



FEES & BURGESS, P.C.
SUPPLY CHAIN MANAGEMENT
MEMO



Volume 7, Issue 4

November 2010

NEW VERSION OF INCOTERMS RELEASED

**FEES & BURGESS, P.C.,
Emphasizes:**

In 1936, the International Chamber of Commerce (ICC), based in Paris, France, released the first version of Incoterms. Incoterms is a set of delivery terms used in both international and domestic sales of goods to control virtually every aspect of the shipping process. The driving force behind the introduction of Incoterms was to create a set of delivery terms that could be used worldwide in an effort to create consistency and prevent confusion in transactions between parties from different countries. The terms are updated roughly every ten years and, since their introduction almost seventy-five years ago, have become the contractual vehicle many prefer for controlling the costs and obligations associated with shipping goods in international transactions.

In the United States, parties engaged in the purchase or sale of goods have traditionally used the delivery terms found in the Uniform Commercial Code (U.C.C.) for domestic transactions. The U.C.C. is a model body of laws governing various forms of commerce, from the sale of goods, to leasing of goods, to secured transactions. The U.C.C. is not binding law in any state within the United States, but almost every state has adopted the portion of the U.C.C. governing the sale of goods in some form over the years, which includes the U.C.C. delivery terms. In 2004, the U.C.C. was amended. As part of those changes, the delivery terms were removed from the U.C.C. For the time being, most versions of the U.C.C. that have been adopted by states into law still include the U.C.C. delivery terms. However, the committee that amended the U.C.C. to delete the delivery terms itself acknowledged that the terms were out of touch with modern commerce. It appears that, even for domestic transactions within the United States, Incoterms are being used with increased frequency.

The version of Incoterms supply chain professionals have dealt with in recent years is the version released in 2000, which includes thirteen three-letter delivery terms grouped into four families: C-terms, D-terms, E-terms, and F-terms (referring to the first letter in each term). The ICC just released a new, 2010 version of Incoterms in September, which will become effective January 1, 2011. One of the most notable changes from the 2000 Incoterms to the 2010 version is the deletion of some old terms and the addition of a couple new ones. Below is a list of the thirteen delivery terms under the 2000 version of Incoterms and the eleven delivery terms under the 2010 version:

Incoterms 2000

(a) C-Terms

- (1) Cost and Freight (CFR)
- (2) Cost, Insurance, and Freight (CIF)
- (3) Carriage Paid To (CPT)
- (4) Carriage and Insurance Paid To (CIP)

General Civil Litigation

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(b) D-Terms

- (1) Delivered at Frontier (DAF) – deleted in Incoterms 2010
- (2) Delivered Ex Ship (DES) – deleted in Incoterms 2010
- (3) Delivered Ex Quay (DEQ) – deleted in Incoterms 2010
- (4) Delivered Duty Unpaid (DDU) – deleted in Incoterms 2010
- (5) Delivered Duty Paid (DDP)

(c) E-Terms

- (1) Ex-Works (EXW)

(d) F-Terms

- (1) Free Carrier (FCA)
- (2) Free Alongside Ship (FAS)
- (3) Free on Board (FOB)

Incoterms 2010

(a) Terms for any Mode of Transport

- (1) Ex-Works (EXW)
- (2) Free Carrier (FCA)
- (3) Carriage Paid To (CPT)
- (4) Carriage and Insurance Paid To (CIP)
- (5) Delivered At Terminal (DAT) – added in Incoterms 2010
- (6) Delivered At Place (DAP) – added in Incoterms 2010
- (7) Delivered Duty Paid (DDP)

(b) Terms for Sea and Inland Waterway Transport

- (1) Free Alongside Ship (FAS)
- (2) Free On Board (FOB)
- (3) Cost And Freight (CFR)
- (4) Cost, Insurance, and Freight (CIF)



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As with Incoterms 2000, Incoterms 2010 will have certain delivery terms that can only be used with respect to maritime shipments (those by sea or inland waterways) and other terms that can be used when shipping goods by any mode of transport. Another change in Incoterms 2010, from the 2000 version, is the abandoning of the family-based categorization of terms and the adoption of an organization scheme based on the modes of transport for which terms can be used. The listing of the 2000 and 2010 terms above shows how terms are grouped under both versions of Incoterms.

Companies that routinely use Incoterms in their contracts should make an effort to study up on the 2010 terms before they go into effect in January. As of January 1, 2011, all contracts referencing Incoterms should apply the 2010 terms. It is also important to remember when using Incoterms in a contract to specify the applicable version of the terms by date. For instance, "EXW Seller's Huntsville, Alabama, facility (Incoterms 2000)" or "EXW Seller's Huntsville, Alabama, facility (Incoterms 2010)," as appropriate.

One thing that does not appear to have changed from the 2000 to 2010 version of Incoterms is that, contrary to what many people assume, Incoterms do not dictate when title or ownership of goods transfers from the seller to the buyer. Therefore, when using Incoterms, as opposed to the U.C.C. delivery terms, it is important to remember to separately indicate in your contract when title to the goods will transfer.

Calendar of Events

April 14, 2011, Las Vegas, NV (In conjunction with IPC APEX EXPO)

Special Session: Contracting with the Customer: What the EMS Executive Needs to Know

This unique workshop presented by Jeffrey L. Roth and Allen L. Anderson, of Fees & Burgess, P.C., addresses the specific issues EMS companies face while contracting. Participants will be led through the contracting lifecycle between an electronic manufacturing services (EMS) provider and its customer, starting with the initial engagement and signing of a nondisclosure agreement, through the bid process and formal contract negotiation, to resolution of disputes under the applicable contract(s).

Click [here](#) to register. To find out more about IPC APEX EXPO, go to www.IPCAPEXEXPO.org

If you would like more information, on these and more seminars, please go to www.feesburgess.com.



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