


SCHELLENBERG WITTMER

Prof. Dr. Alexander von Ziegler, LL.M.

**New INCOTERMS 2010
Do's and Don'ts**



**INCOTERMS 2010
Do's and Don'ts**

- **INCOTERMS Basics**
- **INCOTERMS in the context of international trade**
- **The main changes of INCOTERMS 2010**

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What are the INCOTERMS?

clauses which establish

- specific
- standardized
- terms for the allocation of specific obligations
- between the parties to a Sales Contract

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Issues NOT Covered by INCOTERMS

INCOTERMS do **NOT** cover issues of


- conclusion or interpretation of the contract
- transfer of ownership
- impossibilities of deliveries / Force Majeure or Hardship
- quality or quantity issues
- payment terms
- applicable law
- Jurisdiction / Arbitration

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INCOTERMS and Transfer of Ownership?

- No direct application of INCOTERMS!
- No answer in the Vienna Sales Convention (CISG)
- Answer in national property law (for chattels)
→ indirect influence of INCOTERMS

- 2nd Edition 2011 (Kluwer)



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Incorporation of INCOTERMS into the Contract

Correct
Use: TERM + *Name of Place*, INCOTERMS 2010

Example: FOB + *Name of the port of shipment*, INCOTERMS 2010

Caveat: INCOTERMS variants!!

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Classification of the Obligations of the Parties within the specific INCOTERMS-Rules

Seller (A)  Buyer (B)

Grouping of the subjects of obligations from 1 to 10

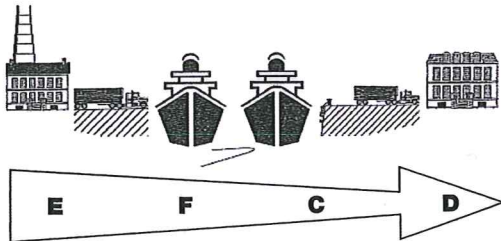
- A/B 4 → Delivery

- A/B 3a → Contract of Carriage (C-Terms)
- A/B 5 → Risks
- A/B 6 → Costs
- A/B 8 → Documents

Particularities of an International Sales Transaction:



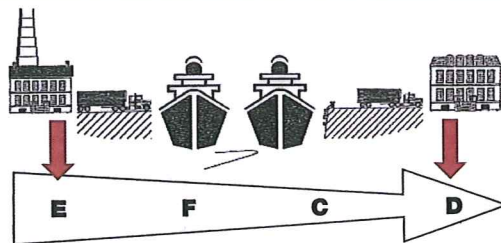
Classification according to Time of Delivery (A4) (and increasing obligations of Seller)



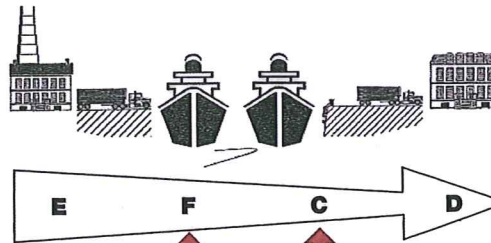
Four Groups of INCOTERMS

- E-“Group“ (EXW)
- F-Group (FCA / FAS / FOB)
- C-Group (CFR / CIF / CPT / CIP)
- D-Group (DAP / DAT / DDP)

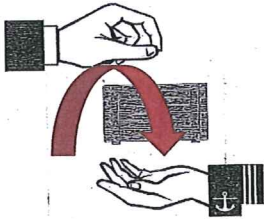
E- and D- Clauses as the two Extremes (“pick-up”: EXW / “arrival” DAT / DAP / DDP)



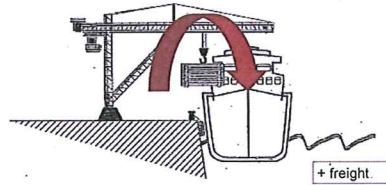
Shipment Contracts: F- and C- Clauses (FAS / FCA / FOB / CFR / CPT / CIF / CIP)



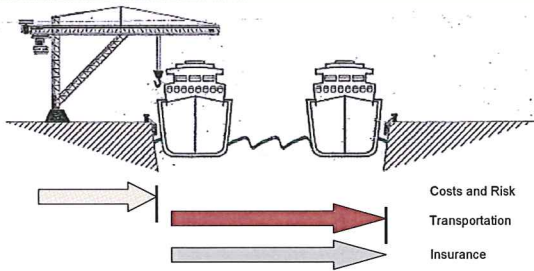
FCA: „Handing Over“



FOB / CFR / CIF: Delivery



Particularities of FOB an CFR / CIF Sales



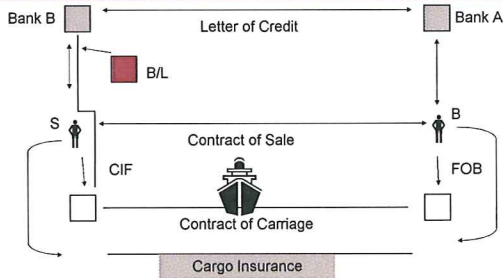
INCOTERMS in the context of international Trade



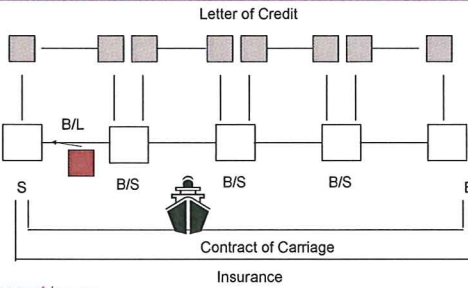
INCOTERMS in the context of international Trade



INCOTERMS in the context of international Trade

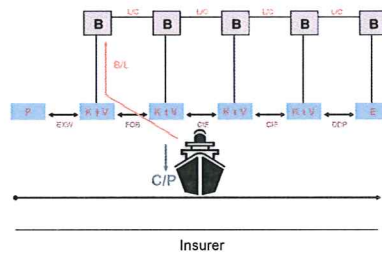


INCOTERMS in the context of international Trade → String Sale



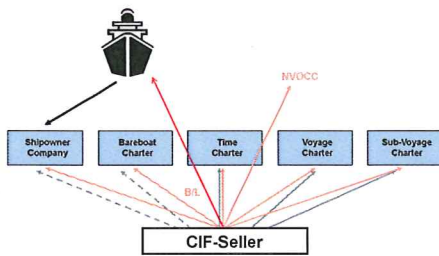
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Particularities of a CIF und FOB string sale



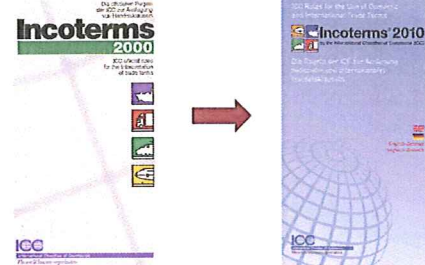
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Shipment options of a CIF - Seller



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INCOTERMS 2010: The most important Amendments



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INCOTERMS 2010: The most important Amendments

1. Synchrony of the obligations to ship with the costs and risks
2. Deletion of DDU / DES / DAF and DEQ after implementation of DAP and DAT
3. Security related information
4. Separate classification of the „Sea“-Terms
5. Some clarifications
6. "Entry into Force"

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1. Synchrony of the Obligations to Ship with the Costs and Risks

Situation (until the) INCOTERMS 2000:

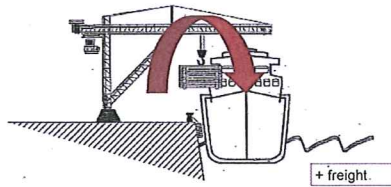
- A4 FOB/ CFR/ CIF → Delivery on Board of the Ship



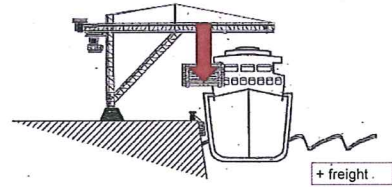
- A5 FOB/ CFR/ CIF → Crossing the Ship's Rail
- A6 FOB/ CFR/ CIF → Crossing the Ship's Rail

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FOB / CFR / CIF: Delivery
INCOTERMS 2000



FOB / CFR / CIF: Transfer of Risk and Division of Costs
INCOTERMS 2000

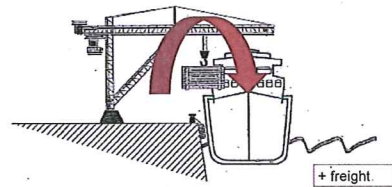


1. Synchrony of the Obligations of Delivery
with the Costs and Risks

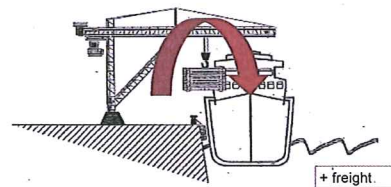
Situation INCOTERMS 2010:

- A4 FOB/ CFR/ CIF → Placing Goods on Board the Vessel
- A5 FOB/ CFR/ CIF → Placing Goods on Board the Vessel
- A6 FOB/ CFR/ CIF → Placing Goods on Board the Vessel

FOB / CFR / CIF: Delivery
INCOTERMS 2010



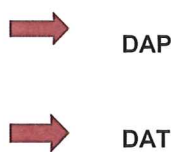
FOB / CFR / CIF: Transfer of Risk and Division of Costs
INCOTERMS 2010



Determination of "placing on board"
- New questions!!

- FOB/ CFR/ CIF → Delivery upon "placing" on Board the Vessel
- Will the old trade usages of the particular trade prevail?
- Identical with delivery under the shipping arrangements (B/L or C/P)?
- "Loading" of individual portions of the goods or final and complete loading?

2. Deletion of DDU / DES / DAF and DEQ after Implementation of DAP and DAT

- DAF →
 - DES →
 - DDU →
- 
- DAP
- DAT

Delivery at Place DAP INCOTERMS 2010

Delivery At Place

- The seller must deliver the goods by placing them at the disposal of the buyer on the arriving means of transport **ready for unloading** at the agreed point, if any, at the named place of destination on the agreed date or within the agreed period.

Delivery at Terminal DAT INCOTERMS 2010

Delivery At Terminal

- The seller must **unload the goods from the arriving means of transport** and must then deliver them by placing them at the disposal of the buyer at the named terminal referred to in A3 a at the port of or place of destination on the agreed date or within the agreed period.

3. Security related Information

- A2 → by the buyer
- B2 → by the seller
- A10/ B10 → mutual assistance

4. Sea and Inland Waterway Transport

- FAS (Free Alongside Ship)
- FOB (Free on Board)
- CFR (Cost and Freight)
- CIF (Cost, Insurance and Freight)

NEW → Separate grouping of the "maritime" INCOTERMS-solutions

5. Clarifications

- National use of INCOTERMS
- Intra-EU trade
- Insurance (A 3b INCOTERMS 2010)
- Shipping obligation of a CIF seller in string sale

„Entry into Force“ of INCOTERMS 2010

INCOTERMS 2010 came „into effect“ on

1st of January 2011

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28.10.2010 / Page 27/42

The Ten Commandments

1. Always be clear on what the INCOTERMS are in general - and what they simply are not!
2. Always remember that the INCOTERMS are only valid when they have been agreed upon.
3. Always remember that the INCOTERMS only ever apply between the parties of a contract of sale.
4. Let yourself be guided by the classification and the structure of the INCOTERMS!
5. Control the four cornerstones of the INCOTERMS!
6. An INCOTERMS-Rule is only complete once naming of the place is completed.
7. Select the correct rule - not the one that is easy to handle from the administrative point of view!
8. If you have questions, use the "Bible", but only the "Bible"!
9. Don't just trust the text that meets your eye instantly! Always consult A and B, and also read the preamble and briefly read the rest of the Rules!
10. Be on your guard against adaptations and amendments!
To owe nothing does not necessarily mean "it costs nothing"!

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28.10.2010 / Page 35/42

Information Events and Training Sessions on the INCOTERMS 2010

- Central role of the **Swiss Shippers Council** regarding support and training on the INCOTERMS in Switzerland
- Information events of the SSC



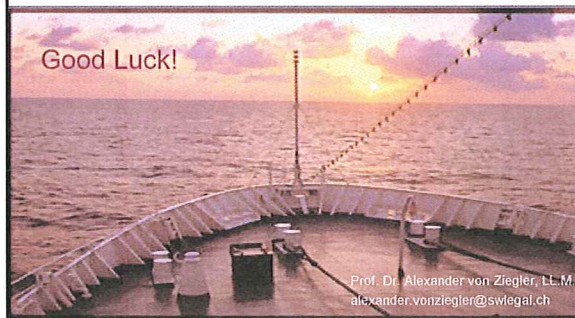
www.incoterms2010.ch



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28.10.2010 / Page 35/42

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Good Luck!



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