!
- Last revised in 1962.
- *RAFTD are being eliminated in some states!!!*

Country Specific

- Subject to specific laws of either buyer's or seller's country

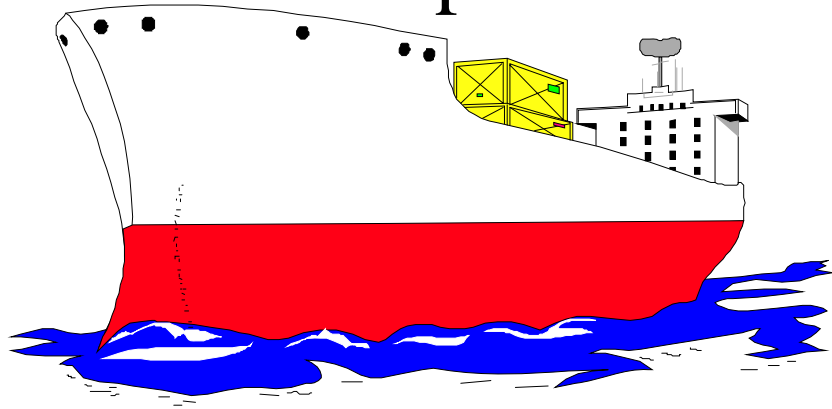
Incoterms®

- International Chamber of Commerce definitions of 11 common trade terms
 - **FOB Named Port (on seller's side)**
- Translated into many languages.
- Last updated in 2010.
- International + Domestic

FOB - Most Misused “Delivery Term”

Free on board (Named Port of Shipment)

Loaded on board a vessel at a port location on the seller’s side



Per *INCOTERMS*® 2010 valid for
- OCEAN FREIGHT
- INLAND WATERWAY
ONLY!!!!!!

- “FOB Factory” is valid under Uniform Commercial Code, but not *INCOTERMS*®!
- “FOB Any City, Iowa” - only valid for barge freight on the Mississippi under *INCOTERMS*® (sea or inland waterways).
- “FOB Heathrow Airport, London” - NOT valid for airfreight under *INCOTERMS*®!

INCOTERMS® 2010

- *Published by the International Chamber of Commerce.*
- *Provides a set of international guidelines for the interpretation of the 11 most commonly used trade terms in international trade.*
- *First published in 1936. Revisions made in 1953, 1967, 1976, 1980, 1990, 2000 and 2010 to bring rules current with changing international trade practices.*

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WHAT INCOTERMS® ARE...*

- **INCOTERMS RULE IS A TERM OF THE CONTRACT OF SALE** (NOT of the contract of carriage).
- translated into many languages by ICC.
- widely understood by most experienced foreign traders.
- periodically updated to reflect trade practices
- abbreviated by three letter English language acronyms
- always accompanied by a geographical place or range of places.

*Per Frank Reynolds, International Projects, Inc.

WHAT INCOTERMS® AREN'T...*

- **LAW.** Since the ICC is not a government, Incoterms do not have the force of law. Sellers and Buyers who wish to use Incoterms **MUST** incorporate them into their sales contracts, citing “Incoterms® 2010” in their contracts, quotations, purchase orders and the description of goods in the Letter of Credit to be valid.
- **ALL INCLUSIVE.** Often, detailed situations beyond the scope of Incoterms must be covered elsewhere in the sales contracts. (Export/Import compliance issues, customs of the port, customs of the trade, etc.)

*Per Frank Reynolds, International Projects, Inc.

WHAT INCOTERMS® RULES DO...

- Divide costs, risks and responsibilities between sellers and buyers; & identify point of risk transfer and export, import, and security-related clearance
- Guide one or more of the other contracting party into subsidiary contracts to fulfill designated Incoterms tasks, such as contracts of carriage with steamship and truck lines, insurance contracts, finance contracts such as a Letter of Credit, etc.
- Mirror seller and buyer responsibilities in 10 categories
- Definition of “**Delivery**” per A4 of each term
- Provide a shorthand by reducing pages of responsibilities to 3 characters and a named place
- Reduce the potential for Seller-Buyer misunderstanding.

INCOTERMS[®] RULES DON'T:

- Address price to be paid and method of payment.
- **Deal with transfer of ownership of goods.**
- Address consequences of breach of contract.

***** THESE MUST BE SPELLED OUT IN CONTRACT OR BE IN THE LAW GOVERNING THE CONTRACT.*****

- *Beware – mandatory local law may override sales contract, including Incoterms[®] rule.*

INCOTERMS® RULES

- Set of three-letter trade terms (in English).
- Reflects current business-to-business practice.
- **MUST include in CONTRACTS OF SALE** which guides all subcontracts (shipping, payment, insurance, etc.)
- Describe **Tasks, Costs** and **Risks** in delivery of **GOODS** from Seller to Buyer.
- **Do NOT define transfer of title.**
- May be used for domestic as well as international.
- **MUST REFERENCE VERSION OF INCOTERMS® RULES** (Incoterms 2000 or Incoterms® 2010).

How to use the Incoterms® 2010 rules

- 1. Specifically include Incoterms® 2010 rules into your Contract of Sale (formal contract, offer and acceptance, etc.)**
- 2. Select the rule carefully to match your goods, the means of transport, and desired obligations of Seller and Buyer.**
- 3. Identify place or port of with as much detail as possible:**
 - *FCA Acme Company, 123 Main Street, Any City, State, Zip, USA – Incoterms® 2010 rules***

DEFINITIONS

- Pre-carriage: Inland transportation on the seller's side (from the place where the shipment originates to the port/airport/border point where it leaves the seller's side.)
- Main-carriage: Primary transportation from seller's side to buyer's side.
- On-carriage: Transportation from arrival point on the buyer's side to any other place (such as the buyer's premises).

DEFINITIONS

- Door-to-Door: Pre-Carriage + Main Carriage + On-Carriage
- Door-to-Port/Airport: Pre-Carriage + Main Carriage
- Port-to-Port/Airport-to-Airport: Main-Carriage only
- Port/Airport-to-Door: Main-Carriage + On-Carriage

DEFINITIONS

- “**DELIVERY**: This concept has multiple meanings in trade law and practice, but in the Incoterms® 2010 Rules, it is used to indicate *where the risk of loss of or damage to the goods passes from the seller to the buyer.*” (A4) Incoterms® 2010
- SELLER must take care that the contract does not overrule the Incoterm definition, such as requiring delivery of both risk and goods at destination port on “C” Terms.

DEFINITIONS

- Delivery Document: Document used to prove “delivery” occurred.
 - Transport Document (Required for CPT, CIP, DAT, DAP, DDP, CFR, CIF)
 - Receipt (vs. Road Transport Document) (Typical for EXW, FCA, FAS, FOB)
 - Seller must provide the Buyer, **at the Buyer’s request, risk, and expense**, when obtaining a Sea or Air Transport Document beyond Delivery receipt.

FACTORS TO CONSIDER BEFORE SELECTING A TRADE TERM:

1. What will be the mode of transportation?

Ocean Freight? Air Freight? Truck, Rail or a combination? How to divide up transportation costs between Buyer and Seller? Who pays costs of loading and discharging the goods?

2. What will be your payment terms?

Open account? Letter of Credit? Payment in Advance? Progress Payments? Who is responsible for accurate documentation?

3. Who is to arrange for export/import formalities?

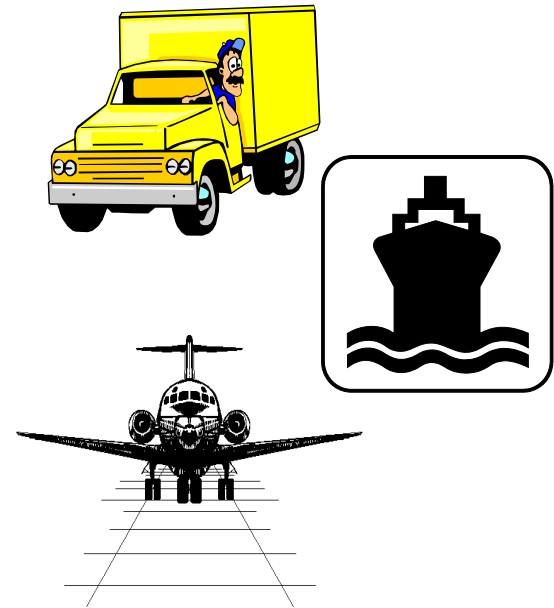
Who will be Exporter of Record? Can the buyer arrange for a license to export from the USA? Who selects the freight forwarder? Who is preparing the export documents? Can you be importer of record in destination country?

4. How should risk of loss of or damage to goods be divided up? Who should take out insurance against these risks?

1. INCOTERMS® & MODES OF TRANSPORTATION

ANY MODE(S) OF TRANSPORTATION

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



MARITIME OR INLAND WATERWAY TRANSPORT ONLY

- FAS - Free Alongside Ship
- FOB - Free On Board
- CFR - Cost and Freight
- CIF - Cost, Insurance and Freight



INCOTERMS® & MODES OF TRANSPORTATION

ANY MODE(S) OF TRANSPORTATION

- Door-to-Port/Place of Shipment
- Door-to-Destination Terminal
- Door-to-Destination Port
- Door-to-Destination Airport
- Airport-to-Airport
- Airport-to-Door
- Ocean-Port to Ocean-Port
- Ocean-Port to Door
- Door-to-Door

SEA AND INLAND WATERWAY TRANSPORT ONLY

- *Port-to-Port ONLY*

2. Incoterms® Rules and Letters of Credit

- Be sure to clearly identify in your contract, Proforma Invoice, and in the description of goods field of the L/C the **three digit Incoterms® rule with named place or port** (Be as precise as possible) followed by **Incoterms® 2010**.
- Require a delivery document that **clearly matches** where your Incoterms® **defined risk ends**.
- **BEWARE OF EXCEEDING YOUR RISK!**
- Include a separate instruction sheet attached to the Proforma Invoice with detailed instructions on how your buyer is to open the L/C.
- Ask the buyer for a copy of their completed L/C application, to proofread for your ability to comply *before* the L/C is opened.

3. Incoterms® Rules & Customs Clearance

- **EXPORT & SECURITY CLEARANCE**

- EXW = Responsibility of Buyer****

- ALL OTHERS = Responsibility of Seller

- **IMPORT & SECURITY CLEARANCE**

- DDP = Responsibility of Seller

- ALL OTHERS = Responsibility of Buyer

****BUT under USA Law, the **USPPI - US Principal Party in Interest** (usually the Seller) - is still required to file the Electronic Export Information (EEI) under new ACEDirect through the Department of Customs and Border Control *Automated Commercial Environment (ACE)*, unless buyer has provided written proof they have designated an agent within the USA to file.

Security Information

- A2/B2 of each Incoterms[®] Rule identifies who must obtain export and import licenses
- A10/B10 requires seller and buyer to provide security-related information that may be needed to export or import goods and determines who pays for such assistance.

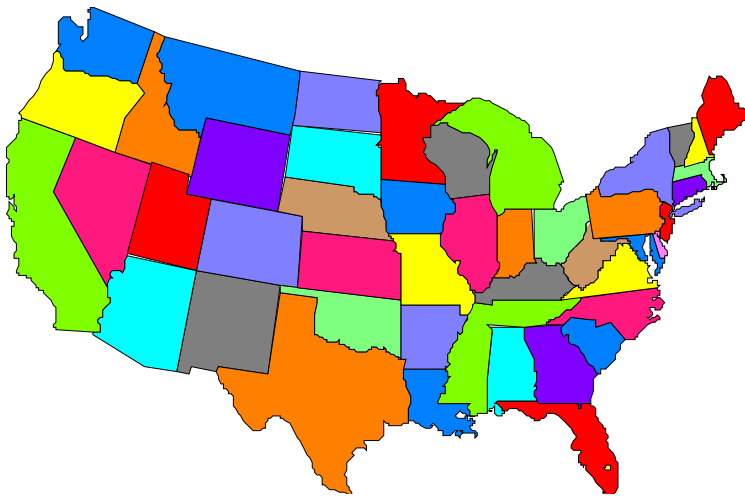
4. Incoterms® Rules & Insurance

- ONLY 2 INCOTERMS® SPECIFICALLY ASSIGN RESPONSIBILITY FOR INSURANCE!!!! **CIP** AND **CIF**.
- *ALL OTHER INCOTERMS® READ “NO OBLIGATION” FOR BOTH BUYER AND SELLER”!* Just because you aren’t insuring, don’t assume your buyer is! Spell it out in the contract! **ALWAYS INSURE!**

TYPES OF CONTRACTS

RISK ENDS at point of ...

SHIPMENT



FCA, CPT, CIP
FAS, *FOB*, *CFR*, *CIF*

ARRIVAL



DAT, DAP, DDP

SHIPMENT TERMS

DELIVERED TERMS

E TERMS

Departure

F TERMS

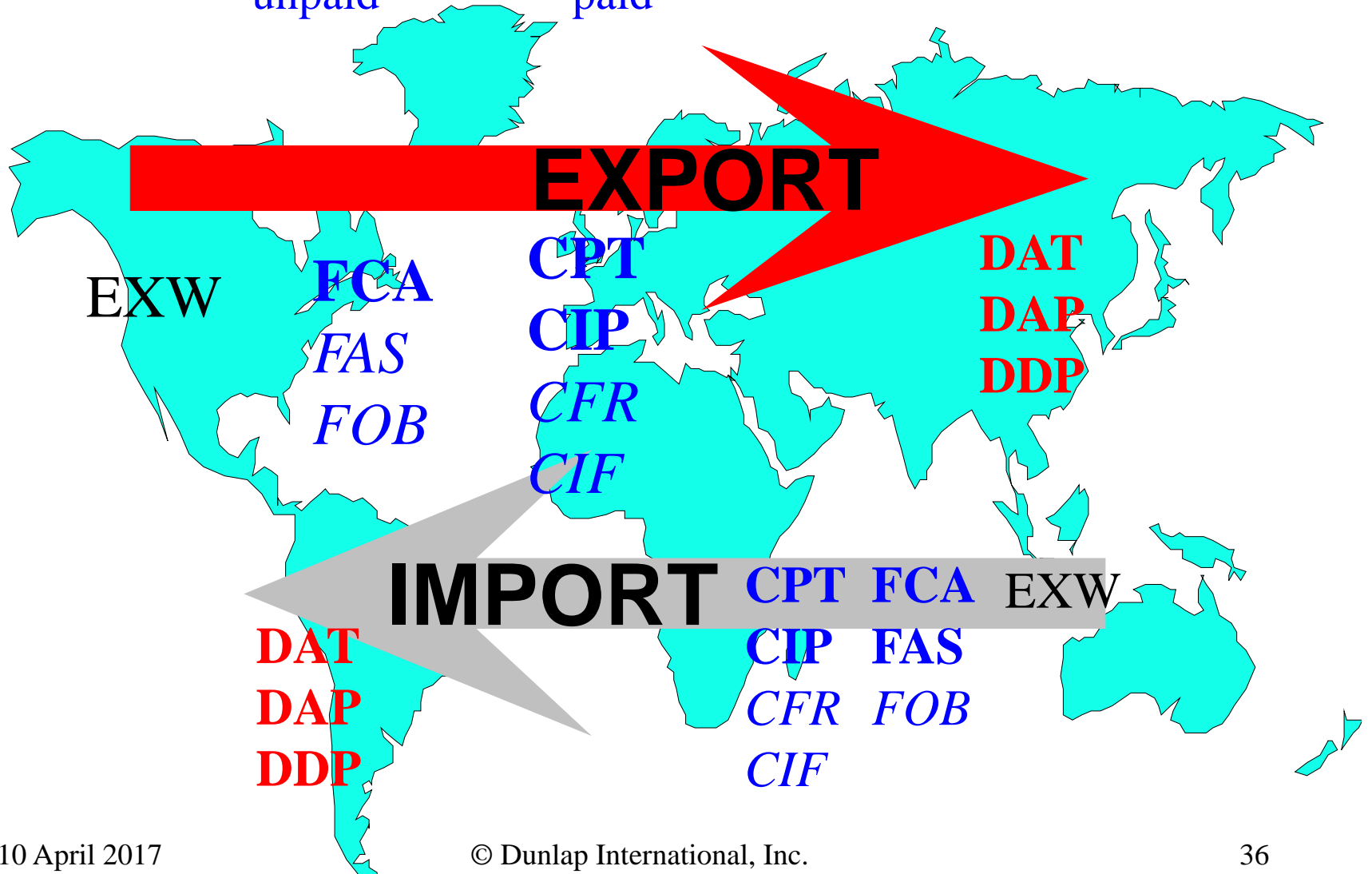
Main carriage
unpaid

C TERMS

Main carriage
paid

D TERMS

Arrival



All Incoterms® require a NAMED PLACE.

Red = any mode of transport / Blue = Sea or Inland Waterway

E Departure

- Ex Works (EXW): named **place**, usually the Seller's premises or warehouse.

F Main-carriage Unpaid

- Free Carrier (FCA) Named **place** of delivery, either:
 - Seller's place with door/door transport
 - Buyer appointed carrier's terminal on Seller's side
- Free Along Side (FAS): named **port** of shipment
- Free On Board (FOB): named **port** of shipment

All Incoterms® require a NAMED PLACE.

Red = any mode of transport / Blue = Sea or Inland Waterway

C Main-carriage Paid

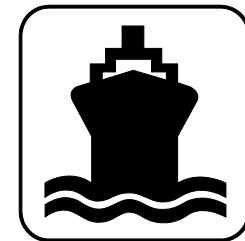
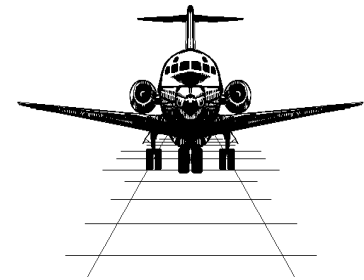
- Carriage Paid to (CPT): named **place** of destination
- Carriage and Insurance Paid (CIP): named **place** of destination
- Cost and Freight (CFR): named **port** of destination
- Cost, Insurance and Freight (CIF): named **port** of destination

D Arrival

- Delivered at Terminal (DAT): named **terminal** at port of arrival/destination
- Delivered at Place (DAP): named **place** of destination
- Delivered Duty Paid (DDP): named **place** of destination

GROUP I - ANY MODE(S) OF TRANSPORT

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



GROUP 1: ANY MODE OR MODES OF TRANSPORT

EXW FCA CPT CIP DAP DAT DDP

- may be chosen for maritime transport
- should be chosen for wholly or partly non-maritime transport.

SELLER & BUYER OBLIGATIONS

ALL 11 INCOTERMS® HAVE SAME 10 DIVISIONS OF OBLIGATIONS

A = Seller Obligations

- A1 General obligations of the seller
- A2 Licenses, authorizations, security clearances and other formalities
- A3 Contracts of Carriage and Insurance
- A4 Delivery
- A5 Transfer of Risks
- A6 Allocation of Costs
- A7 Notices to the Buyer
- A8 Delivery Document
- A9 Checking – Packaging - Marking
- A10 Assistance with information and related costs

B = Buyer Obligations

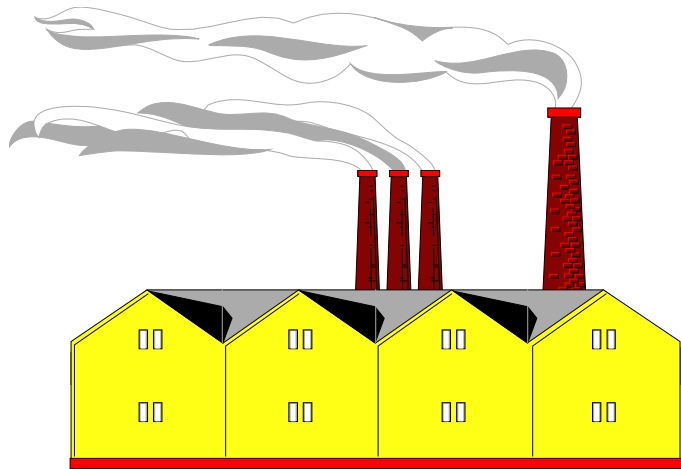
- B1 General obligations of the buyer
- B2 Licenses, authorizations, security clearances and other formalities
- B3 Contracts of Carriage and Insurance
- B4 Taking Delivery
- B5 Transfer of Risks
- B6 Allocation of Costs
- B7 Notices to the Seller
- B8 Proof of Delivery
- B9 Inspection of Goods
- B10 Assistance with information and related costs

EXW EX-WORKS (...Named place) Incoterms® 2010

*Seller fulfills his obligation to “**deliver**” when he places the goods at the disposal of the buyer at the seller’s premise or other named place (e.g.. works, factory, warehouse, etc.) not cleared for export and not loaded on any collecting vehicle.*

- EXW represents the Seller’s minimum obligation, to make goods available, generally at seller’s premises.
- Buyer must bear all costs and risks involved in taking the goods from the seller’s premises.
- EXW is used with any or multiple modes of transport.
- **Under EXW, there is no obligation for either party to export the goods.**
- Suitable for domestic or commodities contracts.

EXW (Named place)



SELLER

- Provide goods & commercial invoice (or its equivalent electronic message) in conformity with sales contract. [A1]
- Notify buyer **when & where** goods will be ready. [A7]
- Render assistance in obtaining export license & security information, providing assistance at *Buyer's* request, risk, & expense. [A2]
- Package goods at *Seller's* expense. Seller *may* package goods appropriate for transport. Goods to be marked. [A9]
- Not responsible for loading on collecting vehicle, freight charges, insurance, or export formalities. [A4]

BUYER

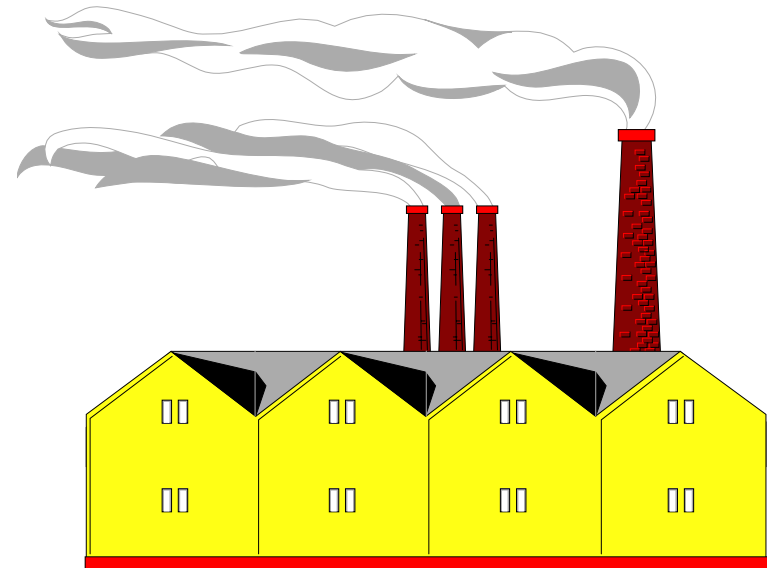
- Pay price in contract of sale. [B1]
- Obtain any export & import licenses, carry out all customs formalities, pay all taxes & fees. [B2]
- Take delivery of goods when they are made available. [B4]
- Pay all costs [B5] and bear all risks of loss or damage **from** time goods have been placed at *Buyer's* disposal [B6] (including preshipment inspection costs). [B9]
- Reimburse all costs incurred by Seller when rendering assistance. [B6]

10 April 2017

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EXW

(Named place)



44

Packaging and Marks

- ***Seller*** must, at his own expense, package the goods (unless it is usual for the particular trade to transport the type of goods sold unpackaged).
- Seller ***may*** package the goods in the manner appropriate for their export, unless buyer has notified of specific packing requirements before contract of sale is completed.
- ***Buyer*** should **advise mode of transport** and **ultimate destination** in order for Seller to provide appropriate packaging.
- Packaging must be marked appropriately.

“Packaging”

- Definitions acceptable under Incoterms[®] 2010 Rules:
 - Packaging of goods to comply with requirements of sales contract.
 - Packaging of goods so they are fit for transportation.
- **INCOTERMS[®] 2010 RULES DO NOT DEAL WITH PARTIES’ OBLIGATIONS FOR STOWAGE WITHIN A CONTAINER.** Must be addressed in the sale contract.

EXW EX-WORKS (...Named place) Incoterms® 2010

*Seller fulfills his obligation to **deliver** when he places the goods at the disposal of the buyer at the seller's premise or other named place (e.g.. works, factory, warehouse, etc.) not cleared for export and not loaded on any collecting vehicle.*

Summary from Guidance Notes for EXW
- Incoterms®2010

AT DISPOSAL OF THE BUYER

- Seller “**delivers**” when it **places goods at the disposal of the buyer** at either at the seller’s premise or at another specifically named place for the buyer to pick up.
- Goods are not “shipped”
- There is no proof of delivery such as a road transport document.

NOT CLEARED FOR EXPORT

- EXW does not require Seller to clear the goods for export. Buyer may arrange for clearance for export or may resell domestically.
- Overridden by US export laws, which requires Seller to clear goods for export unless Buyer has specifically established a “Routed Transaction”

NOT LOADED

- Seller does not need to load the goods on any collecting vehicle.
- Conflicts with OSHA laws and general practices where seller uses their forklift to load the goods on the collecting vehicle.
- If seller does load the goods, it is at the buyer's risk and expense, but needs to be included in writing in the contract.
- FCA is more appropriate Incoterm Rule.

RISK

The Seller should take care not to remain at risk after the goods have been handed over to the carrier that the buyer nominates. This is particularly important when the seller has no possibility to give instructions with respect to the care and custody of the goods, which occurs, for example when the carrier is obligated to take instructions from his own contracting party, the buyer.

EXW

FCA

FAS

FOB

ICC Guide to INCOTERMS® 2010

EXW “Loaded” (insert) .

Who’s risk for loss of or damage to goods during storage & loading operations?

- Loaded at seller’s risk?
- Loaded at buyer’s risk?
- Loaded at buyer’s risk subsequent to the seller’s notice that the goods have been placed at the disposal of the buyer? **RISKY TO MODIFY!**

INCOTERMS[®] are only concerned with the obligations which the parties owe to each other.

- “No obligation” when one party does not have a specific duty or obligation to the other party.
- Even though one party may be under “no obligation” towards the other to perform a certain task, this does not mean that it is not in his interest to perform that task. *This must be spelled out in the Sales Contract.*

EXW and “No obligation”

- **Contract of carriage**
 - **No obligation for either seller or buyer**
- **Contract of insurance**
 - **No obligation for either seller or buyer**
- **Proof of delivery, transport document or equivalent electronic message**
 - **No obligation for seller. The buyer must provide the seller with “appropriate evidence” of having taken delivery**

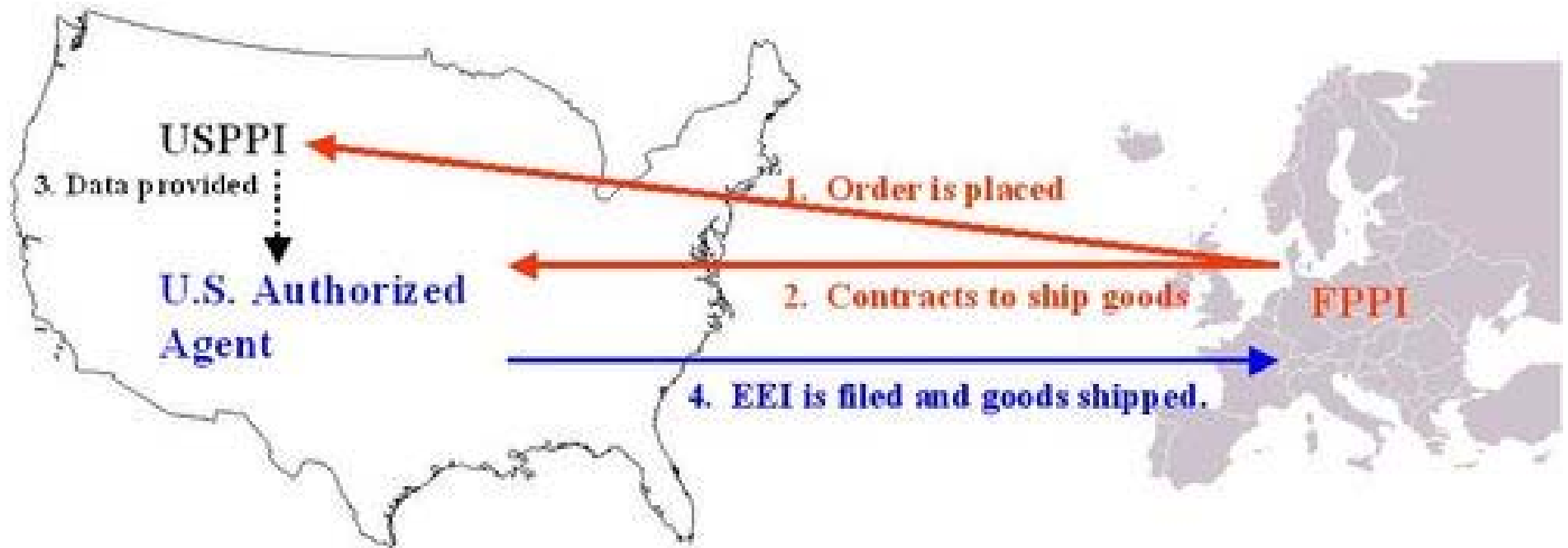
**EXW + FREIGHT COLLECT
IS NOT THE END OF THE
SHIPPER/EXPORTER'S
RESPONSIBILITIES!**

EXW is intended to be minimum obligation, but the US Government requires the **Principal Party in Interest (PPI)**, either exporter or importer, to report export information electronically to the **Automated Commercial Environment (ACE)**.

FOREIGN PRINCIPAL PARTY IN INTEREST (FPPI)

- For EX-Works terms to work where the seller has no responsibility beyond making the goods available, the overseas buyer needs to set up a **Routed Transaction**, whereby the buyer authorizes a **Foreign Principal Party in Interest (FPPI)** in the USA, typically a US forwarding company, the seller, *or other agent*, to facilitate compliance with US export laws and requirements to file the Electronic Export Information (EEI) with through the ACE portal at US Customs & Border Protection.
- Seller needs to receive a letter signed by the “buyer” overseas designating Power of Attorney (POA) to their appointed USA agent to prepare and file all export documentation.

Routed Transaction



➤ **If using U.S. Agent, FPPI provides Agent with written authorization or POA.**

Information by Justin Jenkins, published on the U.S. Census Bureau *Global Outreach*, the official international trade blog of the U.S. Census Bureau.

Routed Transaction

1. The FPPI controls the movement of the goods out of the U.S.
2. The FPPI provides the authorization to a U.S. agent to prepare and file the EEI.
3. The USPPI provides information to the U.S. agent regarding the shipment, or can file the EEI, if they have received authorization from the FPPI.

Information by Justin Jenkins, published on the U.S. Census Bureau *Global Outreach*, the official international trade blog of the U.S. Census Bureau.

US PRINCIPAL PARTY IN INTEREST (USPPI)

- **If any other shipping term is used (FCA, FAS, CPT, CIP, DAT, DAP, DDP, FOB, CRF, and CIF)**
- **Or the buyer fails to set up a legitimate routed transaction**

Then the seller/exporter automatically become the US Principal Party in Interest (USPPI) required to comply with export laws and file the necessary Electronic Export Information (EEI) to the Customs and Border Patrol Automated Commercial Environment (ACE).

RECAP - Problems with EXW

- Is Buyer capable of providing door-to-destination pre-carriage arrangements, including loading at the exporter's dock?
- Is Seller willing to allow Buyer's agents to load from their docks? (Labor laws and Union agreements)
- What is appropriate "proof of delivery" as Seller is not responsible for providing any transport documents, including pre-carriage road transport document (truck bill of lading) ?
- Buyer only has obligation to take delivery of goods as soon as they are available. There is no obligation for *either* party to export the goods. Goods could be resold in domestic market.
- Neither Seller nor Buyer has any obligation to arrange for transportation and insurance.
- USA law mandates US Principal Party in Interest to be responsible for export compliance issues.

EXW

(Named place of delivery)

Not appropriate for Letter of Credit Payment Terms

- Seller only responsible for *making goods available* at his own premise. No document to prove delivery!
- Buyer only has obligation to take delivery of goods as soon as they are available. There is no further obligation to export goods.
- Neither Seller nor Buyer has any obligation to arrange for transportation and insurance.
- If an export shipment ultimately is made, the freight forwarder is under obligation to provide bills of lading/ocean or air waybills only to the Buyer (his contract party). Seller might not even be able to obtain original transport documents from forwarder to present to the Bank!

EXW should NOT be used when the Buyer cannot carry out directly or indirectly the export formalities!!!!

- ➔ Obtain the Export License (State or Commerce Departments)
- ➔ File required export information under Automated Commercial Environment (ACE)

IF Buyer expects YOU to clear the goods for export and/or coordinate shipping arrangements, **CHOOSE A DIFFERENT INCOTERMS[®] RULE.*****

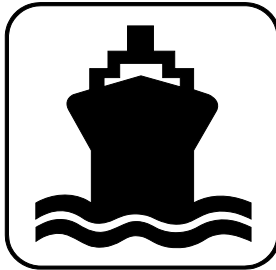
FCA FREE CARRIER (...Named place of delivery) Incoterms® 2010

Seller must deliver goods to carrier or person nominated by buyer at agreed point on agreed date or within agreed period cleared for export ...

- Any mode or modes of transport
- Buyer is responsible for selection of forwarder, transport, and clearance into country of destination.
- Seller clearly required to obtain export license (if needed)
- Buyer must notify seller of name of carrier within sufficient time for Seller to make delivery.
- Seller must give buyer sufficient notice that goods have/have not been delivered.
- Goods are required to be exported.
- Better Incoterms® Rule than EXW for **seller's minimum obligation** in an **export sale of machinery**.

FCA

Free Carrier (Named Place)



Any mode of
transportation

SELLER

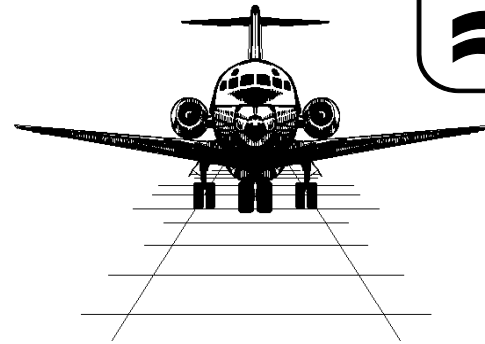
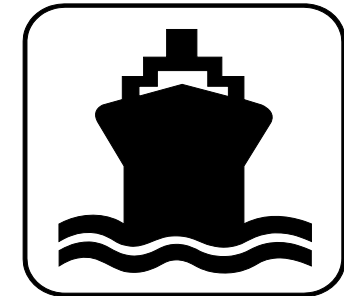
- Provide goods packed for export & commercial invoice in conformity with terms of contract.
- Obtain at *Seller's* risk & expense the export license. File ACE. Pay export taxes and fees.
- Notify Buyer goods available for delivery.
- Deliver goods to carrier or agent named by *Buyer* at named place within the time specified by contract.
- Provide usual proof of delivery of goods to carrier. (Road Transport Document, Forwarder's Cargo Receipt)
- Bear all risk & expense until goods have been delivered at designated place per contract.

BUYER

- Pay price in contract.
- Obtain import license.
- Contract at own risk and expense for carriage of goods from named point to destination.
- Give Seller appropriate instructions whenever Seller's assistance in contracting carriage is required. Reimburse costs incurred by Seller.

FCA

(Named Place)



...Named Place of Delivery

- If delivery occurs at the seller's premises, the **seller is responsible for loading.**
- If delivery occurs at any other place, the **seller is NOT responsible for unloading.**

In other words, who has the forklift truck?



LETTER OF CREDIT CONSIDERATIONS

FCA TERMS

- Transport document must match defined point of **DELIVERY**.
 - **FACTORY** – Preferred document is the Road Transport Document (Truck Bill of Lading), freight collect, consigned to Buyer's Freight Forwarder.
 - **PORT/AIRPORT** – Preferred document is the Road Transport Document (Truck Bill of Lading), freight prepaid, consigned to Buyer's Freight Forwarder.

“Usual proof of delivery”

- Under F-terms, **the contract for main carriage is made by or on behalf of the Buyer.** Buyer selects the freight forwarder. Legally bills of lading are to be released to the Buyer.
- Carrier is obligated to give Shipper a “receipt”, usually identical to Transport Document, as evidence of delivery of goods to carrier.
- **“Dock Receipt” is not adequate, as it only proves delivery to Terminal, not loaded on-board the vessel. (FOB)**
- Seller may, at Buyer’s request, risk, and expense assist in obtaining the transport document for the contract of carriage.

Forwarder's Cargo Receipt (FCR)

- Transactional document issued by a freight forwarder to confirm *receipt of cargo*.
- **FCR is NOT a transportation document.**
- Often used as “proof” of delivery for E & F Incoterms.
- Enables the Seller to collect payment for the goods from the Buyer's bank IF defined in the Letter of Credit (L/C)

FCA & Terminal Handling Charges

- Goods arrive at terminal gate before being placed on board the vessel or plane.
- Extra handling and storage charges in cargo terminals, Terminal Handling Charges (THC), may get billed to both Seller and Buyer. Specify:
 - *FCA Baltimore Incoterms[®], THC for Seller's account (or Buyer's account)*
 - *FCA Seattle Incoterms[®], 50% of THC for Seller's account*

CPT Carriage Paid To (...Named place of destination) Incoterms® 2010

*Seller fulfills **delivery** obligation (and ends his risk) upon **handing over the goods for carriage** in country of shipment, but with additional obligation to arrange and **pay for carriage** up to the agreed point in the country of destination.*

- Any mode or modes of transport
- Seller selects forwarder, contracts carriage, and pays for freight to named place of destination.
- Risk ends when Seller delivers goods into custody of contracted carrier. Buyer carries risk of transport.
- Neither the Seller nor the Buyer have any obligation to each other to obtain a contract for insurance. Spell out in the contract who is to provide cargo insurance. (Sometimes required by local law to be insured by buyer.)

CPT

Carriage paid to (Named *Place* of *Destination*)



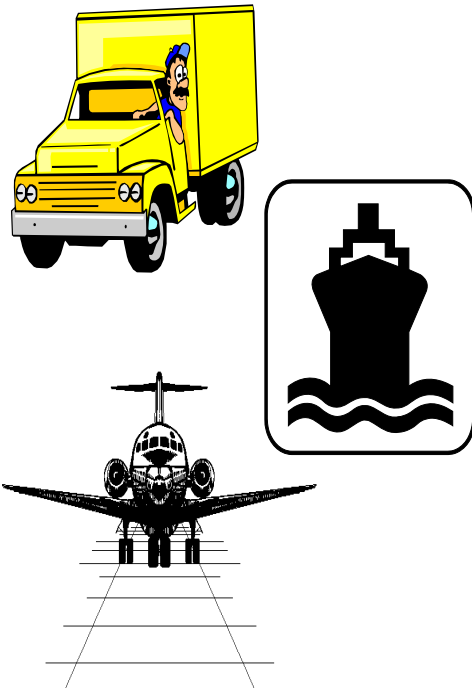
Any mode of
transportation

SELLER

- A1) Provide goods & commercial invoice in conformity with contract of sale.
- A2) At own risk & expense obtain **export** license or other official authorization and carry out export customs formalities for transport to named place.
- A3) a) Contract or procure a contract or carriage of goods from point of delivery to agreed point in named destination by usual route, usual terms, and in customary manner. b) No obligation to provide insurance, but must provide information.
- A4) Deliver goods to the carrier contracted for transportation to named place of destination on date or within period stipulated in contract.
- A5) Bear all risks of loss of or damage to goods until they have been delivered per A4.

CPT

(Named *Place of Destination*)



SELLER

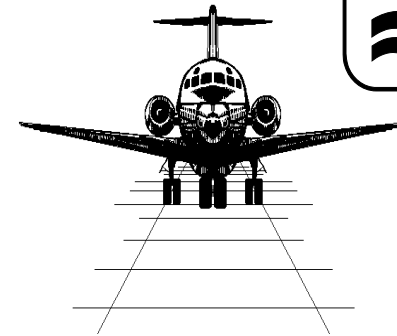
- A6)** Pay all costs relating to goods until they have been delivered in accordance with A4. as well as freight and other costs including costs of loading the goods and any charges for unloading at the place of destination that are for seller's account.
- A7)** Give buyer notice that goods have been delivered to allow buyer to take measures to enable him to receive goods.
- A8)** Provide buyer at seller's expense with usual transport document. May allow claim goods from carrier and/or sale in transit against full set originals of negotiable B/L.
- A9)** Pay costs of checking operations necessary for delivery of goods. Provide at own expense packaging required for transport. Packaging to be marked accordingly.
- A10)** Render at buyer's request, risk, & expense assistance in obtaining documents and information, including security related info, buyer needs for import & transport.

BUYER

- B1)** Must pay price as provided in contract of sale.
- B2)** Obtain at own risk and expense any **import** license or other official authorization, carry out all customs formalities for importation of goods, and where necessary, for their transit through another country.
- B3)** a) No obligation to contract for main carriage or
b) No obligation to contract for insurance.
- B4)** Must take delivery of goods when they have been delivered in accordance with A.4. and receive them from the carrier at named place of destination.
- B5)** Bear all risks of loss of or damage to the goods from the time they have been delivered in accordance with A4. Should Buyer fail to give notice in accordance with B7, bear all risks of goods from agreed date or expiry date of the period fixed for delivery as long as the goods have been clearly identified as the contract goods.

CPT

(Named *Place of Destination*)



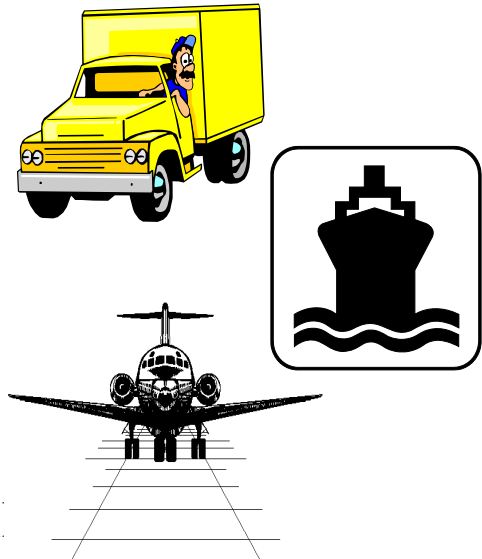
BUYER

B6) Subject to provisions of A.3.a, pay

- a) all costs relating to the goods from the time they have been delivered in accordance with A.4; and
- b) all costs and charges relating to the goods while in transit until their arrival at agreed place of destination, *unless such costs and charges were for the seller's account under the contract for carriage;*
- c) unloading costs, *unless such costs and charges were for the seller's account under the contract of carriage;*
- d) any additional costs incurred if buyer fails to give notice in accordance with B7, from the agreed date or the expiry date of the period for dispatch, provided, that the goods have been clearly identified as the contract goods;
- e) where applicable all duties, taxes and other charges as well as the cost of carrying out customs formalities payable upon import of the goods and the cost for their transport through any country unless included within the cost of the contract of carriage.

CPT

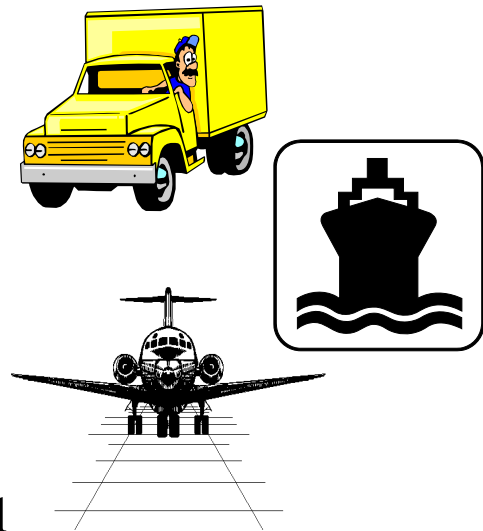
(Named *Place of Destination*)



BUYER

- B7)** Whenever he is entitled to determine the time for dispatching of goods and/or place of destination, give seller sufficient notice.
- B8)** Accept the transport document in accordance with A8 if it is in conformity with the contract.
- B9)** Pay the costs of any mandatory pre-shipment inspection except when mandated by the authorities of the country of export.
- B10)** Advise the seller of any security information requirements;
- reimburse the seller for all costs and charges incurred in providing or rendering assistance in obtaining documents or information;
 - Provide or render assistance in a timely manner in obtaining for the seller, at the seller's request, risk and expense, any documents and information, including security related information that the seller needs for transport and export of the goods..

CPT
(Named
*Place of
Destination*)



CIP Carriage and Insurance Paid To

(...Named place of destination) Incoterms® 2010

*Seller fulfills **delivery** obligation (and **ends his risk**) upon **handing over the goods for carriage** in country of shipment, but with additional obligation to **arrange and pay for insurance and carriage** up to the agreed point in the country of destination.*

- Any mode or modes of transport
- Seller selects forwarder, contracts carriage, and pays for freight to named place of destination.
- Risk ends when Seller delivers goods into custody of contracted carrier.
- **Seller contracts for minimum cover insurance against buyer's risk of loss of or damage to the goods during carriage.**

CIP INSURANCE

- *Seller* is obliged to purchase insurance payable to buyer and provide evidence of cover (insurance policy/certificate).
- *Buyer* must be able to **claim directly from insurer**.
- Duration of insurance cover must coincide with carriage (**Port-to-Port or Door-to-Port or Port-to-Door or Door-to-Door**) and protect buyer from moment he has to bear risk of loss until goods arrive at agreed PLACE/PORT/AIRPORT of destination.
- Insurance must be in accordance with **minimum cover** (**Category C**) of the Institute Cargo Clauses (Institute of London Underwriters)

Minimum insurance coverage can be a serious trap for the unwary buyer!

- Under INCOTERMS® Rules the *Seller* has obligation to take out at least *minimum insurance coverage*. (Note: Most L/C's are set up for 110% of CIF value.) In the event of a loss, this cover is usually *insufficient* when manufactured goods are involved, particularly for goods of high value, because of the risk of theft, pilferage or improper handling.
- Buyer and Seller should agree in the Sales Contract for additional coverage to be provided by either Seller or Buyer.

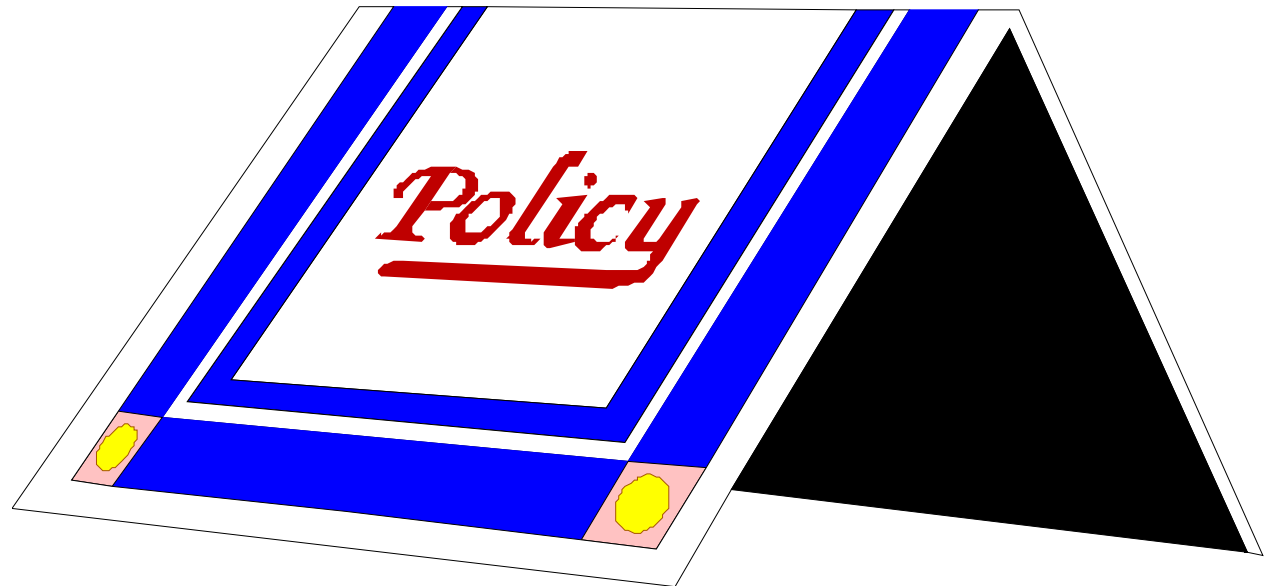
EXTRA INSURANCE:

- **“ALL RISK”** – Extensive insurance coverage of physical risks to cargo
 - Includes external causes such as fire, collision, pilferage
 - excludes “special” risks such as acts of war, strikes and riots, labor strikes, internal damage due to faulty packing
 - Warehouse-to-Warehouse coverage recommended (pre-carriage + main-carriage + on-carriage) vs. Port-to-Port.
- **“WAR RISK”** – Clause to extend coverage against losses as result of war. Available at modest cost.
- **“STRIKES, RIOTS, AND CIVIL COMMOTION RISK” (SRCC)**
 - Clause to cover damage, theft, pilferage, breakage or destruction of insured property caused by strikers, locked out workmen taking part in labor disturbances, riots or civil commotions. Recommended if available.
- **Insurance coverage must be in the currency of the contract and cover the goods from point of delivery to at least the named place of destination. SPELL OUT IN THE CONTRACT !**

Insurable interest

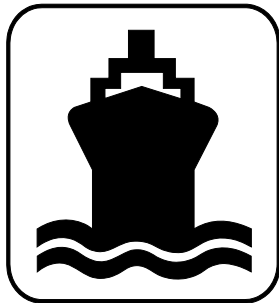
- “Seller must obtain at his own expense cargo insurance as agreed in the contract, such that the **Buyer**, or any other person having an **insurable interest** in the goods, shall be entitled to **claim directly from the insurer...**”
 - Make the insurance certificate (not policy) payable to the Shipper and blank endorsed (like the negotiable ocean bill of lading), making it a “bearer” document that can be exchanged for payment or acceptance along with transport document on a documentary collection basis.

Be sure you have adequate insurance coverage against the possibility of a loss!!!!!!



CPT & CIP

(Named *Place of Destination*)



- CPT & CIP may be used for *any mode of transport, including multimodal.*
- *Seller* must **deliver goods into custody of contracted carrier** in country of shipment..
- *Seller* must arrange and pay for freight to **named Destination.**
- Risk of loss or damage is transferred from Seller to Buyer when goods have been **delivered to the first carrier.**
- *Seller* is required to clear goods for export. *Buyer* clears goods for import.

“Carrier”

Any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport by rail, road, air, sea, inland waterway or by a combination of such modes.

Railroad

**Steamship
Line**

**Freight
Forwarder**

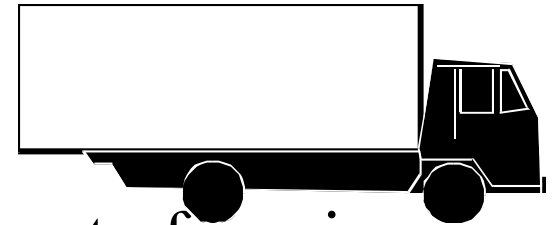
NVOCC

Barge

**Common
Carrier**

Airline

CPT & CIP - First Carrier



- Ideal = All carriers working on same contract of carriage.
 - Air Carrier hires independent local cartage company for outbound shipments
 - Ship line arranging door-to-port or door-to-door through carriage arrangements with local cartage company/railroad.
- **Potential Problem = Separate pre-carriage & main-carriage contracts.**
 - What if first carrier doesn't arrive at second?
 - Cheap truck or mule train? Usual route in customary manner.
- Specify in Sales Contract the type of pre-carriage whenever a “door-to-door” move is not contemplated. Especially important for LCL imports.

Delivery date under “C” terms

- Seller’s obligation is limited to shipping the goods from his country.

➤ **DO NOT CONTRADICT THIS IN THE SALE’S CONTRACT BY PROMISING DELIVERY OVERSEAS BY A SPECIFIC DATE.**

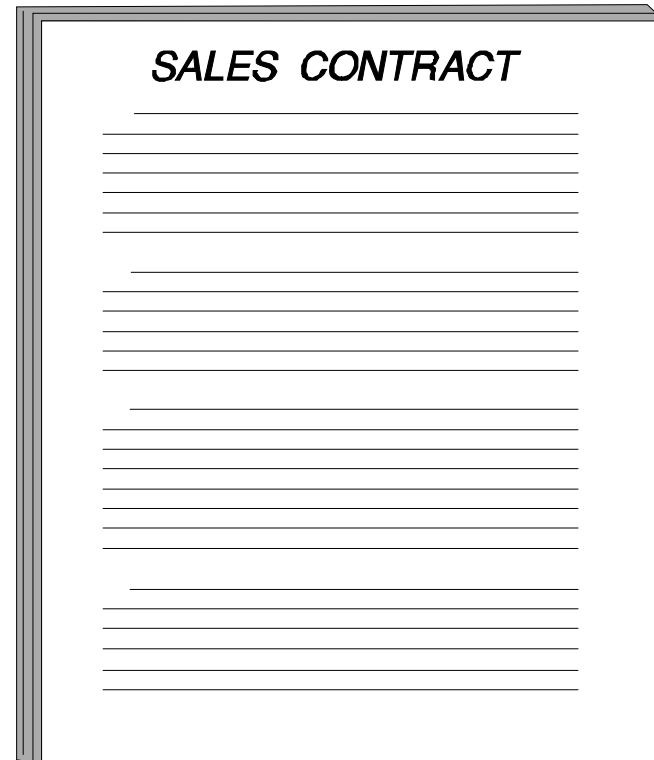
- Instead “Shipment from USA port/airport by ____ (date)”.



MARK THIS DATE

- **If overseas delivery date is required by the Sales Contract, use DAP or DAT terms!!!**

WHEN IN DOUBT, SPELL IT OUT!!!!!!!!!!!!



ARRIVAL TERMS

D- terms. Seller fulfills his obligation to **deliver** when the goods have been made available to the buyer at **destination**. The precise point for delivery depends on the D- term chosen.

- **DAT** Delivered at Terminal (...named terminal at port of destination)
- **DAP** Delivered At Place (...named place)
- **DDP** Delivered Duty Paid (...named place of destination)

Why use D- terms?

- Growing demand by buyers to be quoted “delivered” pricing.
- Increased use of “contract guarantees” for services after delivery such as installation and commissioning. Strange to have sales contract fulfilled before goods have reached destination.
- Desire by manufacturer to ensure goods delivered safely.
- Possibility of more competitive freight rates.

FACTORS TO DETERMINE USE OF DIFFERENT D-TERMS

1. Distribution of costs and risks connected with **discharging goods at destination**
2. Distribution of functions in connection with the **clearance of the goods for import**

DAT Delivered at Terminal (Formerly DEQ)

(...Named terminal at port or place of destination) Incoterms® 2010

*Seller delivers goods, **UNLOADED** from arriving means of transport and placed **at disposal of buyer at a named terminal** at named port or place of destination.*

- **Any mode or modes of transport**
- Seller selects forwarder, contracts carriage, pays for freight, carries all risk, and **is responsible for unloading goods at named terminal** at place of destination.
- Neither the Seller nor the Buyer have any obligation to each other to obtain a contract for insurance. Spell out in the contract who is to provide maritime insurance. Seller obligated to provide information to obtain insurance.
- **If on-carriage beyond terminal is required, use DAP or DDP!!!**
- **No obligation of seller to clear goods for import**, pay import duties/taxes or carry out import formalities.

“TERMINAL”

- Includes anyplace, whether covered or not, not necessarily forwarder terminal, such as:
 - Quay
 - Warehouse
 - Container yard
 - Road, rail or air cargo terminal

Unloaded from arriving transport

NOTIFICATION [A7/B7]

It is critical that Seller:

- Advise Buyer of Estimated Time of Arrival of vessel

It is critical that Buyer:

- Remove cargo within agreed upon time

TO AVOID DEMURRAGE CHARGES

DAP Delivered at Place

(...Named place of destination) Incoterms® 2010

(Replaced DAF,
DES and DDU)

*Seller delivers goods by placing at disposal of buyer on arriving means of transport, **not unloaded**, at named **place of destination**.*

- **Any mode or modes of transport**
- Seller selects forwarder, contracts carriage, pays for freight, and carries all risk to named place of destination. **Buyer is responsible for unloading goods from transport.**
- Neither the Seller nor the Buyer have any obligation to each other to obtain a contract for insurance. **Spell out in the contract who is to provide maritime insurance.** Seller obligated to provide information to obtain insurance.
- **No obligation of seller to clear goods for import, pay import duties/taxes or carry out import formalities.**

DAP Dilemmas!

- **Fulfillment of seller's on-carriage responsibility depends upon **import clearance, a buyer responsibility.****
Failure by buyer to arrange for timely import clearance can frustrate seller's ability to arrange on-carriage.
 - Buyer is liable for any costs and risks caused by his failure to clear the goods for import in time.
- Potential difficulty getting paid when delivery is deep in buyer's country, terms require exchange of documents/goods for immediate payment, and buyer refuses to pay.
 - Use primarily with Advance Payment or Letter of Credit terms (single contract of carriage), or with buyers whose commercial responsibilities are undoubted.

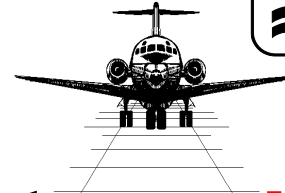
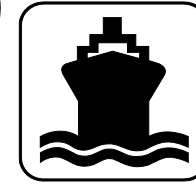
DDP

Delivered Duty Paid

(Named Place of Destination)



Any mode of transportation



- *Seller* delivers the goods to the buyer, **cleared for import**, and **not unloaded from any arriving means of transport** at the named place of destination.
- *Seller bears all costs and risks* in bringing goods to named place of destination.
- Seller is responsible for and bears risk of carrying out of customs formalities and payment of formalities, customs duties, taxes and other charges)
- **DDP represents MAXIMUM obligation for Seller!**

DDP and Canada

- Landed cost to Buyer
- Minimal risk clearing Canadian customs with NAFTA-eligible USA products.
- Many U.S. truck lines deliver into Canada.
- Canadian VAT (Goods & Services Tax) is not a duty but a sales tax. Define Seller & Buyer obligations in the Sales Contract.
 - If US seller is NOT to pay the VAT, show:
“DDP VAT unpaid”

DDP Terms & US Importers

- Seller's landed cost price includes US duties. Get binding ruling from US customs to ensure accurate and lowest permissible duty. Reduction in duty should be accompanied by lower price.
- Be sure **Seller or his Customs Broker is listed as Importer of Record** in field 26 of US Customs and Border Protection Entry Summary form (Entity responsible for present and future claims US Customs may have against import entry).
- Research duty drawback options with your Customs Broker.

ISSUES WITH DDP

- Be 100% certain of your H/S TARIFF CLASSIFICATION NUMBER before agreeing to DDP Terms. It is very expensive if Destination Customs Officials reclassify your products to a higher duty rate. Get a binding ruling from Destination Customs Officials.
- Know if the Laws of the Destination Government require IMPORTER PHYSICAL PRESENCE in country to clear goods. You may not be allowed to be the importer!

*****DDP-Buyer non-acceptance*****

Having nationalized the goods in buyer's country by arranging import clearance, Seller may have to obtain permission from Buyer's government prior to re-exportation.



DDP

should not be used if the seller is unable directly or indirectly to obtain the import license.

Know the import licensing laws of the destination country !

Duties/Taxes & costs of importation

- **DAT & DAP** - Duties, taxes and costs of importation **UNPAID BY SELLER**. If parties agree that seller is to pay selected costs, add to sales contract: *DAT or DAP named terminal/place (be specific)*, **VAT paid**
- **DDP** - Duties, taxes, and costs of importation **PAID BY SELLER**. If parties agree that buyer is to pay selected costs, add to sales contract: *DDP named place of destination (be specific)*, **VAT unpaid**.

CONTAINERIZED CARGO

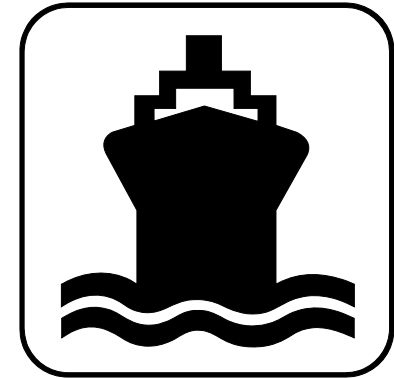
- Usually ships on a Door-to-Door or Door-to-Port (Overseas Terminal) basis.
- Often requires **MULTIMODAL Bill of Lading** (instead of an Ocean/Marine Bill of Lading)
 - Shipment includes **at least two modes of transport**, such as shipping by truck/rail and by sea.
 - Usually a “Received for Shipment” B/L though it may be stamped “On Board”
 - Usually declare point of “taking charge” or “dispatch from”
- **CPT/CIP/DAT/DAP/DDP named overseas port/place are appropriate Incoterms® rules.**

GROUP 1 - ANY MODE OF TRANSPORTATION
= ANY COMBINATION(S) OF 'DELIVERY'

- | | |
|----------------------------------|-----|
| • Door-to-Port/Place of Shipment | EXW |
| • Door-to-Destination Port | FCA |
| • Door-to-Destination Airport | CPT |
| • Door-to-Destination Terminal | CIP |
| • Airport-to-Airport | DAT |
| • Airport-to-Door | DAP |
| • Ocean-Port to Ocean-Port | DDP |
| • Ocean-Port to Door | |
| • Door-to-Door | |

PRIMARILY FOR MANUFACTURED GOODS.

**GROUP II - MARITIME OR
INLAND WATERWAY
TRANSPORT ONLY**



- **FAS** - Free Alongside Ship
- **FOB** - Free On Board
- **CFR** - Cost and Freight
- **CIF** - Cost, Insurance and Freight

PRIMARILY FOR COMMODITIES

GROUP II – SEA AND INLAND WATERWAY TRANSPORT

***FAS FOB CFR CIF should be chosen
for maritime transport ONLY***

PORT-TO-PORT SHIPMENTS ONLY

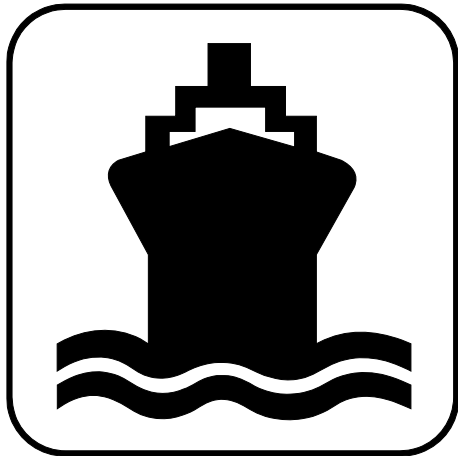
FAS FREE ALONGSIDE SHIP

(... named port of shipment) Incoterms ® 2010

*Seller **delivers** when the goods are placed **alongside the vessel** (on quay or barge) selected by buyer **at the named port of shipment**. Buyer has to bear all costs and risks of loss of or damage to the goods from that moment on.*

- Sea or inland waterway transport only!
- Goods may be “procured” alongside the vessel as part of a string sale. Buyer pays transport.
- Risk passes when goods are alongside the vessel. Specify as clearly as possible exact loading point.

FAS FREE ALONGSIDE SHIP (... named port of shipment) Incoterms® 2010



Sea or inland waterway!

SELLER

- Provide goods packed & cleared for export & invoices per terms of contract.
- Deliver goods **alongside named vessel at loading place named by Buyer at named port of shipment within named time period and in manner customary at the port.**
- Notify Buyer goods have been delivered alongside vessel.
- Provide usual proof of delivery.
- Render assistance at *Buyer's* request, risk & expense.
- No obligation to contract for main carriage or insurance. Shipment by sea or inland waterway only!

BUYER

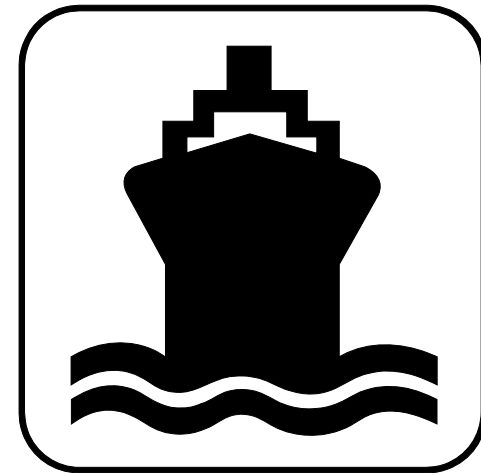
- Contract for carriage at *Buyer's* risk & expense.
- Notify Seller of vessel name, loading point, and required delivery time.
- Must take delivery of goods when delivered alongside of designated vessel.
- Pay all costs relating to goods after delivery alongside ship, including additional costs incurred by delays in arrival of vessel.
- Reimburse *Seller* for expense incurred assisting with documentation, etc.

10 April 2017

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FAS

(Named *Port of Shipment*)



110

FOB Free on Board (...Named port of shipment) Incoterms® 2010

*Seller fulfills **delivery obligation** (and ends his risk) **when goods are LOADED ON BOARD the vessel** nominated by the buyer at the **named port of shipment** or procures the goods already so delivered.*

- Restricted to sea and inland waterway transport.
- Buyer selects forwarder, contracts carriage, and pays for freight to destination.
- Neither the Seller nor the Buyer have any obligation to each other to obtain a contract for insurance. Spell out in the contract!
- **FOB IS NOT APPROPRIATE WHEN GOODS ARE HANDED OVER TO THE CARRIER BEFORE THEY ARE ON BOARD THE VESSEL, FOR EXAMPLE IN CONTAINERS, WHICH ARE TYPICALLY DELIVERED AT A TERMINAL.**

The term **FOB** is most appropriate for

1. Goods lifted across the ship's rail (break-bulk cargo, no containers or Ro-Ro)
2. Goods tendered to the ship in hoses for liquid cargo.
3. Goods filled from silos when the cargo is to be carried loose in bulk.

IN ALL OTHER CASES,
FOB SHOULD NOT BE USED!
USE FCA NAMED PLACE OF DELIVERY



CFR Cost and Freight(...Named port of destination) Incoterms® 2010

Seller fulfills **delivery obligation** (and ends his risk) by placing goods **on board the vessel** at port of shipment, but with additional obligation to arrange and pay for carriage up to the agreed **port** in the country of **destination**.

- Restricted to sea and inland waterway transport.
- Seller selects forwarder, contracts carriage, and pays for freight to named **port** of destination.
- Risk ends when Seller **delivers goods on-board the vessel** at the port of shipment.
- Neither the Seller nor the Buyer have any obligation to each other to obtain a contract for insurance. Spell out in the contract who is to provide marine insurance.

CIF Cost Insurance and Freight (...Named port of destination) Incoterms® 2010

Seller fulfills delivery obligation (and ends his risk) by placing goods **on board the vessel** at port of shipment, but with additional obligation to arrange and pay for minimum cover insurance and carriage up to the agreed **port** in the country of destination.

- Restricted to sea and inland waterway transport.
- Seller selects forwarder, contracts carriage, and pays for freight to named **port** of destination.
- Risk ends when Seller **delivers goods on-board the vessel** at port of shipment.
- Seller contracts for minimum marine insurance cover at buyer's risk of loss of or damage to the goods during carriage.

CIF INSURANCE

- *Seller* is obliged to purchase insurance payable to buyer and provide evidence of cover (insurance policy/certificate).
- *Buyer* must be able to **claim directly from insurer**.
- Duration of insurance cover must coincide with carriage (**Port-to-Port ONLY**) and protect buyer from moment he has to bear risk of loss until goods arrive at agreed port of destination.
- Insurance must be in accordance with **minimum cover** (Category C) of the Institute Cargo Clauses (Institute of London Underwriters)

CFR/CIF & the Negotiable B/L

- Unless otherwise agreed in the Contract of Sale, both CFR & CIF terms require a negotiable bill of lading that will enable the buyer to sell the goods in transit by the transfer of the document to a subsequent buyer.

TRANSPORT DOCUMENT

- NEGOTIABLE (Ocean/Marine Bills of Lading)
 - Use when you want to retain control of goods.
 - Possession of the original paper document enables buyer to claim the goods from carrier at destination.
 - Use for commodities sold on spot market. Bulk cargo (oil, grain) may be sold several times prior to arrival at destination.
 - Must have words “ORDER OF” in “consignee” field.
- NON NEGOTIABLE (Sea Waybills)**
 - Use for quick release of goods upon arrival. EDI release.
 - Buyer only has to prove identity. No original document required.

**Comite Maritime International (CMI) Uniform Rules for Sea Waybills

Negotiable Transport Document (Ocean/Marine Bill of Lading)

- ORDER OF SHIPPER
 - Title and possession pass from shipper to shipper
 - Original B/L must be signed and endorsed to become a “bearer” document and transfer ownership.
- ORDER OF NAMED BANK
 - Include instructions to bank to not release document unless buyer makes payment or accepts a note.
Buyer must deal with bank to claim shipment.

WATCH WORDING CAREFULLY

“shipment by usual route of the type normally used for the transport of goods of the contract description.

➤ Type of vessel must match type of goods being carried.

e.g.... Ships specializing in *break bulk* or *ro-ro* cannot be contracted for *on-deck containerized cargo* 1) since the ship is not designed for carriage of containers, and 2) the carriage may be exposed to additional risks and even render the insurance cover ineffective.

“Manner customary at port”

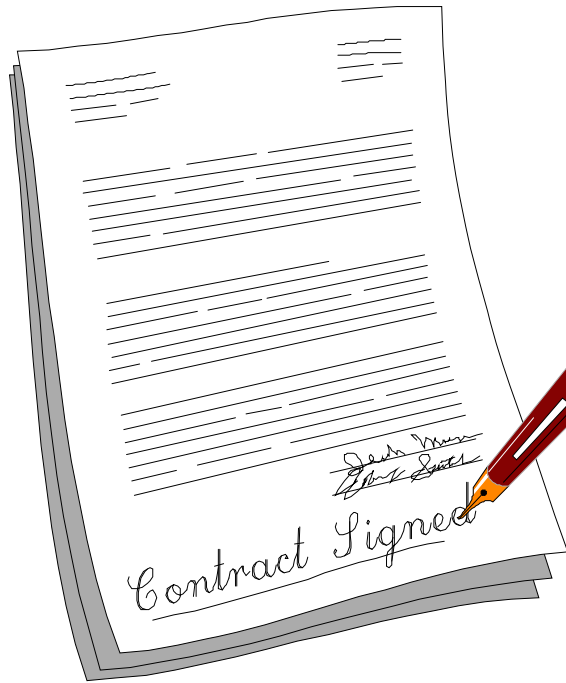
- **Who pays the costs to load the goods on-board and stowed for voyage on the vessel?**
- Stevedoring companies at port perform the whole loading operation on either their own cranes or those belonging to port authorities. However, dividing the bill between buyer and seller is based on **“the manner customary at port”** which can vary between:
 - Buyer pays for all costs of loading (like FAS)
 - Splitting the costs according to various customs & methods
 - Seller pays for all costs of the loading

Port related surcharges

- “Liner Terms” - Ship line *usually* bills freight and surcharges to party contracting for main carriage. (Beware THC issue!)
- Certain local port authority taxes are billed directly to shipper regardless of the Incoterm.
- Some ship lines may require shipper/seller to prepay certain port-related expenses on buyer’s side due to inconvertibility of currency.

WHEN IN DOUBT, SPELL IT OUT!

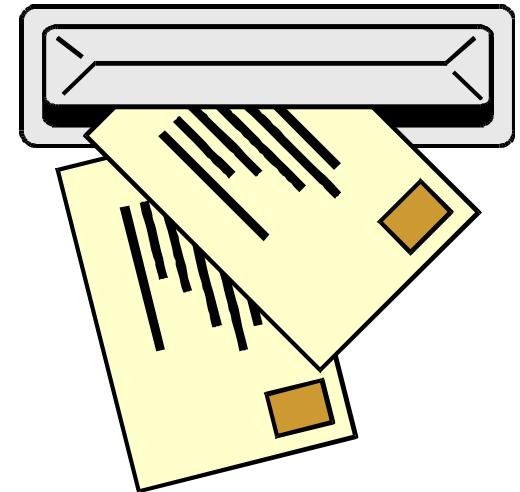
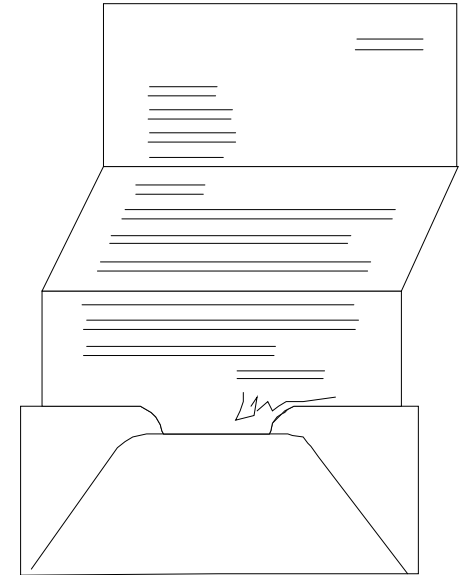
**Special provisions in
the individual contract
supersede or vary
anything that is set
forth as a rule of
interpretation of the
various Incoterms!**



“Seller Notice to Buyer”

SELLER must give notice to buyer:

- When and where goods will be placed for buyer’s disposal (EXW)
- When and where the goods have been delivered to the carrier under F- and C- terms.
- When and where goods are expected to arrive under D- terms so buyer can be ready to receive.



“Buyer Notice to Seller”

If not spelled out in contract and buyer is entitled to determine:

- Time and place when and where to take delivery under EXW and D- terms
- Nominated carrier and delivery time under F- terms
- Time for shipping goods and destination under C- terms



Recap

EXW

- Place goods **at disposal of buyer** at the named place
- **Not loaded** on vehicle
- **Not cleared for export**
- No proof of delivery required

EXW should not be used when buyer cannot carry out export formalities

FCA

SELLER

- **Delivers goods** at named point (either origin or forwarder/port/airport)
- Provides evidence of delivery of goods
- Arranges **export clearance**

BUYER arranges carriage

FCA – preferred term for shipper’s minimum obligation

FCA vs. FAS & FOB

- **FCA** = *Any mode of transportation!* Delivered at *any named place of delivery* (inland or port). Containerized or Ro-Ro cargo. *Seller* responsible for Export License.
- **FAS** = *Sea or inland waterway vessel only!* Delivered *alongside of vessel* on quay or lighters! Commodities cargo. *Seller* responsible for Export License.
- **FOB** = *Sea or inland waterway vessel only!* Delivered *on board the vessel* at the named port of shipment. Commodities cargo. *Seller* responsible for Export License.

“F-terms”

- Seller:
 - Arranges export compliance
 - Delivers goods to named point (origin, agent, port)
- Buyer :
 - Selects the freight forwarder
 - Arranges the main-carriage contract (and receives B/L)
 - Determines date, time, and place of shipment

Seller may agree to set up the contracts for pre-carriage and main-carriage for the account of the buyer, at buyer’s risk and expense. *(Get written authorization from buyer! kd)*

ALL F-TERMS

- Buyer pays for main carriage
- Favors the **BUYER** by putting him or her in charge of freight forwarder / carrier selection
- Remember! All subcontract parties (inland, ocean & air carriers/forwarders, etc.) are all working for the **BUYER**. Issues to consider:
 - Does forwarder have a Federal Maritime License?
 - **If L/C, are they willing to cooperate with Seller?**
 - Are they competent???
 - What is the carrier liability? Container is considered 1 piece if goods are lost or damaged! Price per piece.

CPT

VS.

CFR

- Shipment by **any mode of transportation**.
 - Risk and costs measured from **delivery to first carrier**.
 - May cover delivery from **inland point origin to inland point destination**.
 - Appropriate for RoRo and containerized freight.
- Shipment by sea freight or inland waterway only.
 - Risk and costs measured from delivery on-board the vessel.
 - May only cover delivery from *port* of origin to *port* of destination.
 - Appropriate for commodities only.

CIP

- Shipment by **any mode of transportation**.
- Risk and costs measured from **delivery to first carrier**.
- May cover delivery from ***inland point* origin to *inland point* destination**.
- Appropriate for **Ro-Ro and containerized freight**
- Insurance coverage from delivery to **first carrier** until goods arrive at **agreed destination**.

Vs.

CIF

- Shipment by **sea freight or inland waterway** only.
- Risk and costs measured from **delivery on-board the vessel**.
- May only cover delivery from ***port* of origin to *port* of destination**.
- Appropriate for **commodities only**.
- Insurance coverage from loading **on board vessel to port** of destination.

- FOB, CFR and CIF are appropriate **ONLY** when there is delivery to the carrier by handing over the goods *to the SHIP*.
 1. Lifted across the ship's rail
 2. Tendered to the ship in hoses for liquid cargo
 3. Filled from silos when cargo is carried loose in bulk.
- ***FAS, FOB, CFR and CIF are NOT APPROPRIATE if goods are containerized at an earlier point. Use FCA, CPT or CIP instead.***

C-TERMS

- **Most Seller friendly**
- Risk ends on Seller's side
- Carrier(s) and Forwarders are selected by Seller. (Good for L/C documentation)
- Always **use CPT or CIP terms** for **Containerized freight or Ro/Ro.**
- **CFR/CIF** are for **ocean or inland waterway ONLY** on port-to-port basis.
- Define who insures!

ARRIVAL TERMS COMPARED

DAT

- Replaces DEQ
- “Delivered” at named destination **Terminal** (Quay, warehouse, container yard or road, rail or air cargo terminal)
- Goods **UNLOADED** from arriving transport
- BUYER pays duties, taxes and customs formalities costs.

10 April 2017

DAP

- Replaces DAF, DES, DDU
- “Delivered” at named destination **Place** (any place beyond Terminal)
- Goods **NOT UNLOADED** from arriving means of transport.
- BUYER pays duties, taxes and customs formalities costs

DDP

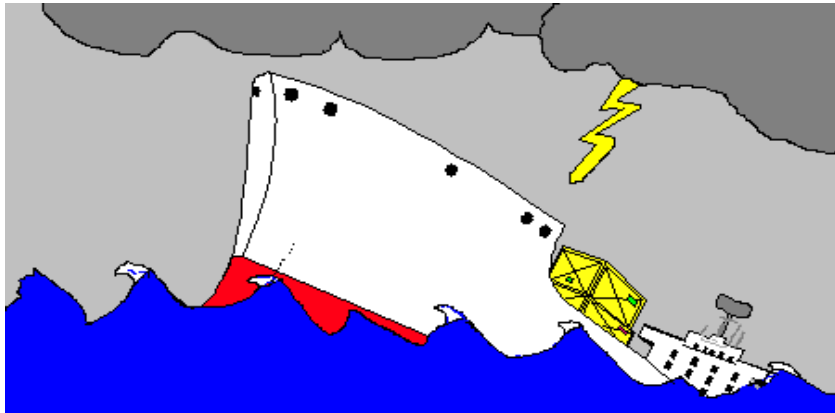
- “Delivered” at named destination **Place**
- Goods **NOT UNLOADED** from arriving means of transport
- **SELLER** pays duties, taxes and customs formalities costs
- May be difficult to re-export.

© Dunlap International, Inc.

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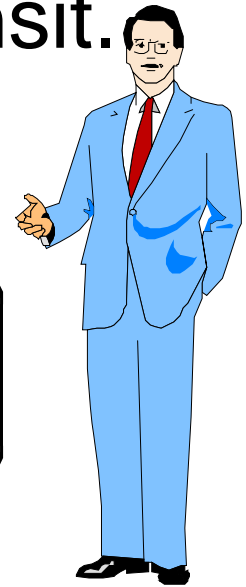
Differences between C- and D- terms!

Seller's responsibility for goods in transit.



C- Terms

Sorry, we have "delivered" per terms of the contract. You need to file insurance and reorder.



BUYER

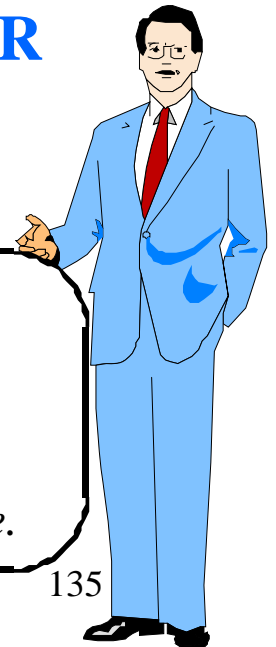


I WANT MY GOODS!

SELLER

D-Terms

We have not "delivered" per terms of contract. We will ship replacements. Due to force majeure we need an extension of time to complete.



When selling on D- terms

- When selling the goods under D-terms, Seller should carefully consider the need to protect himself against breach of contract and non-fulfillment risks by adequate *force majeure* or other relief clauses in the Contract of Sale.



INCOTERMS® CRITICAL POINT

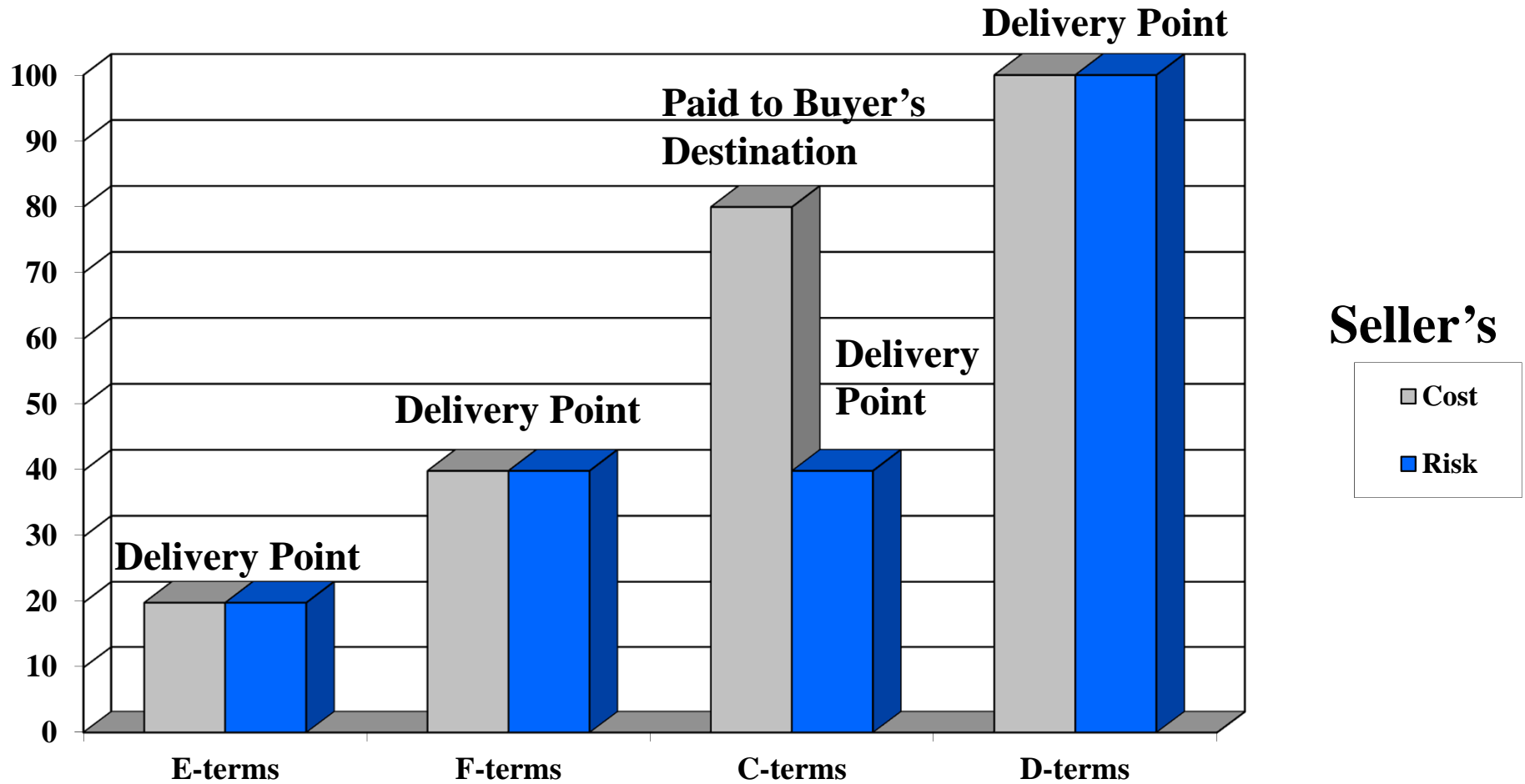
THE POINT OF DELIVERY

When has the Seller performed his delivery obligation?

THE DELIVERY POINT OF GOODS DEFINES:

- *DIVISION OF COST*
- *TRANSFER OF RISK*

Division of Cost & Risk



RISK

The Seller should take care **NOT TO REMAIN AT RISK** after the goods have been handed over to the carrier that the buyer nominates. This is particularly important when the seller has no possibility to give instructions with respect to the care and custody of the goods, which occurs, for example when the **carrier is obligated to take instructions from his own contracting party, the buyer.**

EXW

FCA

FAS

FOB

ICC Guide to INCOTERMS[®] 2010

“Delivery” date

- **CPT, CIP, CFR & CIF** - Seller’s risk is limited to shipping the goods from country of origin.

DO NOT CONTRADICT THIS IN THE SALE’S CONTRACT BY PROMISING “DELIVERY” (ARRIVAL) OVERSEAS BY A SPECIFIC DATE.

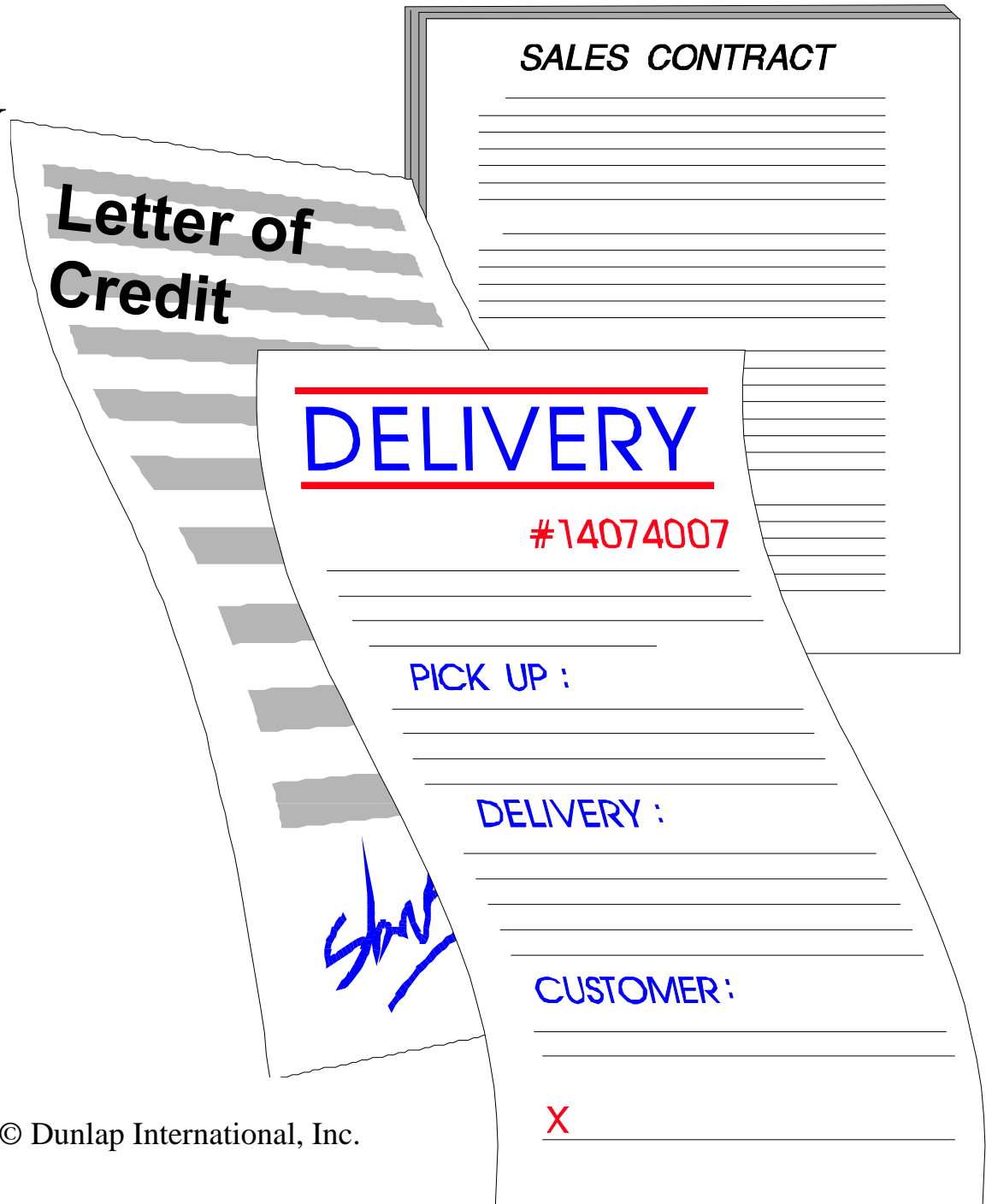
- Instead “Shipment from USA port/airport by ____ (date)”.



MARK THIS DATE

- **If overseas delivery date is specified in the Sales Contract, use DAT or DAP terms!!!**

- **PAY ATTENTION TO DETAILS!**
- **Make sure your Contract of Sale and all subordinate contracts (carriage, insurance, and the letter of credit) match!**



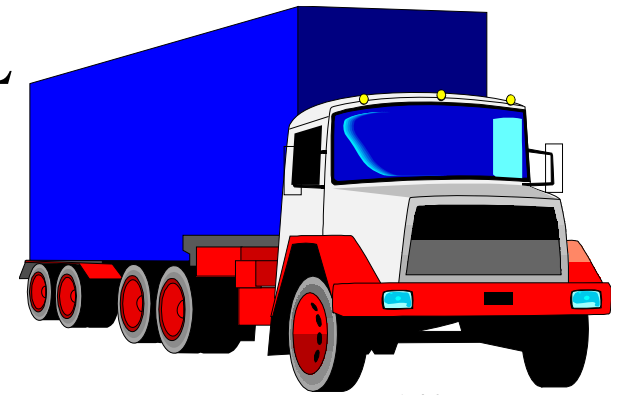
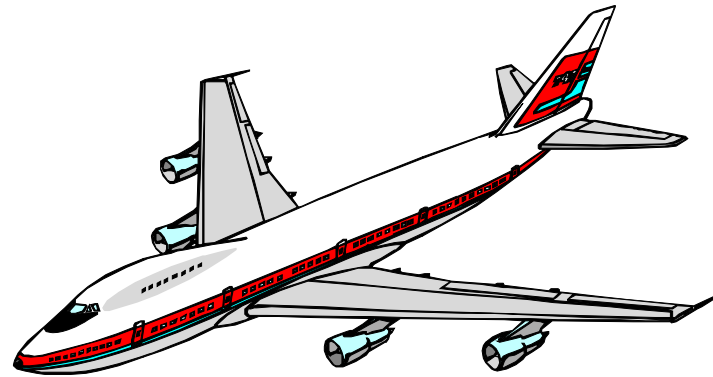
BEST OF INCOTERMS®!

- **FCA** FREE CARRIER
(...named place)

- **CPT** CARRIAGE PAID TO
(...named port of destination)

- **CIP** CARRIAGE & INSURANCE PAID TO
(...named port of destination)

- **DAT** DELIVERED AT TERMINAL
(...named terminal at port or place of destination)

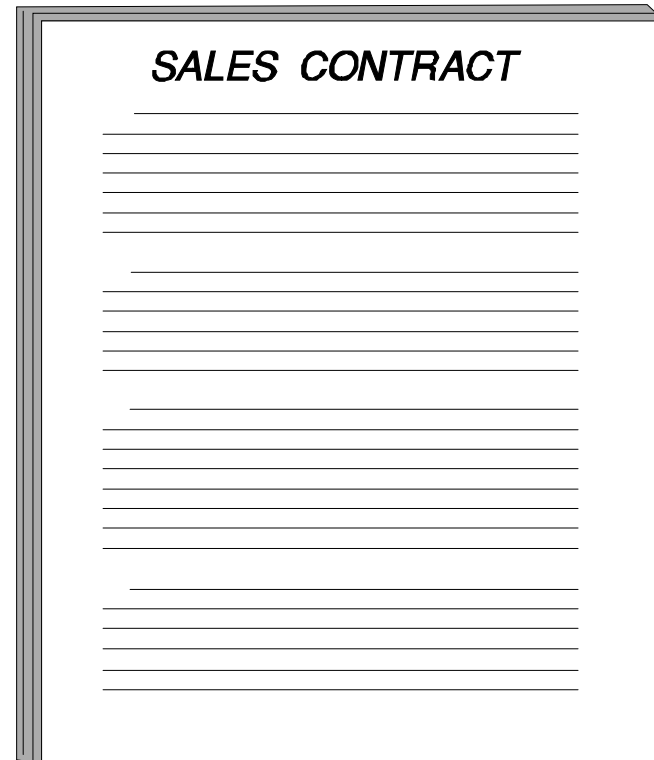
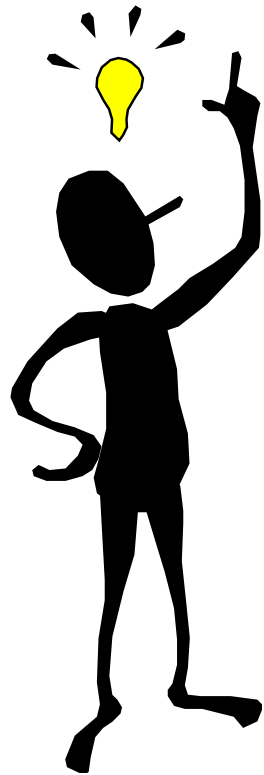


Trade terms are shortcuts
summarizing the division of risks and
*costs in your transaction! **Trade terms***
must match what has been agreed
upon in the contract!

Special provisions in the individual contract supersede or vary anything that is set forth as a rule of interpretation of the various Incoterms®!



WHEN IN DOUBT, SPELL IT OUT!!!!!!!!!!!!!!



ADDITIONAL RESOURCES:



PUBLISHED BY INTERNATIONAL CHAMBER OF COMMERCE

- *INCOTERMS*[®] 2010 ICC Publication 715E
- *ICC GUIDE TO INCOTERMS*[®] 2010 by Jan Ramberg
- *INCOTERMS*[®] 2010 Q&A edited by Emily O'Connor

PUBLISHED BY INTERNATIONAL PROJECTS, INC.

- *INCOTERMS*[®] *FOR AMERICANS*[®] by Frank Reynolds
(writer for *Journal of Commerce* and USA delegate to *INCOTERMS*[®] 2000 & 2010 revision process)

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