Incoterms® 2020 Checklist and Flowcharts



ICC

Incoterms® 2020 by the International Chamber of Commerce (ICC)

Incoterms® 2020 Checklist and Flowcharts

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CONTENTS

HOW DOES ONE CHOOSE THE RIGHT *INCOTERMS®* RULE? 4

A decision-making checklist. 4

SAMPLE *INCOTERMS® 2020* DECISION FLOWCHARTS 7

Incoterms® 2020 Flowchart—Seller's Point of View. 7

Graphic Flowchart—Seller's Point of View. 9

Incoterms® 2020 Flowchart—Buyer's Point of View. 10

Graphic Flowchart—Buyer's Point of View. 12

Incoterms® 2020 Publications and Resources. 13

HOW DOES ONE CHOOSE THE RIGHT *INCOTERMS®* RULE?

A DECISION-MAKING CHECKLIST

Perhaps the most important question concerning the Incoterms® rules is, which Incoterms® rule should my company choose in a given case?

How do I choose an Incoterms® rule? How do I know if my counterparty's choice is good for me?

These are the crucial questions that face not only the beginning exporter or importer, but also the experienced trader. Whenever the trader has to deal with a new type of sale, an unfamiliar party, an unknown transport provider, or some other source of uncertainty, it is important to consider wisely the choice of Incoterms® rule.

In all international sales negotiations, the overall commercial context and the relative bargaining power of the parties will determine many of the issues covered by the Incoterms® rules. Some of the following basic principles, 'rules of thumb', and common notions are worth noting (they are by no means the only possible cost considerations):

1. Many disputes arise concerning payment of loading or unloading charges, charges arising from handling the goods in terminals, container rental charges, and/or customs processing charges. This happens even when the parties have clearly chosen a particular Incoterms® rule, because in some cases the Incoterms® rule is quite general. Why not just make a checklist of such potentially troublesome issues and clarify them systematically with your counterparties? If necessary, include language in your contract in addition to the chosen Incoterms® rule so that it is clear that you have a particular allocation in mind that is more detailed than the basic requirements set out in the chosen Incoterms® rule (e.g., 'FOB Baltimore Port, stowed and trimmed').
2. Many small or beginning exporters like to quote EXW (Ex Works) because they perceive that it requires the least amount of knowledge of export procedures, and the least work. This is basically accurate, but there are a number of concerns about using EXW in international transactions (see the Explanatory for EXW in the text of the Incoterms® 2020 rules (ICC Publication No. 723E)) and exporters are well advised to consider using EXW, if at all, only for domestic sales. Moreover, if an exporter limits itself to agreeing to sales using only one Incoterms® rule, he or she may miss opportunities for sales in those cases where the buyer insists on other Incoterms® rules, such as FCA, CIP or DAP. So it is important for even small exporters to understand the full range of Incoterms® rules, because someday they may be called for. Moreover, even small exporters usually have access to the services of a freight forwarder or a transport carrier. These transport service providers can often counsel the small trader on how to choose amongst the different Incoterms® rules, and they may then also offer the services associated with fulfilling the trader's transport obligations under the given Incoterms® rule. However, to delegate such responsibilities to the freight forwarder intentionally, it is preferable for the trader to have a good general understanding of the Incoterms® rules. The same kind

of thinking applies to small importers who believe that they should only buy DDP, since it requires the fewest obligations on their part; they may be right, but there are many opportunities for complications in transactions using DDP (see the Explanatory Note for DDP in the text of the Incoterms® 2020 rules (ICC Publication No. 723E)), so a thorough knowledge of all Incoterms® rules is still necessary.

3. The Incoterms® rule chosen will vary primarily according to whether it is the seller or the buyer who has to effect the main transport. The first practical issue is therefore: Who wants or proposes to take care of transport? Who can obtain the cheapest transport rates? There is a strong economic argument in favour of allocating the larger portion of transport duties to whichever of the parties can obtain the cheapest or most efficient transport services.

4. The next practical issue is to consider at what point risk will transfer from the seller to the buyer. If you are the seller, you would like to transfer this risk as soon as possible; you can do this to some extent with EXW, FCA, FOB, CFR, CIF, CPT and CIP, depending on which point you choose as the named delivery point. If you are the buyer, conversely, you might wish to accept no risk at all for the goods until they are safely in your possession; then your preference would be for the D family of Incoterms® rules, DAP, DPU and DDP. The actual choice, again, will depend on the entire commercial context, as well as on the relative interests and bargaining power of the parties.

5. Does the choice of an Incoterms® rule require you to effect customs formalities or pay duties in a foreign country? If so, you had better check to make sure you know what will be required of you. It might be advisable to ask for a clause allowing you time-extensions and force majeure termination if there are customs problems.

6. As an exporter, would you like to earn money by charging a commission for arranging transport services? If so, you may wish to choose an Incoterms® rule that places a lot of transport responsibilities on the seller (such as the 'C' and 'D' families of rules), so that you can then earn revenues on the provision of these services. Even if you do not want to earn money on transport, if you are able to find or organize cheaper transport than your buyer or your competitors, it may be to your advantage to quote 'C' or 'D' rules, because your total offer will then be cheaper and more competitively priced.

7. As the parties execute their various contractual tasks, some form of either electronic or hard copy documents may be required in addition to the commercial invoice. The parties' various responsibilities, the nature of the goods, applicable trade practices and government regulations may require some of the following documents in hard copy or electronic form.

   - Proof of export
   - Proof of arrival at a named consignee (for items subject to enhanced export control)
   - Phytosanitary certification
   - Clean report of findings (for pre-shipment inspection requirements)
   - Consular documentation
   - Origin certification
   - Proof of insurance
   - Verified Gross Mass (for seaborne full container shipments)
   - Transport documentation

Carrier selection and its resulting transport documentation can be an important consideration with such payment terms as letters of credit or documentary collections. The FCA Incoterms® 2020 rule provides a possible solution to bridge the difference between delivery and on-board transport documents frequently required by letters of credit covering vessel shipments.

SAMPLE *INCOTERMS® 2020* DECISION FLOWCHARTS

The following sample decision-making flowcharts regarding the choice of an Incoterms® 2020 rule will help you analyse possible choices of a rule for your contract of sale.

Note that any flowchart is by necessity very general and should be considered only as a starting point for thinking about which Incoterms® rule to choose. As noted in point 4 of the checklist above, in any given real-life transaction, there are a number of considerations particular to that deal that parties must factor in to their final decision on which Incoterms® 2020 rule to choose. A flowchart alone cannot provide the answer.

Sample *Incoterms® 2020* Decision Flowchart —Seller's Point of View

The following procedure is provided merely to give an example of an analysis that could lead a seller to choose one Incoterms® 2020 rule over another in a particular case. There are many possible flowcharts for the making of an Incoterms® 2020 decision, and the following are intended only as examples:

You are the SELLER and—

1. You wish to sell directly from your factory or place of business. Are you willing to carry out export clearance formalities?
    - **a)** If No, choose EXW, which simply requires the seller to make the goods available to the buyer at the seller's factory or place of business. Note that EXW is suitable primarily for domestic trade. See possible difficulties in using EXW at the Explanatory Note in the text of the Incoterms® 2020 rules (ICC Publication No. 723E).
    - **b)** If Yes, you may use FCA, which in this case requires the seller to deliver the goods, by loading them onto the buyer's vehicle at the seller's premises and clearing them for export, if applicable.

If the above does not apply, go to:

2. You wish to deliver the goods in your country (or in any event prior to subsequent international transport) and you do not wish to include the cost of the main (international) transport in your quoted price. The Incoterms® 2020 rules you have available are the 'F' or 'free' rules: FCA, FAS, FOB.

(Note that FAS and FOB may be used only for maritime transport, whereas FCA may be used for any kind of transport, including multimodal.)

a) If the goods are to travel in containers or by multimodal transport, or if delivery is to be made to an inland or port terminal, choose FCA. The goods are delivered to the first carrier engaged by the buyer, either at seller's premises or at a transport terminal.

b) If the goods are to be delivered alongside the ship, choose FAS (any export clearance is the seller's responsibility).

c) If the goods are general cargo or bulk commodities to be loaded onboard a vessel (or are containers that will be loaded directly by seller in such a traditional fashion) or if for any other reason you wish to transfer risks and divide costs once the goods are onboard the ship, choose FOB.

If the above does not apply, go to:

1. You wish to include the cost of main international transport in your quoted price. You must choose between 'C' and 'D' rules, which means you must decide whether you want the risk of loss to be transferred to the buyer upon shipment or only upon arrival.

a) 'Shipment' contract—you want the risk of loss to be transferred to the buyer at the time and place of delivery in the seller's country. Seller must choose a 'C' rule.

i) If shipment is containerized or multimodal, or delivery is to an inland or port terminal:

- choose CPT if you do not want to include the cost of insurance in the quoted price;
- choose CIP if you do want to include insurance with all risk cover.

ii) If shipment is of traditional commodities lifted onboard a ship, or you otherwise wish to divide risks once the goods are onboard the ship:

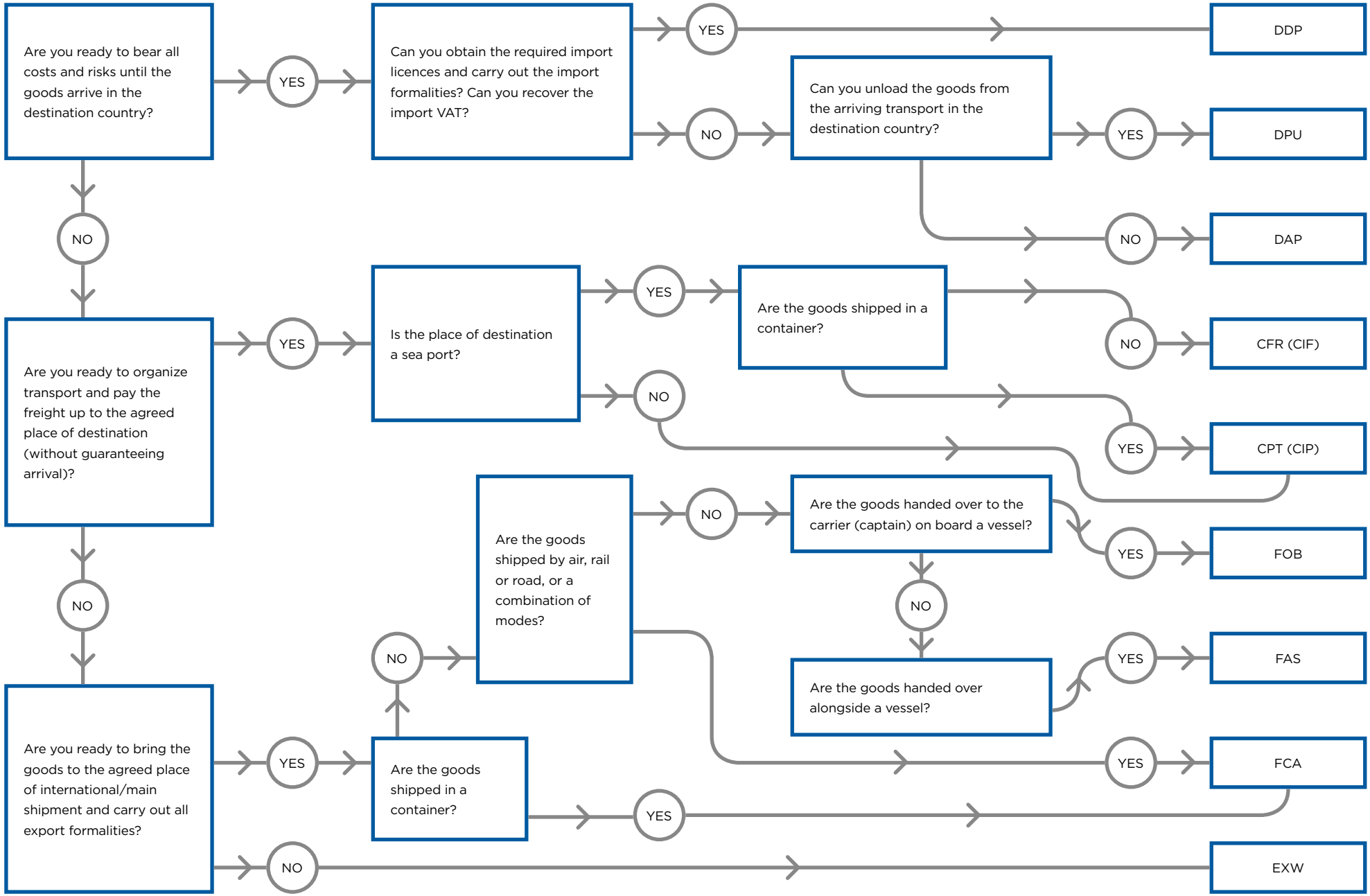
- choose CFR if you do not want to include insurance;
- choose CIF if you do want to include insurance.

b) 'Arrival' contract—you want to be entirely responsible for costs and risks up to delivery in the buyer's country (or your buyer has insisted upon such risk coverage):

i) choose DDP if you want to accept total responsibility up to delivery at the buyer's premises or the named delivery point, including import clearance, which may pose problems;

ii) choose DAP if you want to be responsible for costs and risks—NOT including the unloading of the goods at destination—but do not want to pay duties or be otherwise responsible for import customs formalities, or

iii) choose DPU if you want to be responsible for costs and risks including the cost of unloading the goods at destination, but do not want to pay duties or be otherwise responsible for import customs formalities.



WARNING: This flow chart is not intended to be used alone and should always be used in conjunction with the Incoterms® 2020 rule book.

SAMPLE *INCOTERMS® 2020* DECISION FLOWCHART —BUYER'S POINT OF VIEW

You are the BUYER and—

1. You wish to receive the goods directly at your place of business or other point in the country of destination, and you are unwilling to accept any transport risks. You must choose an 'arrival' contract (see above).

Are you willing to carry out import clearance formalities?

a) If No;

- choose DDP, which gives the seller total responsibility up to delivery at the buyer's premises or the named delivery point if the shipment is containerized or multimodal, or delivery is to be made to an inland or port terminal. But note that practical realities may prevent a seller from being able to undertake import clearance, so choose this rule with caution. See the Explanatory Note for DDP in the text of the Incoterms® 2020 rules (ICC Publication No. 723E).

b) If Yes, you may use:

i) DAP which imposes upon seller total transport responsibility and risk, except as regards import clearance formalities and duties, which are for the buyer's account. Note that DAP differs from DPU in that DAP does NOT require the seller to unload the goods at destination; or

ii) DPU, which imposes upon seller total transport responsibility and risk, except as regards import clearance formalities and duties, which are for the buyer's account. Note that DPU requires the seller to unload the goods at destination.

If the above does not apply, go to:

2. You wish to purchase on the basis of a sale price that includes the cost of the international carriage of the goods, but you accept to bear the risks of such transport. The seller will pay export clearance formalities, whereas you will pay import clearance formalities. The costs of main (international) transport will be borne by the seller. Delivery of the goods takes place in the seller's country. The buyer must choose a 'C' rule.

a) If shipment is containerized or multimodal, or delivery is to an inland or port terminal:

i) choose CPT if you do not want the seller to pay for an insurance cover;

ii) choose CIP if you do want to include insurance costs for all risks cover (LMA/IUA Clauses A or similar) in the price paid by the seller.

b) If shipment is of traditional commodities lifted onboard a ship, or you otherwise wish to divide risks once the goods are onboard the ship:

i) choose CFR if you do not want the seller to pay for an insurance cover;

ii) choose CIF if you do want to include insurance costs in the price paid by the seller. Note the seller's insurance obligation under CIF is limited to minimum cover (LMA/IUA Clauses C or similar).

If the above does not apply, go to:

3. You accept to arrange and pay directly for the international carriage of the goods and also to bear the risks of such transport. The costs and risks of main (international) transport will be borne by the buyer. Delivery of the goods takes place in the seller's country. Buyer must choose an 'F' or 'free' rule.

a) If you are willing to be responsible only for import customs clearance, but not for export clearance:

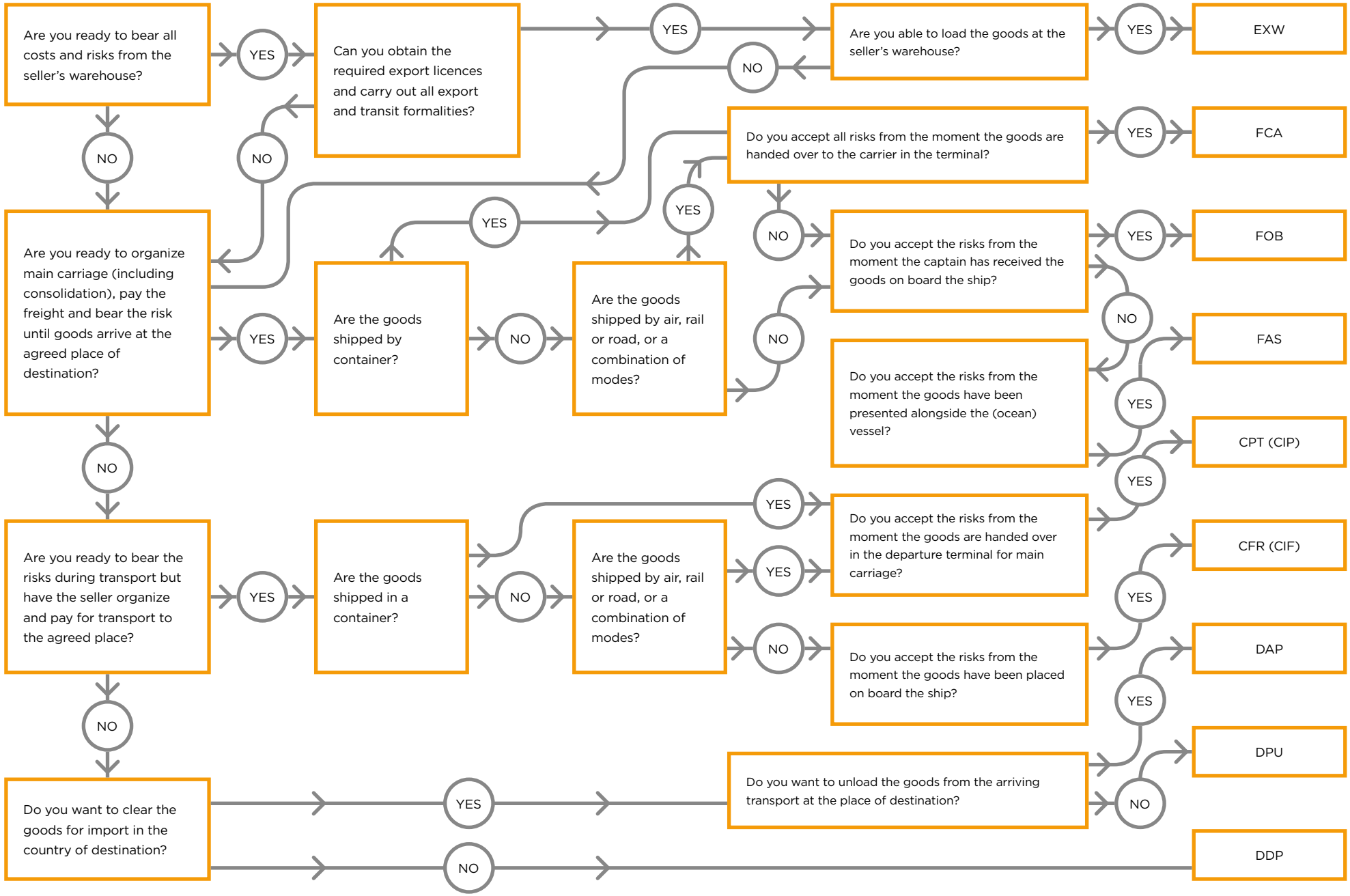
i) choose FCA if the goods are to travel in containers or by multimodal transport, or if delivery is to be made to an inland or port terminal. The goods are delivered to the first carrier engaged by the buyer, either at seller's premises or at a transport terminal (any export clearance is the seller's responsibility);

ii) choose FAS if the goods are to be delivered alongside the ship (any export clearance is the seller's responsibility);

iii) choose FOB if the goods are general cargo or bulk commodities to be loaded directly onboard a ship or if for any other reason you wish to set the transfer of risks and divide costs once the goods are onboard the ship (any export clearance is the seller's responsibility).

b) If you are willing to be responsible for both export and import clearance formalities, if any:

- choose EXW if the goods are to be delivered at the seller's premises. All costs and risks are transferred from the seller to the buyer after the goods have been made available to the buyer (not cleared for export) at the seller's premises. Note that EXW is suitable primarily for domestic trade. See possible difficulties in using EXW at the Explanatory Note in the text of the Incoterms® 2020 rules (ICC Publication No. 723E).



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INCOTERMS® PUBLICATIONS AND RESOURCES



Incoterms® 2020

ICC Pub. No. 723E, €45
Also available bilingual English-French: €50

The Incoterms® rules provide specific guidance to individuals for import and export. This new edition includes updates that reflect today's ever-changing trade landscape.

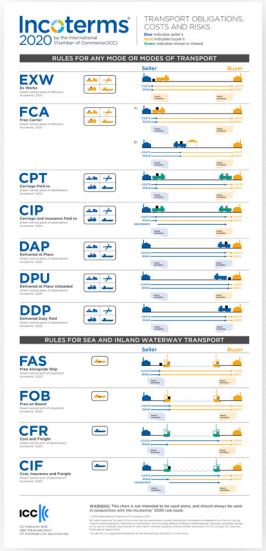
Incoterms® 2020 is available in 28 languages.



ICC Handbook on Transport and the Incoterms® 2020 Rules

ICC Pub. No. 806E, €59

This handbook has been developed to clarify multiple issues arising in the interrelation ation of contracts of carriage and the Incoterms® 2020 rules in contracts for the B2B sale of goods and help readers address the complex steps of today's logistics chains. When goods need to be transported from a seller to a buyer, in most cases an independent carrier is involved. Covering each of the 11 rules and reflecting sales when the buyer contracts or arranges for carriage and when the seller does so.



Incoterms® 2020 Wall chart

Available free to download : https://2go.iccwbo.org/incoterms-2020-practical-free-wallchart.html

Ideal for easy referencing, this full colour illustrated poster outlines the responsibilities of buyers and sellers under each of the 11 Incoterms® rules.



Incoterms® App

ICC Pub. No. 806E, €59

In 2021, ICC Incoterms® 2020 app had a makeover: the app now makes it easier to understand which of the 11 Incoterms® rules to use and when.

The Incoterms® 2020 app is the only official tool from the world business organization that brings together essential news, information and insight regarding the commercial trade terms in one, easy-to-access location.

Nearly 70 000 downloads, so here are six reasons to download the app:

- Get descriptions of each of the 11 Incoterms® rules.
- Understand which trade term to include in your sales contracts, depending on the mode of transport.
- Connect with ICC's global network of experts to get advice on the most pressing Incoterms® rules questions facing your entreprise.
- Discover events and specialised trainings taking place worldwide.
- Read comprehensive up-to-date news coverage.
- Shop added resources to help take your business global and expand growth.

Available free of charge iOS and Android users

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https://2go.iccwbo.org

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The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 100 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.



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