John S. James Co.

INCOTERMS® 2010

Presented Exclusively for



National Association of Credit Management

Why INCOTERMS?

- Delivery of goods in an export-import transaction requires
 - Using one or more segments of transportation
 - A variety of services to arrange the transportation, comply with government requirements and fulfill an array of commercial needs.
- To accomplish a typical export-import transaction, a dozen or more thirdparty players are needed.
 - (e.g., multiple transportation carriers, ports or airports, a forwarder, a customs broker, government agencies in the export and import countries, and perhaps an insurance company and other specialized players)
- Who (seller or buyer) will perform, arrange and pay for each of the required services?
- At what point in the process do the risks of delay, loss or damage to the goods pass from seller to buyer?



What INCOTERMS Do

Serve as guidelines to establish:

- ✓ Who pays which portion of the transport cost
- ✓ Who is responsible for specific documentation
- ✓ Where the transfer of risk passes between buyer and seller.



- INCOTERMS Rules are an internationally recognized standard
- Used worldwide in international and domestic contracts for the sale of goods
- Can serve the exporter as a vital foundation for negotiation of purchasing and sales contracts



What INCOTERMS Don't Do

INCOTERMS rules do not cover:

- ✓ Passage or transfer of Title
- ✓ Payment terms between buyer and seller



- Passage of Risk is different than passage of title.
- The sales / purchase contract should specify and define the transfer of title.
- If contract is silent, the law of the U.S. State or the states version of U.C.C.
 §2.401 may apply
- INCOTERMS do not supersede legal sales contracts



Key Definitions

Pre-Carriage

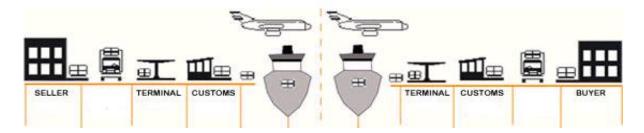
Transport from an "agreed-upon" place of the seller to the CFS, port, rail, airport or border point where it leaves the seller's side.

Main Carriage

The means of transport from "border to border", i.e. normally a vessel or aircraft, sometimes truck or rail (with Canada & Mexico)

On-Carriage

Transport to an "agreed-upon" place in the buyer's country





Who uses INCOTERMS?

U.S. Freight Forwarder

Which party will pay for each portion of the transport cost? For quotation purposes, tells what to include upon presentation.

Foreign Freight Forwarders & Customs Brokers

Some taxes and fees are assessed based on the INCOTERM

- VAT = *generally* CIF Value + Estimated Duties
- Ecuador = Modernization Fee, Consumption Tax, Import Tax
- Chile, Peru, Ecuador, Colombia, Panama Customs Brokerage Fees based on % of CIF values

Customs Authorities

Estimated duty calculations, Valuation, Collection of Government Revenues.



Who uses INCOTERMS?

The Exporter (Seller)

- Framework for selling goods from initial inquiry to purchase agreement, sales contract and eventual shipping of goods
- Provides reference for best estimate of cost in an export transaction
- Helps the Exporter determine applicable fees and service charges during invoice auditing
- Better mitigation of risk, control of costs, division of responsibilities
- Better forecasting for anticipated "lifecycle" of shipments
- With experience, can help an Exporter effectively sell in newer markets:
 - How much do you know of a foreign country's destination requirements?
 - Can you fulfill those, cover costs and make a profit?
 - What is the current environment of the destination country in terms of political, economical and financial risks?



Using INCOTERMS Properly

- You must use an INCOTERM + "Named Place"
 - FCA Columbia, SC
 - CIP Johannesburg, South Africa
 - DAP Panama City Free Zone, Panama
 - DDP Mississauga, Ontario, Canada
- INCOTERMS are mode-specific
- Marine Restricted:
- FAS (Free Alongside Ship)
- FOB (Free On Board)
- CFR (Cost and Freight)
- CIF (Cost, Insurance and Freight)
- All others are "Omnimodal"







INCOTERMS 2010 Reference Chart

INCOTERMS® 2010 REFERENCE CHART

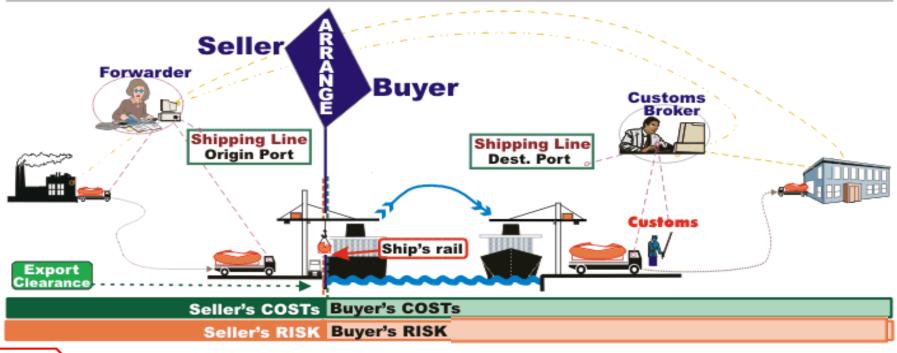
John S. James Co.											
0.000	Rules for any mode or modes of transport							Rules for sea and inland waterway transport			
James Co.	EXW	FCA	CPT	CIP	DAT	DAP	DDP	FAS	FOB	CFR	CIF
3	Ex Works	Free Carrier	Carriage Paid To	Carriage & Insurance Paid To	Delivered at Terminal	Delivered at Place	Delivered Duty Paid	Free Alongside Ship	Free on Board	Cost & Freight	Cost, Insurance & Freight
SERVICES	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays
Export Packing	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Marking & Labeling	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Block and Brace	1	1	1	1	1	1	1	1	1	1	1
Export Formalities	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Freight Forwarder Fees	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Inland Freight to Main Carrier	Buyer	2	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Port/Terminal Fees	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Seller	Seller
Vessel Loading Fees	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Seller	Seller
Ocean or Airfreight	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Nomination of US Freight Forwarder	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Marine Insurance	3	3	3	Seller	3	3	3	3	3	3	Seller
Unload Main Carrier Charges	Buyer	Buyer	4	4	Seller	Seller	Seller	Buyer	Buyer	4	4
Destination Terminal/Port Fees	Buyer	Buyer	4	4	4	Seller	Seller	Buyer	Buyer	4	4
Nomination of On-Carriage	Buyer	Buyer	5	5	5	5	Seller	Buyer	Buyer	Buyer	Buyer
Security Information Requirements	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
Customs Entry Service Fees	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer	Buyer	Buyer	Buyer
Duties, Taxes, Customs Fees	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer	Buyer	Buyer	Buyer
Deliver to Buyer	Buyer	Buyer	5	5	5	5	Seller	Buyer	Buyer	Buyer	Buyer
Deliverying Carrier Unloading	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer

Notes

- 1 Incoterms® 2010 do not deal with the parties' obligations for stowage within a container and therefore, where relevant, the parties should deal with this in the sales contract.
- 2 FCA Seller's Facility Buyer pays inland freight; other FCA qualifiers. Seller arranges and loads pre-carriage carrier and pays inland freight to the "F" delivery place
- 3 Incoterms® 2010 does not obligate the buyer nor must the seller to insure the goods, therefore this issue be addressed elsewhere in the sales contract.
- 4 Charges paid by Buyer or Seller depending on contract of carriage.
- 5 Charges paid by Seller if through Bill of Lading or door-to-door rate to Buyer's destination

Marine Restricted - FOB

FOB (Free on Board vessel, origin port)



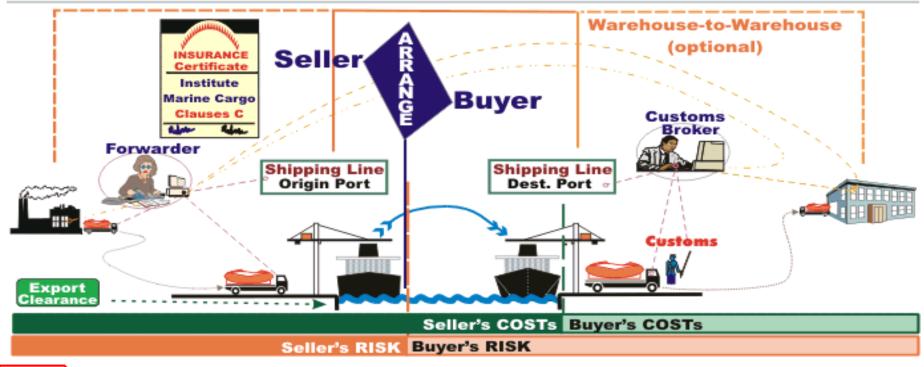
IMPORTANT

"FOB" is often confused with "EXW"

- i. Arranging transportation of goods to a vessel named by the buyer at a named port
- ii. All costs of placing/securing the goods on board the vessel
- iii. Origin terminal charges
- iv. The seller is responsible for export clearance



Marine Restricted - CIF (Cost, Insurance & Freight to destination port)



IMPORTANT

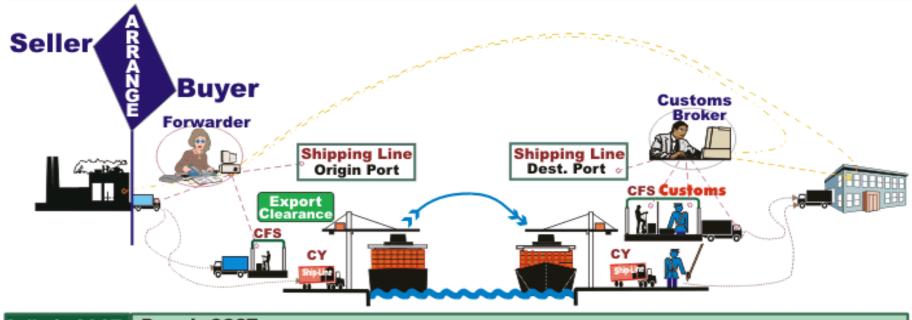
CIF should only be used for "loose", bulk or ro-ro cargo, not containerized shipments...

- Arranging transportation of goods to a vessel named by the buyer at a named port
- All costs of placing/securing the goods on board the vessel
- Origin terminal charges
- The seller is responsible for export clearance
- Ocean transportation + cargo insurance to the foreign port of destination.



Omnimodal - EXW

EXW (Ex Works) (May also be referred to as Ex Factory, Ex Warehouse, Ex Mill, etc.)



Seller's COSTs Buyer's COSTs

Seller's RISK Buyer's RISK

EXW shipments also referred to as "Routed Transactions"

- Seller is responsible only for making the goods available at his/her designated premises for pick up.
- All costs and risks of transportation transfer to the buyer.

BEWARE - EXW shipping can expose the exporter to tremendous liabilities



EXW & Exporter Liabilities

USPPI

U.S. Principle Party in Interest The person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction [...]

- Non-compliance with the Export Administration Regulations (EAR) can translate into \$250,000.00 fine per incident.
 - Other Participating Government Agencies can issue fines
 - Charges can be brought on the company AND the individual
 - Civil & Criminal proceedings, possible jail time

Under EXW Terms, the exporter outsources all of the shipping, compliance and control over the export...



EXW & Exporter Liabilities



In an EXW scenario...

The goods are export-packed and sitting on your dock.

You provide documents to the Freight Forwarder hired by the buyer overseas.



Ask yourself

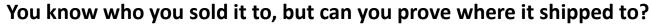
How do you know if what is submitted to CBP is accurate and filed on time?

 The fines would be levied on the USPPI although you never had control over what or when info was transmitted.



Is your company name listed as the shipper of record on the Bill of Lading?

 If the carrier declares "General Average", you could be on the hook for a hefty monetary deposit.



You sold it to a company in Panama, did they sell & ship it to Cuba?

CBP or BIS request documentation on an EXW shipment, how can you produce it?

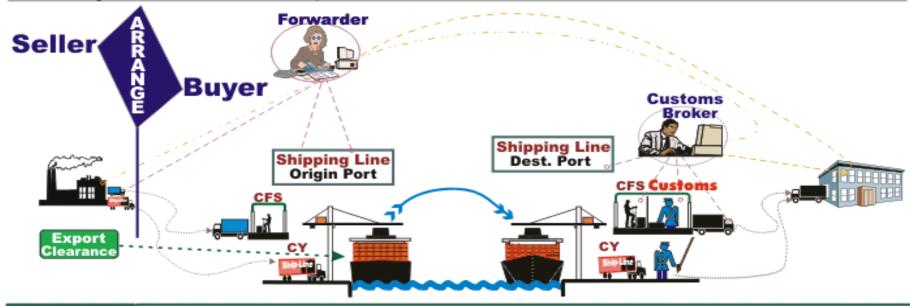
- Immediate Record-keeping violation and potential for fines & penalties.
- Freight Forwarder works for the buyer overseas, and in *their* interest, not yours





Omnimodal - FCA

FCA (Free Carrier, loaded at seller's premises)



Seller's COSTs Buyer's COSTs

Seller's RISK Buyer's RISK

FCA terms can give the exporter control & visibility, where EXW doesn't

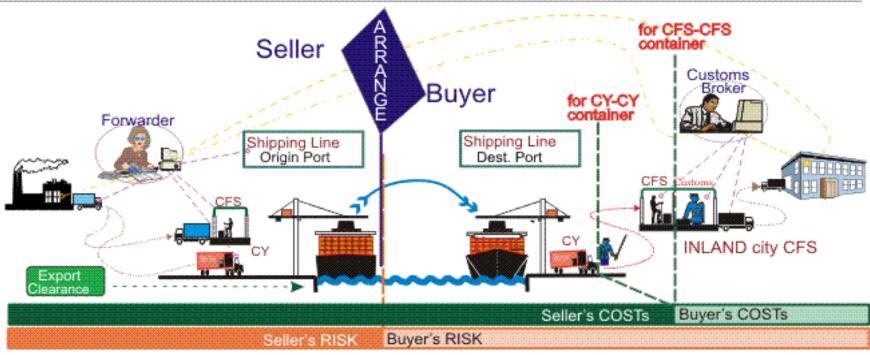
- The seller is responsible for export clearance
- The seller is responsible for handing over the goods to a transportation carrier named by the buyer at an *agreed-upon*, *named location* in the country of export.
 - Typically at either the seller's facility or else the CFS/Port/Airport.

If the FCA point is the seller's facility, and loading the conveyance is essential to "handing over the goods," the seller is responsible for the risk and expense of loading.



Omnimodal - CPT

CPT (Carriage Paid to named point)



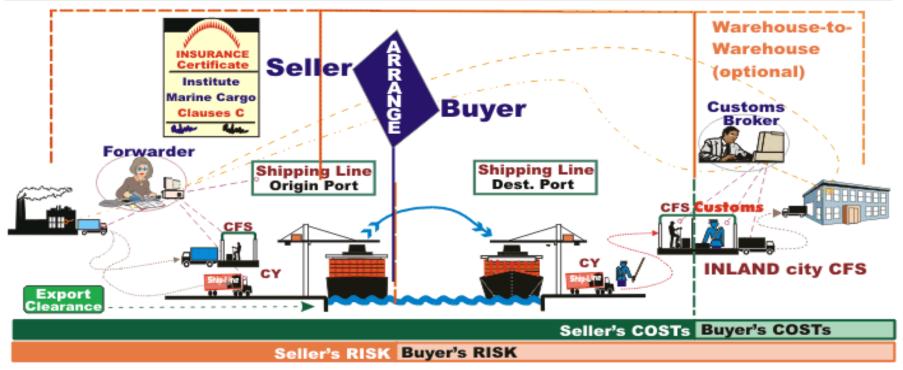
CPT denotes that the seller is agreeing to "Pay Carriage to" a named place in the buyers country.

- Arranging transportation of goods to a main carrier
- All costs of placing/securing the goods on board the vessel/aircraft/truck
- The seller is responsible for export clearance
- Origin & destination terminal charges
- Transportation & related costs to the agreed-upon, named location in the destination country.



Omnimodal - CIP

CIP (Carriage & Insurance paid to named point)

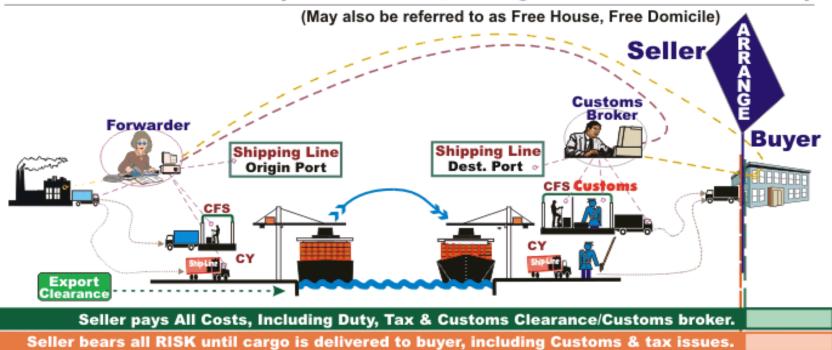


- Arranging transportation of goods to a main carrier
- All costs of placing/securing the goods on board the vessel/aircraft/truck
- The seller is responsible for export clearance
- Origin & destination terminal charges
- Transportation, cargo insurance & related costs to the agreed-upon, named location in the destination country.



Omnimodal - DDP

DDP (Delivered, Duty Paid, to named point)



An Exporter can not legally ship under DDP terms to Brazil,

Venezuela, and

EVERYTHING

• The seller is responsible for arranging transportation of the goods through to the buyer's door, and pays all costs required to accomplish this, including customs clearance, customs duty, and taxes due upon importation

gBEWARE - DDP shipping obligates the exporter to comply with a number of import customs regulations in the foreign country.



Mevico

DDP & Exporter Liabilities

Think about it...

Why would a foreign company ask a U.S. Exporter to act with all rights, risks and obligations as an importer in a foreign country?

- Is the consignee a related party or subsidiary?
- If not a related party, did this company lose their privilege to import?
 - If yes, you could be aiding and abetting this organization to circumvent Customs law or other Governing laws of the country.

DDP Shipping is extremely risky for U.S. exporters. Being responsible for "everything" that can occur in a shipment until it arrives to the consignee's door may not be easily managed due to time differences, language barriers, and unfamiliarity with laws in the destination country. Furthermore, there are too many variables in the shipping scenario that can't be forecasted.

Nervous about DDP? Try using CPT or CIP instead!



DDP & Exporter Liabilities

In a DDP scenario...

All formalities for documentation, transportation, customs clearance, duties and delivery to the consignee's door, ready for unloading are undertaken by the exporter.

Ask yourself

Are you required to hold custodial customs bonds, other bonds or obtain fiscal representation in the destination country?

• Overseas governments usually require a bond or cash deposit to protect incoming revenues.

How do you determine, support and justify your tariff classifications in a foreign country?

 The first 6 digits of the tariff are universal, but are there sovereign rules in the country that denote a different interpretation of the goods?

How do you manage timely payment of services for customs exams?

• If Customs held the shipment for inspection, the services of customs would have to be paid, but then there may be storage, detention, demurrage and other charges that have to be satisfied.

As a foreign importer of record, how do you comply with Customs laws & regulations in the destination country?

How well-versed are you in import customs regulations – in a foreign country?

How do you absorb the cost for VAT?

Does a product warranty obligate you to an unwanted DDP shipment?



INCOTERMS & Negotiation

Do your homework...

You may not be responsible for getting a shipment to the ultimate destination, but an informed exporter should have an awareness of the buyers costs.

THINK ABOUT IT...you route goods to a named port/airport, and your cost ends there. Your customer will still have to pay for VAT (which varies from country to country), entry & delivery fees. Some customs clearance fees are based on FOB value vs. CIF value and some foreign customs authorities have administrative fees based on a percentage of the cargo value. Your potential client is looking at a bottom line cost just like you are. If you normally sell to a country with 6.5% VAT but you are looking to sell to a country with 16% VAT you may have to adjust your sales margins or entertain new INCTOERMS altogether.

Why is this important?

- You may be competing with other foreign sellers
- These sellers may have a Free Trade Agreement in force where the U.S. does not
- You can't assume that you are more informed than your competitors
- When you're across the table from these potential buyers, the knowledge you
 possess can be a powerful influence for a future purchase



Options for the Exporter

When you negotiate, offer options....

\$50,000 Merchandise Value +\$ 550 Export Packing

\$ 50,550 Total EXW Cost

FCA Shipper's Dock \$50,000 Merchandise Value

\$ 550 Export Packing

+\$ 200 Export formalities

\$ 50,750 Total FCA Cost

FCA/FOB Jacksonville, FL port \$50,000 Merchandise Value

\$ 550 Export Packing

\$ 800 Precarriage

+\$ 200 Export formalities

\$ 51,550 Total FCA/FOB Cost





Options for the Exporter

When you negotiate, offer options....

CFR Named destination Port \$50,000 Merchandise Value

- \$ 550 Export Packing
- \$ 800 Precarriage
- \$ 200 Export formalities
- + \$ 3,793 Ocean Freight \$ 54,793 Total CFR Cost

CIF/CIP Named destination Port \$50,000 Merchandise Value

- \$ 550 Export Packing
- \$ 800 Precarriage
- \$ 200 Export formalities
- \$ 3,793 Ocean Freight
- \$ 271 Marine Cargo Insurance
- \$ 55,064 Total CIF/CIP Cost





QUESTIONS?



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And it's been my pleasure to speak with you today!





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