

INCOTERMS[®] FOR AMERICANS[®] SEMINAR NOTES

WHAT INCOTERMS® 2010 RULES ARE

- 11 terms of shipment and delivery for use in contracts for the business-to-business sales/purchases of tangible, portable goods, provided by the International Chamber of Commerce for implementation 1/1/11.
- Country neutral, but for international use are influenced by the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- Available worldwide through nearly 100 International Chamber of Commerce National Committees. (United States Council for International Commerce is the US affiliate.)
- Drafted in (British) English and are in the process of translation into numerous languages. (Incoterms 2000 was available in over 35.)
- Legacy to a long tradition of international use since 1936 (including recognition by the United Nations Commission on International Trade Law - UNCITRAL).
- Written to reflect rather than dictate trade practice, incorporating the views of trade practitioners rather than legislators.
- Always abbreviated by a three character English language acronym.
- Always accompanied by a geographic place - the more precise the better.
- Updated to reflect current trade practice and subject to future replacement as necessary (recent average lifespan = 10 years).
- Self contained.
- Used exclusively in sales/purchase contracts (we'll call these "sales contracts").
- Referred to throughout as "Incoterms rules."
- Increasingly considered as a replacement for the former Uniform Commercial Code shipment and delivery terms (UCC§2-319 through §2-324) which although still present in the contract law of many US states are poorly understood and confusing for businesses that engaged in both international and domestic trade.

WHAT INCOTERMS® 2010 RULES AREN'T

- Law. They must be specified in order to apply. (abbreviation + place + Incoterms 2010)
- All inclusive. Cannot address such issues as customary operations of carriers, ports, trades, government regulations, etc.

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WHAT INCOTERMS® 2010 RULES DO

- Divide costs, risks and responsibilities between sellers and buyers.
- Guide one or the other party into subsidiary contracts required to fulfill designated tasks such as contracts of carriage and contracts of insurance.
- Mirror seller-buyer responsibilities in 10 task categories (A1-A10 and B1-B10).
- Serve as handy checklists for sellers and buyers.
- Provide a handy shorthand by reducing pages of text to 3 letters and a place.
- Address new issues such as “string sales,” new Institute insurance clauses and cargo security.
- Reduce the potential for seller-buyer misunderstanding.

WHAT INCOTERMS® 2010 RULES DON'T DO

- Address passage of title. However, other rules may be based on issues addressed by Incoterms® rules such as delivery, transfer of risk, transfer of cost, etc. Ownership passage should be specified elsewhere, or become an operation of the governing law. (Note for international transactions: the CISG is also silent about title transfer.)
- Address recognition of revenue. However, other rules such as GAAP, IFRs and SEC regulations consider issues addressed by Incoterms® rules such as delivery and transfer of risk, etc.
- Address remedies for breach of contract, although there are some provisions for premature transfer of risk and cost in case a party fails a particular obligation.
- Address more than one contract. “Drop shipments” normally involve more than one contract, and the use of more than one Incoterms® rule may be appropriate.
- Automatically apply. They must be specified. This is important, particularly in domestic trade where the presumption could be in favor of the former UCC shipment and delivery terms which bear the same name and/or abbreviation.
- Define the term “customary.”
- Refer to “ship’s rail” which changes the delivery point for FOB, CFR, CIF.
- Define vessel loading which can differ by product and vessel type.
- Specifically task container stowage obligations (as opposed to merely loading a conveyance).
- Specifically address payment for the contract goods. (B1 is very general.)
- Resolve all possible problems in trade.

DEFINITIONS

The following definitions will greatly assist you in understanding Incoterms® 2010 rules. All but “delivery” are additional to those found in the Introduction to Incoterms® 2010 pages 10 and 11.

Pre-carriage - inland transportation on the seller’s side. International: from the place where the shipment starts to the departure point on the seller’s side. Domestic: from the place where the shipment starts to subsequent carriage.

Main carriage - International: transportation from the point of departure on the seller’s side to the arrival point on the buyer’s side. Domestic: subsequent transportation beyond pre-carriage.

On-carriage - International: transportation from the arrival point on the buyer’s side. Domestic: subsequent transportation beyond main carriage.

Door-to-door - a contract of carriage including pre-carriage, main-carriage and on-carriage.

Door-to-port (or airport) - a contract of carriage including pre-carriage and main carriage.

Port (airport)-to-port (airport) - a contract of carriage for main carriage only.

Port (airport)-to-door - a contract of carriage including main carriage and on-carriage.

Omni-modal - those Incoterms® rules that may be used for all modes of transport: EXW (really non-transport) FCA, CPT, CIP, DAP, DAT, DDP

Marine-restricted - those Incoterms® rules that may be used only for carriage by vessel: FAS, FOB, CFR, CIF.

On-board - a marine transport document notated “on board” and bearing the date that the described goods were physically loaded on the carrying vessel. On board documents are appropriate to FOB, CFR and CIF which specifically task the seller with vessel loading.

Received for shipment - a transport document evidencing that a named carrier has received described goods for shipment. Although it may indicate the vessel name or flight numbers, this document may be and usually is issued prior to actual transport.

Delivery: indicates where the risk of loss passes from seller to buyer.

Shipment contract - a type of sales/purchase contract under which the seller's responsibility ends when the contract goods have been handed over to a carrier (i.e., the seller delivers by shipping). EXW, FCA, FAS, FOB, CPT, CIP, CFR and CIF Incoterms® rules are used in shipment contracts.

Arrival contract: - a type of sales/purchase contract under which the seller's responsibility ends when the goods have arrived at the agreed place (i.e., the seller delivers when they arrive). DAT, DAP and DDP Incoterms® rules are used in arrival contracts.

Revenue recognition: when a sale becomes an account receivable under such accounting rules as GAAP, IFRs and SEC regulations.

Party at risk: The party that has most to lose in case of casualty to the contract goods. Normally, this is sellers up to the delivery point and buyers beyond it. However, there may be special circumstances that increase the risk for one or both parties.

Minimum cover: This very limited coverage is the default position for CIP and CIF. It corresponds to the American term "Free of Particular Average (FPA)" and the more widely used Term "Institute Cargo Clauses C."

"All Risks": A misleading American term for comprehensive insurance as it does not really cover all risks. War and Strike, Riot and Civil Commotion are normally not covered and should be considered, as well as coverage on a warehouse-to-warehouse basis. It roughly corresponds to Institute Cargo Clauses A (which should also be enhanced by War and Strike coverage). Check with your insurer as the Institute Cargo Clauses were rewritten effective 2009. Also, there are new perils such as piracy.

Institute Cargo Clauses (LMA/IUA): A = maximum cover, B = intermediate cover, C = minimum cover.

THE F-GROUP INCOTERMS® RULES

All F-Group rules are used in shipment contracts.

International use:

The buyer contracts for main carriage and therefore in charge of carrier and usually also forwarder selection. With F-Group rules the buyers are actually the shippers.

Sellers

F-Group rules provide little advantage for U.S. sellers except possibly that there is less work involved. They increase the risk with documentary-driven payment terms by reducing the seller's documentary control. They also provide a conflict with the Census Bureau's Foreign Trade Regulations which state that in "routed transactions" the buyer (FPPI) appointed U.S. agent (the forwarder) should file the EEI. F-Group rules task the seller with export clearance. There is a possible remedy in the FTR for sellers wishing to handle this. Request written authority from the buyer to file in its behalf. With this in hand, inform the forwarder that you will be filing at the buyer's request, and that you want the transportation details in writing in order to do so. The only downside is that such exports must be reported pre-departure. Any buyer reluctance to approve this should be treated with suspicion as the parties have already tasked the seller with export clearance by using an F-Group rule, and the sellers are unlikely to charge for doing so while buyer-appointed forwarders usually do.

Buyers

F-Group rules are usually the result of the buyer's stronger negotiating power vis a vis carriers or sellers, or seller indifference. These rules favor informed buyers by providing control of main carriage and the resulting documentation. Frequent carrier selection results in lower negotiated freight costs, making continued F-Group use increasingly attractive. Where applicable, 10+2 pre-shipment reporting requirements provide another reason for U.S. importers to use F-Group rules.

Domestic use:

The buyer contracts for main carriage. There is no problem, provided that F-Group rules are not used in arrival contracts. There is no "FOB destination with Incoterms® rules. This can take some getting used to for people accustomed to the old UCC shipment/delivery terms.

THE C-GROUP INCOTERMS® RULES

All C-Group rules are used in shipment contracts.

International use:

The seller contracts for main carriage and is therefore in charge of carrier and usually forwarder selection.

Sellers

C-Group are by far the most seller-friendly Incoterms® rules. On one hand, the seller is in a position to give instructions to the carrier and forwarder that it appoints. This provides a comfort level for documentary-driven payment terms, with items subject to specific export controls, and those susceptible to commercial diversion. On the other hand, the seller's risk for the condition of the contract goods ends somewhere prior to main carriage (at the first carrier with CPT and CIP, and with vessel loading with CFR and CIF). Export reporting is a seller responsibility under these rules, consistent with the FTR. Sellers that frequently select carriers are in a position to negotiate favorable freight rates. The only downsides are that there is more work involved than with F-Group rules, and more things to get wrong for inexperienced sellers. Also, sellers need to obtain excellent freight costs to make C-Group rules attractive to experienced buyers.

Buyers

Experienced buyers are not well served by C-Group rules unless their suppliers obtain exceptionally low freight costs. (Even then, a case could be made for D-Group rules.) The risk of being responsible for the condition of goods while they are in transit with a carrier selected and paid by someone else should be considered. Also, U.S. importers must rely heavily on their suppliers with shipments subject to 10+2 reporting. Inexperienced buyers may be better served by letting their more experienced suppliers handle transportation, provided the freight costs are reasonable adequate insurance is in place.

Domestic use:

No problem, and C-Group rules are a good matchup for the "F.O.B. origin, freight prepaid" version of the old UCC shipment/delivery terms.

THE D-GROUP INCOTERMS® RULES

All D-Group rules are used in arrival contracts. All are omnimodal.

The arrival nature of D-Group rules causes revenue recognition issues under GAAP, IFRs (and SEC regulations), as the seller remains responsible for the condition of the contract goods until they arrive at the agreed place. This can be particularly important for publically traded corporations wishing to recognize revenue at the earliest possible moment.

International use:

The seller contracts for main carriage and is therefore in charge of carrier and usually forwarder selection.

Sellers:

D-Group rules allow sellers to contract for transportation in return for being responsible for the performance of the carriers they select, which seems fair. This provides a comfort level with items subject to specific export controls or commercial diversion. Document-driven payment terms could be difficult, as shipping documents merely indicate that goods were shipped, not that they have arrived. (Parties often compromise on this by using shipping documents as triggers despite their inconclusive nature). Export reporting is a seller responsibility under these rules, consistent with the FTR. Sellers that frequently select carriers are in a position to negotiate favorable freight rates. The downside is that there is more work than with F-Group rules, more risk than with C-Group rules, and the need to obtain attractive freight costs to make D-Group rules attractive to experienced buyers. DDP is a special case, involving a far higher level of risk.

Buyers:

For experienced buyers, this is the next best thing to F-Group rules when accompanied by low freight costs. Risk is far less than with C-Group rules. However, U.S. importers must rely heavily on their suppliers with shipments subject to 10+2 reporting. Inexperienced buyers will find D-Group rules particularly helpful.

Domestic use:

No problem, and DAT and DAP are good matchups for the "F.O.B. destination, freight prepaid" version of the old UCC shipment/delivery terms. Incoterms® 2010 rules even address domestic sales of customs-cleared imported goods with the new DAP as it's name is "duty neutral (unlike the previous DDU vs. DDP).

EX WORKS (EXW) + NAMED PLACE (place where the shipment originates - usually the seller's premises)

Location: Incoterms® 2010 page 15, Incoterms® for Americans® page 43

Contract use: shipment

Transport mode: all (or more precisely, none)

Insurance: neither party required to insure.

Breakdown:

Seller: have goods available when promised and packaged to the extent known or agreed.

Buyer: everything else (pre-carriage, export clearance, main carriage, import clearance, on-carriage)

Suggestions:

International use: EXW is not recommended

Domestic use: with carriers that load their own vehicles such as small package carriers (Former UCC shipment/delivery term matchup – F.O.B. origin.)

FREE CARRIER (FCA) + NAMED PLACE (either place where shipment originates - usually the seller's premises - or another place on the seller's side.)

Location: Incoterms® 2010 page 23, Incoterms® for Americans® page 53

Contract use: shipment

Transport mode: all

Insurance: neither party required to insure.

Breakdown:

- A) When accompanied by the place where the shipment originates
 - Seller: have goods available when promised, packaged to the extent known or agreed, load collecting vehicle, export clearance.
 - Buyer: everything else (pre-carriage, main carriage, import clearance, on-carriage)
- B) When accompanied by another place on the seller's side
 - Seller: have goods available when promised, packaged to the extent known or agreed, load delivering vehicle, pre-carriage, export clearance.
 - Buyer: everything else (unload delivering vehicle, main carriage, import clearance, on-carriage)

Suggestions:

General: Incoterms® specifically does not task either party with container stowage, which should be addressed elsewhere in the contract. This is new.

When used with a place other than the origin point, keep in mind that FCA is designed for use in shipment contracts and not with destination points.

International use: FCA + origin point is the practical minimum seller obligation rule.

Domestic use: This is how to say "FOB Factory" in Incoterms rules! (Former UCC shipment/delivery term matchup F.O.B. origin, car or other vehicle, freight collect.) This differs from F.O.B. origin as it specifically tasks the seller with loading.

CARRIAGE PAID TO + NAMED PLACE (on the buyer's side)

Location: Incoterms® 2010 page 33, Incoterms® for Americans® page 71

Contract use: shipment

Transport mode: all

Insurance: neither party required to insure.

Breakdown:

Seller: deliver the goods appropriately packaged to the carrier for transportation to the named place of destination and pay all transport costs thereto. (The seller delivers at the first carrier unless specified otherwise in the sales contract.), export clearance.

Buyer: unloading (?), import clearance, on carriage (?)

Suggestions:

General: Incoterms® specifically does not task either party with container stowage, which should be addressed elsewhere in the contract. This is new.

Sellers are warned to contract to the agreed point as additional expenses are not recoverable from buyers.

International use: Ideal for multimodal transport.

Domestic use: Use for freight prepaid shipment contracts (Former UCC shipment/delivery term matchup – F.O.B. origin, freight prepaid.)

CARRIAGE AND INSURANCE PAID TO (CIP) + NAMED PLACE (on the buyer's side)

Location: Incoterms® 2010 page 41, Incoterms® for Americans® page 79

Contract use: shipment

Transport mode: all

Insurance: seller must provide at least minimum cover.

Breakdown:

Seller: deliver the goods appropriately packaged to the carrier for transportation to the named place of destination and pay all transport costs thereto. (The seller delivers at the first carrier unless specified otherwise in the sales contract.), insurance, export clearance.

Buyer: unloading (?), import clearance, on carriage (?)

Suggestions:

General: Incoterms® specifically does not task either party with container stowage, which should be addressed elsewhere in the contract. This is new.

Sellers are warned to contract to the agreed point as additional expenses are not recoverable from buyers.

International use: Ideal for multimodal transport. Consider additional insurance coverage.

Buyers may also consider contingency insurance.

Domestic use: Use for freight prepaid shipment contracts (Former UCC shipment/delivery term match-up – F.O.B. origin, freight prepaid.) Sellers should agree to process any inland marine claims in behalf of buyers, as the CIP rule specifies that buyers or others with insurable interest be able to claim directly from the insurer.

DELIVERED AT TERMINAL (DAT) + NAMED PLACE (terminal on buyer's side)

Location: Incoterms® 2010 page 53, Incoterms® for Americans® page 85

Contract use: arrival

Transport mode: all

Insurance: neither party required to insure.

Breakdown:

Seller: export clearance, deliver the goods appropriately packaged at the named destination terminal and pay all transport costs thereto, unloading.

Buyer: import clearance, on carriage

Suggestions:

General: Incoterms® specifically does not task either party with container stowage, which should be addressed elsewhere in the contract. This is new.

Sellers are warned to contract to the agreed point at the destination terminal as additional expenses are not recoverable from buyers.

This is the only Incoterms® rule that specifically tasks the seller with unloading.

International use: Ideal for multimodal transport.

Domestic use: Use (only where destination is a terminal) for freight prepaid arrival contracts (Former UCC shipment/delivery term matchup – F.O.B. destination, freight prepaid.)

DELIVERED AT PLACE (DAP) + NAMED PLACE (on the buyer's side)

Location: Incoterms® 2010 page 61 , Incoterms® for Americans® page 91

Contract use: arrival

Transport mode: all

Insurance: neither party required to insure.

Breakdown:

Seller: export clearance, deliver the goods appropriately packaged at the named destination and pay all transport costs thereto.

Buyer: unloading (?), import clearance, on carriage (?)

Suggestions:

General: Incoterms® specifically does not task either party with container stowage, which should be addressed elsewhere in the contract. This is new.

Sellers are warned to contract to the agreed point at the destination as additional expenses are not recoverable from buyers.

International use: Ideal for multimodal transport.

Domestic use: Use for freight prepaid arrival contracts (Former UCC shipment/delivery term matchup – F.O.B. destination, freight prepaid.)

DELIVERED DUTY PAID (DDP) + NAMED PLACE (on the buyer's side)

Location: Incoterms® 2010 page 69, Incoterms® for Americans® page 99

Contract use: arrival

Transport mode: all

Insurance: neither party required to insure.

Breakdown:

Seller: export clearance, deliver the goods appropriately packaged and cleared for import at the named destination and pay all transport costs thereto.

Buyer: unloading (?), on carriage (?)

Suggestions:

General: Incoterms® specifically does not task either party with container stowage, which should be addressed elsewhere in the contract. This is new.

Sellers are warned to contract to the agreed point at the destination terminal as additional expenses are not recoverable from buyers.

International use: Extremely risky for sellers. Buyers bear the risk of delayed arrival caused by faulty import clearance by seller-appointed customs brokers. Also drawback becomes awkward if possible at all.

Domestic use: Use the new duty-neutral DAP rule instead.

FREE ALONGSIDE SHIP (FAS) + NAMED PLACE (alongside a vessel at port on the seller's side)

Location: Incoterms® 2010 page 79 , Incoterms® for Americans® page 105

Contract use: shipment

Transport mode: vessel only

Insurance: neither party required to insure.

Breakdown:

Seller delivers goods appropriately export packed alongside the buyer-designated vessel at the port on the seller's side, export clearance.

Buyer: everything else (vessel loading, main carriage, import clearance, on carriage)

Suggestions:

General: Incoterms® specifically does not task either party with container stowage, which should be addressed elsewhere in the contract. This is new. **HOWEVER, THIS RULE IS GENERALLY UNSUITABLE FOR CONTAINERIZED TRANSPORT.**

New provision for sale of pre-delivered goods.

International use: Parties should agree on proof of delivery document (mate's receipt?).

Unsuitable for containerized shipments. Questionable for liner shipments.

Domestic use: (Former UCC shipment/delivery term matchup Free Alongside)

FREE ON BOARD (FOB) + NAMED PLACE (loaded on a vessel at a port on the seller's side)

Location: Incoterms® 2010 page 87, Incoterms® for Americans® page 111

Contract use: shipment

Transport mode: vessel only

Insurance: neither party required to insure.

Breakdown:

Seller delivers goods appropriately export packed on board the buyer-designated vessel at the port on the seller's side, export clearance.

Buyer: everything else (main carriage, import clearance, on carriage)

Suggestions:

General: Incoterms® specifically does not task either party with container stowage, which should be addressed elsewhere in the contract. This is new. HOWEVER, THIS RULE IS GENERALLY UNSUITABLE FOR CONTAINERIZED TRANSPORT.

"Ship's rail" is no longer mentioned in this rule. The parties should agree on exactly what loaded on board means in their sales contract, as this varies per type of vessel, commodity, etc. This is new.

New provision for sale of pre-delivered goods.

International use: Unsuitable for containerized shipments. Questionable for liner shipments.

Domestic use: (Former UCC shipment/delivery term matchup F.O.B. Vessel.)

COST AND FREIGHT (CFR) + NAMED PLACE (a port on the buyer's side)

Location: Incoterms® 2010 page 95, Incoterms® for Americans® page 117

Contract use: shipment

Transport mode: vessel only

Insurance: neither party required to insure.

Breakdown:

Seller delivers goods appropriately export packed on board the seller-designated vessel at the port on the seller's side and pays transportation costs to the agreed port on the buyer's side, export clearance.

Buyer: everything else (vessel unloading (?) import clearance, on carriage)

Suggestions:

General: Incoterms® specifically does not task either party with container stowage, which should be addressed elsewhere in the contract. This is new. **HOWEVER, THIS RULE IS GENERALLY UNSUITABLE FOR CONTAINERIZED TRANSPORT.**

"Ship's rail" is no longer mentioned in this rule. The parties should agree on exactly what loaded on board means in their sales contract, as this varies per type of vessel, commodity, etc. This is new.

Sellers are warned to contract to the agreed point as additional expenses are not recoverable from buyers.

New provision for sale of pre-delivered goods.

International use: Unsuitable for containerized shipments. Questionable for liner shipments.

Domestic use: (Former UCC shipment/delivery term matchup Cost and Freight.)

COST INSURANCE AND FREIGHT (CIF) + NAMED PLACE (a port on the buyer's side)

Location: Incoterms® 2010 page 105, Incoterms® for Americans® page 123

Contract use: shipment

Transport mode: vessel only

Insurance: seller must provide at least minimum cover.

Breakdown:

Seller delivers goods appropriately export packed on board the seller-designated vessel at the port on the seller's side and pays transportation costs to the agreed port on the buyer's side, insurance, export clearance.

Buyer: everything else (vessel unloading (?) import clearance, on carriage)

Suggestions:

General: Incoterms® specifically does not task either party with container stowage, which should be addressed elsewhere in the contract. This is new. **HOWEVER, THIS RULE IS GENERALLY UNSUITABLE FOR CONTAINERIZED TRANSPORT.**

"Ship's rail" is no longer mentioned in this rule. The parties should agree on exactly what loaded on board means in their sales contract, as this varies per type of vessel, commodity, etc. This is new.

Sellers are warned to contract to the agreed point as additional expenses are not recoverable from buyers.

New provision for sale of pre-delivered goods.

International use: Unsuitable for containerized shipments. Consider additional insurance coverage. Buyers may also

Domestic use: (Former UCC shipment/delivery term matchup Cost and Freight.)

WHAT THE OFFICIAL UCC SHIPMENT AND DELIVERY TERMS ARE

- Six terms of shipment and delivery for sales of tangible goods (plus one document description) as formerly found in Parts 2-319 through 2-324 of the Official Uniform Commercial Code
- embedded to great extent in the sales contract laws of each state except Louisiana
- last revised in 1962
- available only in English
- extensively used only by Americans mainly for domestic trade
- abbreviated by English acronyms and words
- used either with accompanied geographic places or default places
- deleted from the Official UCC as obsolete in 2004
- extremely complicated to correctly use
- likely to be deleted from law on a state-by-state basis at some future time.

WHAT THE OFFICIAL UCC SHIPMENT AND DELIVERY TERMS AREN'T

- specific. The F.O.B. term has been expanded to include all means of transportation as well as shipment and delivery contracts and freight collect and freight prepaid transportation.
- self contained. There are many references and sub-references to other Official UCC articles which may or may not have also been deleted.
- well understood. Many times, F.O.B. is used merely as a pricing term to indicate freight payment without regard to its default provisions affecting responsibility, title and payment.
- understood internationally.

WHAT THE OFFICIAL UCC SHIPMENT AND DELIVERY TERMS DO

- divide costs, risks and responsibilities ownership and payment timing between sellers and buyers, often through default provisions and/or by cross references to other Official UCC parts.
- guide one or the other contracting party into subsidiary contracts necessary to fulfill designated tasks, such as contracts of carriage and insurance
- provide handy shorthand by reducing pages of responsibilities to three characters and sometimes a word and a specified or default place.
- increase the potential for seller-buyer misunderstanding through numerous cross references and default situations.

WHAT THE OFFICIAL UCC SHIPMENT AND DELIVERY TERMS DON'T DO

- require sellers and buyers to specify geographic places or payment terms.
- reflect modern trade practice.
- clearly differentiate among the many F.O.B. permutations.
- resolve all problems possible in trade

GAP FILLERS

A gap-filler is a provision in law that applies to a point not otherwise specified in a sales contract. For instance, Official 2-401 determines where title passage occurs in contracts that do not specifically cover this topic.

Gap-fillers may cause weird situations that neither the seller nor the buyer had foreseen or wanted. The best way to avoid this is to simply make sure to specify everything that is important to you in the sales contract. Failure to do so clearly may result in application of either implied terms (prior dealings, trade practices) or gap-fillers.

The following gap-fillers are found in Article 2 of the Official Uniform Commercial Code. They are outside the former shipment and delivery terms, and have not been deleted. Those with an asterisk are provided in the text.

- If the price is omitted, the price will be a reasonable price at the time of delivery. (§2-305)
- If a manner of delivery has not been specified, a single shipment will be made. (§2-307)
- If a place of delivery is not specified, it will be the seller's place of business. (2-308)
- If no time frame has been established, it will be within a "reasonable" time. (§2-309)
- If no timeframe for risk of loss has been specified, it will be when the seller delivers either to the carrier (shipment contract) or to the buyer (destination contract). (§2-509)
- ***If no timeframe for title transfer has been established, it will be when the seller delivers either to the carrier (shipment contract) or to the buyer (destination contract). (§2-401)***
- If the timeframe for payment is not specified, it will be at the point where the buyer receives the goods. (§2-310)

FROM F.O.B. (OFFICIAL UCC §2-319) TO INCOTERMS® 2010 RULES

F.O.B. Origin, Freight Collect:

Contract type: shipment

Breakdown: Seller hands over goods at the place where shipment originates, often the seller's premises.

Delivery point: where shipment originates

Incoterms® match-up: Ex Works (EXW)

F.O.B. Origin Car or other Vehicle, Freight Collect:

Contract type: shipment

Breakdown: Seller hands over goods at the place where shipment originates, often the seller's premises, and loads the collecting vehicle.

Delivery point: where shipment originates, after loading.

Incoterms® match-up: Free Carrier (FCA) + origin point

F.O.B. Origin, Freight Prepaid

Contract type: shipment

Breakdown: Seller loads the first carrier at the place where the shipment originates, often the seller's premises, and pays the freight to the agreed place, often the buyer's premises.

Delivery point: where shipment originates, after loading.

Incoterms® match-ups: either Carriage Paid To (CPT) or Carriage and Insurance Paid (CIP) With CIP the parties should agree that the seller will handle any Inland Marine insurance claims in the buyer's behalf.

F.O.B. Destination, Freight Collect

Contract type: destination

Breakdown: Scenario: Seller loads the collecting vehicle at the place where the shipment originates, often the seller's premises, but remains responsible for the condition of the goods until arrival at the agreed place.

Delivery point: where shipment arrives at the agreed destination, often the buyer's premises.

Incoterms® match-up: NONE. There is no Incoterms® rule that extends the seller's risk for the condition of the goods to the destination without also holding it with contracting for transportation to get them there. Sellers should be reluctant to assume responsibility for the condition of goods being transported by carriers that aren't working for them. (Sellers not contracting for transportation are really consignors, not shippers.)

FOB Destination, Freight Prepaid

Contract type: destination

Breakdown: Seller loads the first carrier at the place where the shipment originates, often the seller's premises, and pays the freight to the agreed destination, often the buyer's premises.

Delivery point: agreed destination.

Incoterms® match-up: Delivered At Place (DAP) or if the agreed place is a terminal, Delivered At Terminal.

F.O.B. Vessel

Contract type: shipment

Breakdown: Seller is responsible for all cost and for the condition of the goods until they are loaded on board the vessel.

Delivery point: vessel loaded at embarkation port.

Incoterms® match-up: Free On Board (FOB)

FROM F.A.S. (OFFICIAL UCC §2-319) TO INCOTERMS® 2010 RULES

Contract type: shipment

Breakdown: Seller delivers the goods alongside the buyer-appointed vessel and is responsible for their condition and all costs until they get there.

Delivery point: alongside the buyer-appointed vessel at the embarkation port.

Incoterms® match-ups: Free Alongside Ship (FAS) or Free Carrier (FCA) + place at embarkation port (particularly if the shipment is multimodal).

Note: Neither the former Official UCC F.A.S. nor the FAS Incoterms® rule are appropriate for vessel shipments made on liner terms. They are appropriate for charter shipments and those involving lighterage. FCA + the carrier's terminal conforms to modern shipping practice.

FROM C.I.F. and C. & F. (OFFICIAL UCC §2-320) TO INCOTERMS® 2010 RULES (The UCC handled these as one term, with no insurance as an option.)

Contract type: shipment

Breakdown: Seller remains responsible for the condition of the goods through vessel loading of the seller-appointed vessel at the port of embarkation, and pays the freight cost and insurance to the named destination port.

Delivery point: vessel loaded at embarkation port (same as F.O.B. Vessel.)

Incoterms® match-up: Cost, Insurance and Freight (CIF) or Cost and Freight (CFR)

FROM C.I.F. AND C. & F. NET LANDED WEIGHTS (OFFICIAL UCC §2-321) TO INCOTERMS® 2010 RULES

Contract: hybrid – shipment plus post-arrival seller responsibility

Breakdown: The mechanics of this term work the same as C.I.F. and C. & F. except that the price due the seller is based on the arrived quantity or weight, etc. which is not determinable at time of shipment. However, the seller is not responsible should the shipment be lost or damaged in main carriage, only for “ordinary deterioration, shrinkage, and the like.”

Incoterms® match-up: NONE. Incoterms® rules rely on the delivery point.

FROM DELIVERY EX SHIP (OFFICIAL UCC §2-322) TO INCOTERMS® 2010 RULES

Contract type: destination

Breakdown: Seller is responsible for all costs and the condition of the goods until they have left the ship’s tackle or are otherwise properly unloaded on the quay at the destination port.

Delivery point: on the quay next to the vessel at the destination port.

Incoterms® match-up: Delivered At Terminal (DAT)

FROM UCC BILL OF LADING (UCC §2-323) TO INCOTERMS® 2010 RULES

Breakdown: Describes the form a bill of lading must take for shipments “overseas” (or domestic vessel and even air shipments that are akin to “international deep water commerce”).

Incoterms® match-up: NONE. No Incoterms® rule speaks to the form a transportation document must take.

FROM UCC “NO ARRIVAL – NO SALE” (UCC §2-324) TO INCOTERMS® 2010 RULES

Contract type: destination

Breakdown: Provision that the seller avoided the sales contract if the goods are not delivered to the buyer through no fault of the seller (UCC §2.615). UCC 2-613 Casualty to Identified Goods relieves the buyer from the obligation to pay if the goods are not delivered and if the goods are partially lost, or damaged so as to be non-conforming, the buyer may either terminate the contract or accept the goods with reduced pricing.

Incoterms® match-up: NONE. Incoterms® rules do not handle transfer of risk this way. They focus on the seller’s delivery obligation. Also, Incoterms® rules do not speak to remedy (other than premature cost and risk transfer should one party’s failure to comply with an obligation prevent the other party from fulfilling its obligations). Specific remedies should be covered elsewhere in the sales contract or in law.