



Incoterms[®]

2020 by the International
Chamber of Commerce (ICC)

Breakfast Seminar

Friday, 15 November 2019

ICC UNITED KINGDOM
INTERNATIONAL
CHAMBER OF COMMERCE
@100 years

**The London Institute
of Banking & Finance**

INCOTERMS[®] 2020

DAVID LOWE, PARTNER

INCOTERMS AGENDA

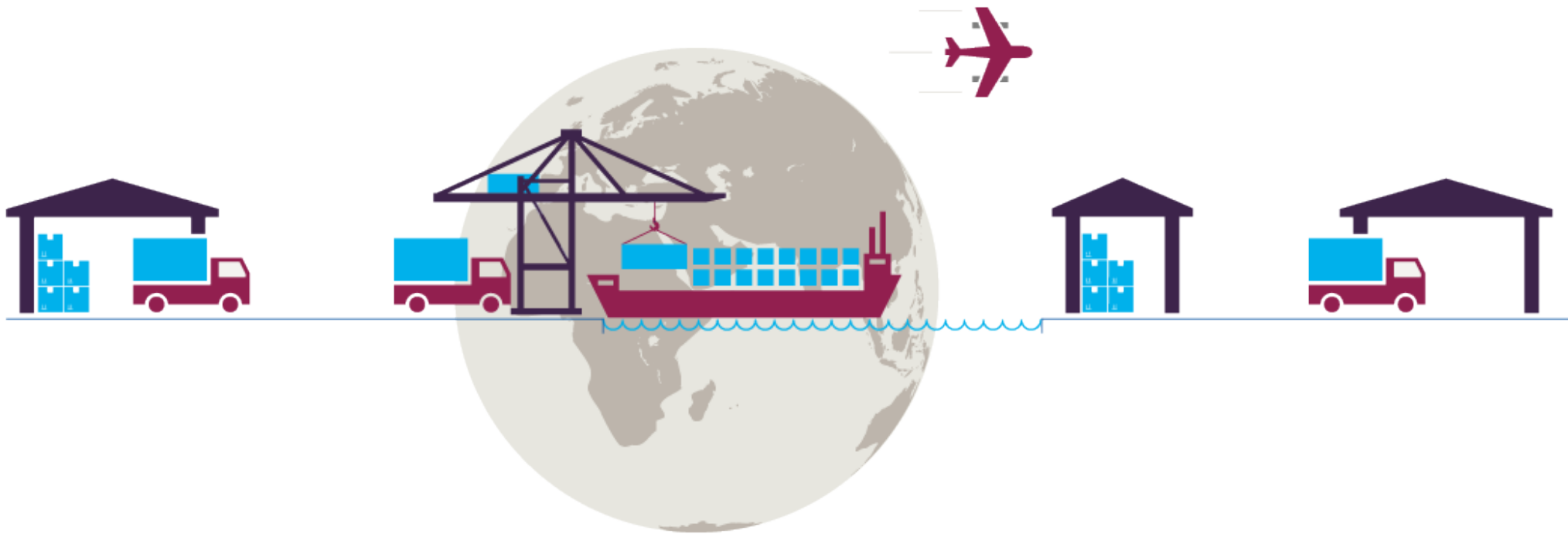
Brief Refresher

Incoterms 2020

- Key changes
- When

What does it mean for trade finance?

IT'S ALL ABOUT DELIVERY



INCOTERMS – WHAT ARE THEY?

- Standard terms
- Freight delivery
- International (but...)
- 1936

INCOTERMS – KEY FUNCTIONS

- Risk/cost allocation
- Delivery
- Export/Import licences, duties and customs requirements
- Documents

INCOTERMS ARE NOT EVERYTHING

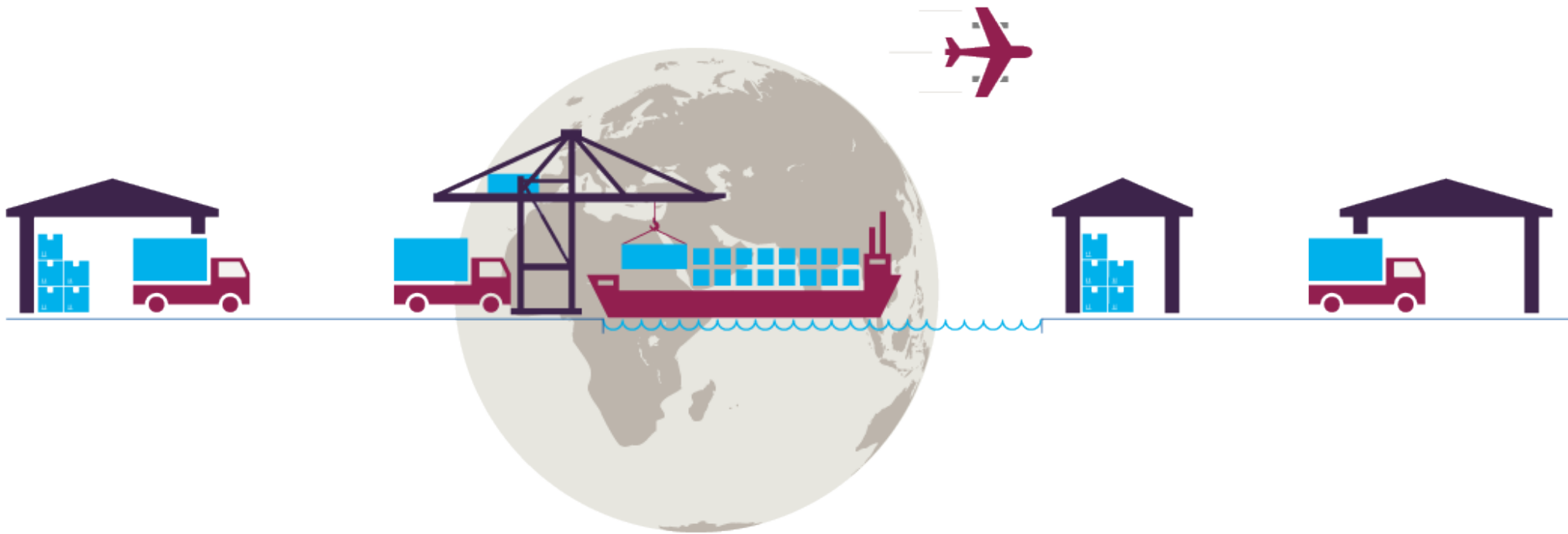
Incoterms do not provide complete contract

- Goods
- Price/payment
- Title
- Intellectual property
- Law/jurisdiction

INCOTERMS 2020 BY GROUP

	E	F	C	D
ANY FORM OF TRANSPORT	Ex- works	FCA	CPT	DPU
			CIP	DAP
				DDP
MARITIME ONLY		FOB	CFR	
		FAS	CIF	

IT'S ALL ABOUT DELIVERY



INCOTERMS – EXAMPLE

Seller - Chinese supplier

Sells goods FCA (Hong Kong port) Incoterms 2020

Buyer – Lowe Retail Limited

INCOTERMS - EXAMPLE

Chinese seller must:

- Clear goods for export
- Deliver goods to port not unloaded

INCOTERMS – EXAMPLE

Lowe Ltd (Buyer) must:

1. Unload from supplier's vehicle
2. Terminal storage/charges
3. Load on to ship
4. Ocean carriage
5. Clear for import
6. Transport to warehouse at destination
7. Pay (not dealt with Incoterms)

HOW TO USE INCOTERMS

- Incorporate into contract
- Choose the right rule
- Specify the place/port precisely
e.g. FCA (4 More London, London SE1 2AU) Incoterms 2020

INCOTERMS 2020 – KEY CHANGES

- DAT changed to DPU
- Insurance in CIF and CIP
- Costs
- Security
- Own transport
- FCA, FOB and bills of lading
- Presentation

DAT CHANGED TO DPU

- DAT requires delivery at terminal (unloaded)
- Reference to “terminal” changed to “place”
- No change of substance

CIF/CIP – INSURANCE

- CIF/CIP seller buys insurance for buyer
- Incoterms 2010 insurance is “Clause C”
- Incoterms 2020:
 - CIF stays with Clause C
 - CIP changed to Clause A
- Clause A is more comprehensive (and more expensive)

COSTS

- More detail
- Collected together in A9
- Key principle
 - costs to delivery (and before) – seller
 - costs post delivery - buyer

SECURITY

- Cargo security (e.g. container screening) is more common
- Incoterms 2020 deals in more detail
 - A4/B4 (carriage) – transport related security
 - A7/B7 (export/import clearance) – security clearance for export

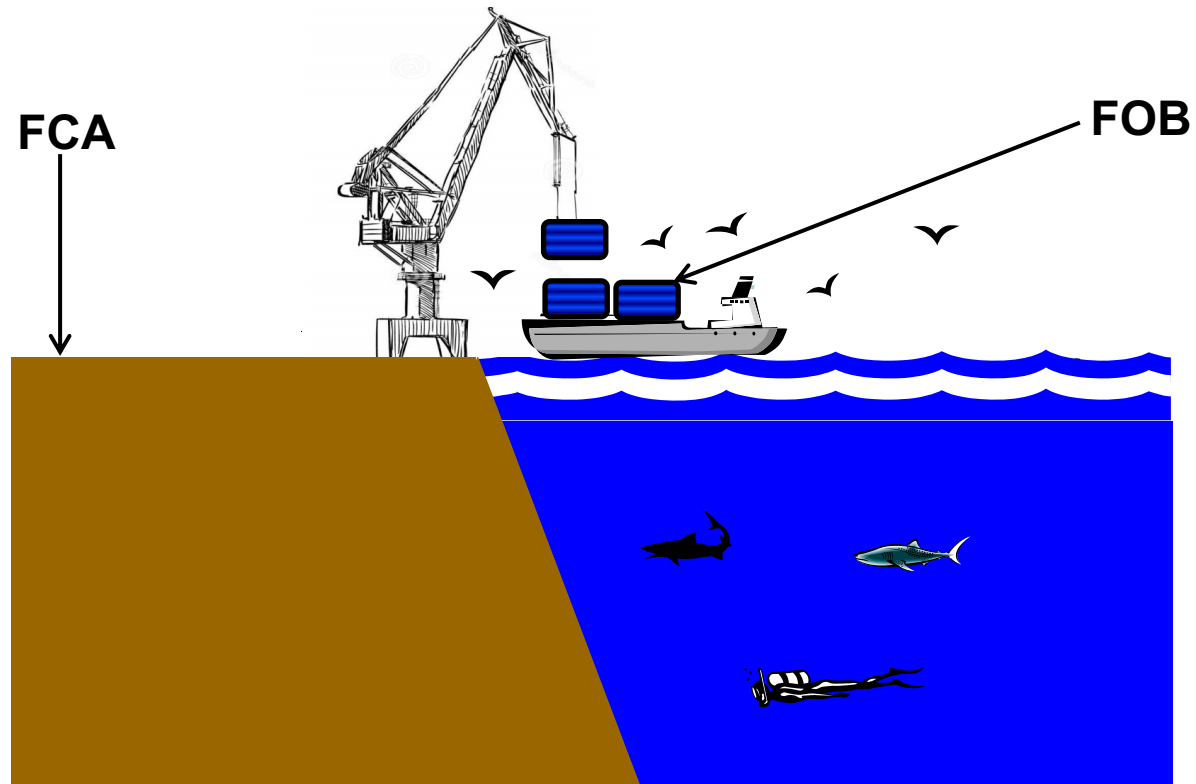
OWN TRANSPORT

- 2010 assumes carrier is 3rd party
- 2020 allows for own transport

FCA B4

“The buyer must contract **or arrange** at its own cost for the carriage of the goods” (emphasis added)

FCA, FOB AND BILLS OF LADING (1)



FCA, FOB AND BILLS OF LADING (2)

FCA Incoterms 2020 B6

“If the parties have so agreed, the buyer must instruct the carrier to issue to the seller, at the buyer’s cost and risk, a transport document stating that the goods have been loaded (such as a bill of lading with an on board notation)” (emphasis added)

PRESENTATION

- Explanation notes
- Better pictures
- Re-ordering
- Horizontal
- Maritime second (no change)

INCOTERMS 2020 – IN SUMMARY

- No fundamental changes
- DAT changed to DPU
- Users of CIF and CIP must review
- FCA, FOB and onboard bills of lading
- New edition is a good trigger for review

WHEN

- Incoterms 2020 can be used now
- But no obligation to use Incoterms 2020
- “Effective” 1 January 2020
- 1 – 2 years for the market to adopt?

INCOTERMS 2020 & TRADE FINANCE

What does this mean for you?

- Basic awareness – you have a key role in awareness
- DAT to DPU, and insurance in CIF/CIP are important
- Bigger issue
 1. align Incoterms and finance on the documents
 2. Onboard bill of lading



QUESTIONS

Incoterms 2020 and Digital Trade

Miriam Goldby

ICC UK Incoterms 2020 Seminar

15th November 2019

The London Institute of Banking & Finance

Article A1/B1 second indent

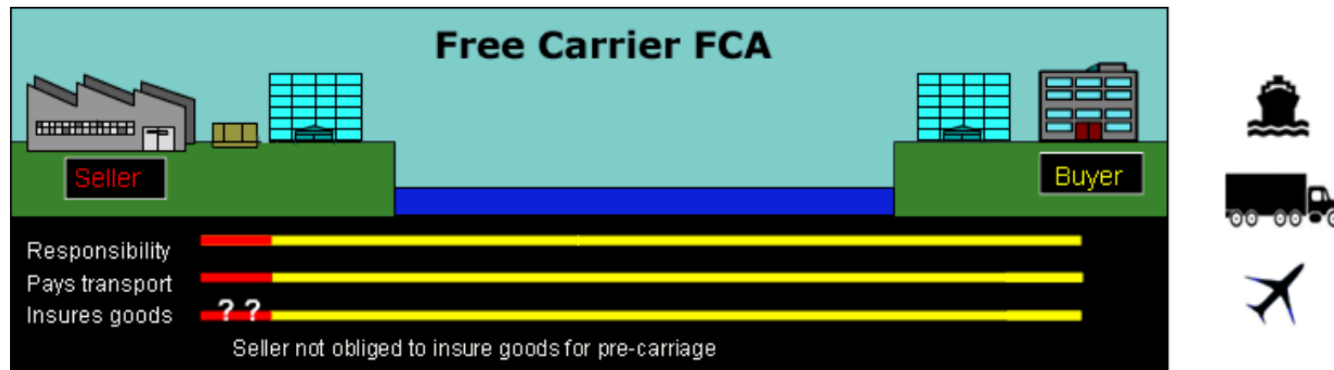
A1/B1 2010

Any document referred to in A1-10/B1-10 may be an **equivalent** electronic record or procedure **if** agreed between the parties or **customary**.

A1/B1 2020

Any document to be provided by the seller/buyer may be in paper or electronic form as agreed or where there is no agreement, **as** is customary.

FCA Article B6 second indent



If the parties have so agreed, the buyer must instruct the carrier to issue to the seller at the buyer's cost and risk, **a transport document stating that the goods have been loaded** (such as a bill of lading with an onboard notation).

Legal Terms

Novation – replacing one contractual party with a third person, with no change to the contract itself. The third party obtains rights of suit against the original party.

Bailment – a bailor – a person entitled to possession of goods transfers actual possession to a bailee (e.g. a carrier), retaining **constructive possession**.

Attornment – a method of transferring constructive possession: at the bailor's request, the bailee notifies a third party that the goods are now held for it rather than the original bailor.

Pledge – a type of security right (or special property) that requires the creditor to be in possession of the collateral.



Digital Alternatives

- Electronic recording of transport data + recording of entitlements in a central registry or distributed ledger which is supported by a contractual framework designed to achieve certain legal effects
 - Bolero Rulebook; essDOCS DSUA; CMI Rules for Electronic Bills of Lading 1990
- Nexus between carrier and subsequent holder achieved by *novation*
 - *Argo Fund Ltd v Essar Steel Ltd* [2005] EWHC 600, [60]–[66], affirmed [2006] Lloyd’s Rep 134 (CA)
- Constructive possession transferred by *attornment*
 - *The Future Express* [1993] 2 Lloyds Rep 542, 550
 - *Mercuria Energy Trading v Citibank* [2015] EWHC 1481 (Comm), [59]–[60]
- Transfer of ownership rights beyond constructive possession not directly addressed:
 - Depends on intention;
 - Use of the system can help establish intention (e.g. Bolero Pledgee Holder).
- At what point can the transferee be said to have acquired general or special property?
 - Use of express clauses tying transfer of rights to specific events (e.g. receipt of confirmation from that the transfer has been recorded in a particular register or ledger).

Effect of Attornment

‘The carrier [who has attorned to a bank], as bailee of the goods, owes a duty to deliver the goods to the order of the bank. Accordingly, the bank will be able to enforce that obligation against the carrier, subject to a) the terms of the attornment, b) the contractual provisions pursuant to which the carrier holds the goods and c) whether the property in the goods had already passed from the previous holder to the borrower [to whom the bank has extended credit] at the time of insolvency [of the e-bill’s previous holder].’

Clyde & Co 2018

Pledge

' ... delivery of possession may take the form of the actual handing over of the goods to the pledgee or of a symbolical or constructive delivery. Symbolical or constructive delivery may be effected *by an agreement on the part of the owner of the goods, or some person holding the goods on his behalf, to hold them as bailee on behalf of the pledgee*, a device which is deemed to change the nature of the original possession of the goods, so as to amount to a constructive delivery.'

Gutteridge & Megrah's Law of Bankers' Commercial Credits

This is in effect an attornment. It is sufficient to create a pledge, which would give the bank the same collateral as would holdership of a paper bill.

Pledge

'A trust receipt or letter of trust is used where a bank-pledgee having possession of documents of title *or actual or constructive possession of the goods*, received from or on behalf of the owner, delivers them to the owner or to a third party, who undertakes to hold them and, if sold, the proceeds, in trust for the bank.'

Gutteridge & Megrah's Law of Bankers' Commercial Credits

Trusts receipts could still be used where constructive possession is transferred to the bank by means of the carrier's attornment rather than by the transfer of a bill of lading.

Thank you for your attention!
Questions?

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