INTERNATIONAL COMMERCIAL TERMS FOR THE CONTRACT OF SALE OF GOODS

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ABSTRACT

This paper discusses the International Commercial Terms used frequently in the International Transaction for the Sale of Goods. However, the revised 2020 incoterms provide eleven terms currently in use in different countries of the world; the aims of this paper discuss them one by one, thereby bringing out some features that differentiate them. This is for clarification and simplicity in the choices of incoterms for nonprofessionals in freight forwarding. The paper used the doctrinal method of legal research to pay attention to the existing work. The paper established where the goods and risks pass from the seller to the buyer. Although the paper has been from a theoretical perspective, some incoterms are similar and, therefore, course confusion. The paper recommended using incoterms correctly and clearly to the understanding and requirement of contracting parties and contract to avoid shipping costs.

Keywords: Commercial, Terms, Contracts, Goods, Sale

INTRODUCTION

This paper aims to explore eleven International Commercial Terms (incoterms) that are currently used in international contracts for the Sale of Goods. This paper is significant because the Incoterms rules discussed here are clear, and, therefore, easier for importers and exporters to acquaint themselves with them when entering a contract for sale, related to the importation and exportation of goods: including packaging them, labeling of shipment for freight transport and filling a purchase order etc.

However, trade terms in the sales contract of goods indicate the situation where the risk is transferred from the seller to the buyer and who is to pay the costs and arrange transport and ancillary services concerning the Cargo. Such ancillary services include insurance, customs clearance, documentation, etc. Depending on the risk transfer point, either the seller or the buyer shall arrange the cargo transport insurance (Council for the Regulation of Freight Forwarding in Nigeria).

Finally, this paper aims to create awareness to the public and business people to make a future incoterms research. This is necessary since the terms are acceptable trade terms for International and domestic contracts.

METHODOLOGY

This research topic on international commercial terms adopts a doctrinal legal research method that pays attention to the existing work. The primary materials used are statutes, while secondary data used are textbooks, articles in journals and online materials.

LITERATURE REVIEW

There is literature in this area of research found in blogs, Wikipedia, textbooks, articles, and online published notes; all these are in another jurisdiction. However, there is not much research in this area of study in Nigeria. Nevertheless, Vishny (1981) described incoterms as the term used globally in International Commercial Transaction, and Procurement Processes and their use is backed by trade councils, courts, and International Lawyers. These works show that incoterms are used widely because of their acceptance and recognition by the trade council, International Lawyers, and Community. This is what makes the work relevant in this area of research work because it helps in understanding the acceptable trade terms internationally. The present work explores the incoterms that are presently in use globally.

Davis and Vogt (2021) defined incoterms concerning obligation, risks and cost that seller and buyer must incur in the International Movement of Goods for trade purposes. This work is relevant to this paperwork as he makes it clear that both buyer and seller in International Transaction anticipate risks. It, therefore, helps in bringing the time in which the risk and delivery of goods pass from the seller to the buyer. This is what justifies this study work.

Griffin (2003) said that the incoterm aims to communicate the tasks, costs and risks associated with the delivery and transportation of goods in International Contract for the Sale of Goods. He mentions the reasons for using incoterms in International Trade, communicating the risk. The work is very relevant to the present work as it helps to understand the intention of the International Chamber of Commerce regarding incoterms. The present research clearly explained the duties of sellers, buyers and sometimes forwarders in International Trade.

Michael (2016) described eleven rules that can be applied to any mode of transport and those specific to sea and inland waterways transport. He noted that there are rules that govern transportation. This work is helpful as he said there are specific rules restricted to transport by sea and inland waterways only. The present research spelled out each incoterm's rules and mode of transport. The above research works are different from the existing work because the present work dwells so much in exploring all the eleven incoterms, what differentiates each term from another, mode of transport and where the risk and delivery of goods pass from the seller to the buyer.

OVERVIEW OF INTERNATIONAL COMMERCIAL TERMS (INCOTERMS)

The International Chamber of Commerce, also known as (ICC), was created in 1919, which is the year after the end of the first (1) World War, and it is based in Paris. The founders called themselves the "Merchants of Peace ."They started their work by first understanding the trade terms used by merchants then and then gathered their findings which covered six terms from thirteen countries (13), and first published it in 1923 (https://www.cogoport.com>blogs). After more studies, the ICC

introduced the first incoterms rules, which are six in numbers and were published first in 1936; revised in 1953 with three (3) terms. This is how incoterms come to be (https://www. cogoport. com>blogs).

The ICC created the International Court of Arbitration to support these trade agreements and deal with disputes. The founders of the ICC intend to provide a system of rules to govern trade and that trade should be regulated via global standards by private industry, not governments.

The ICC did away with air and rail terms in 1990 and looked at the transfer points between buyer and seller to define the location. In 2000 it increased the terms to thirteen (13) but modified. To comply with the modern customs practices and in particular deal with the issues of exporter and importer. However, the 2010 incoterms reduced the number of terms to eleven and increased the obligations for buyers and sellers to information sharing. It also removed four (4) terms: they are DAF, DES, DEQ and DDU and replaced them with two terms that hold for any mode of transport: they are DAT and DAP.

Since their introduction in 1936, the Incoterms rules have been updated every Ten (10) years; that is how incoterms 2020 came into being. ICC stated that the incoterms 2020 should be used for domestic and international contracts to sell goods. They also replaced DPU with DAT, thereby removing DAT (Vogt and Davis, 2020). The latest update was therefore carried out in September 2019, following which the ICC released incoterms 2020, which came into effect on 1 January 2020, https://www.cogoport.com. The incoterms 2020 rules are contained in publication No.723 EF of the International Chamber of Commerce (ICC) or e-book format on www.iccbooks.com.

INTERNATIONAL COMMERCIAL TERMS

International Commercial Terms, also known as incoterms or trade terms, are universally accepted and used in delivering goods by road, rail, air, sea, and pipeline. Below are eleven (11) incoterms in which some of them apply to all modes of good delivery while others are specific to a particular model.

i. EXW (ex-works): Ex-works is an International Shipping agreement (https://learn.robinhood.com) in which the seller is to ensure that the goods are made available for collection at either seller's premises or works, factory, warehouse etc. there is a division of responsibility between the shipper and consignee in the shipping process. Therefore, in an ex-work, the seller must not load the goods on any collecting vehicle or clear the goods for export, where such clearance is needed. In this type of transaction, the buyer bears full responsibility for the door-to-door transport of goods (https://www.cogoport.com) while the seller delivers the goods to the buyer at the seller's named premises (https://www.gov.bra) pt-br. In this type of contract, the buyer has to take delivery of the goods at the work or stare of the seller. The property in goods and risk passes when the buyer takes delivery of the goods or that the risk and interests of the seller are transferred when the Cargo is delivered at his premises. The seller's only obligation is to make the goods tally with the description in the contract and be available at the proper place and time for delivery to

the buyer (Owolabi and Badmus, 1999). When purchasing goods in this term, the price is lower because the seller assumes no responsibility for any shipping process. The transaction, therefore, starts with the wholesale cost of items involved in a shipment that includes packaging and labeling. The seller then sets those items aside on site for collection, and all other expenses to ship them will fall upon the buyer. These include the cost of handling from the seller's address to a transit point such as a port or airport, any custom paperwork and loading the shipment on and off transport. The buyer must pay for transportation itself, plus any customs duties or import tariffs and insurance coverage it needs.

ii. Delivered At Place (DAP) is an agreement for delivering goods to a designated place by the seller. The buyer's responsibility is to unload the goods, sort out duties and taxes, and clear the goods through customs. The buyer also is to carry out any import formalities. On the other hand, the seller here must deliver the goods to a place named by the buyer (buyer's premises) and carry out any export formalities (https://www.tradefinanceglobal.com). In this contract, the seller will arrange for its forwarder to take possession of the goods from the airline or shipping company and arrange for local inland transport, typically by truck. This shows that the buyer is not a consignee on any air waybill or bill of loading. When the goods are destroyed or lost at any stage before the destination, the seller did not deliver the goods and therefore, he is in breach of the contract (https://www.tradefinanceglobal.com). In the Delivered At Place (DAP) contract, the buyer is responsible for all costs and risks associated with unloading the goods. At the same time, the seller bears all risks and costs associated with delivering the goods to the named foreign destination not unloaded (Noah, 2021).

iii. Free On Board (FOB). This is an incoterms term of sale. When used in a contract for the sale of goods, the seller completes delivery of the goods when he loaded them on a ship specified by the buyer at a named port. After that, any liability for damage or loss passes to the buyer (https://www.cogoport.com>blogs). This is where the seller puts them on board a ship and pays all the charges incurred before this, including loading charges—the property and risk pass when the goods have been lifted over the ship rail. The buyer, however, is responsible for paying the Freight and Insurance. The buyer is also responsible for selecting the port of shipment and the date of shipment of the goods (Awolabi and Badmus, 1999).

iv. Free Carrier (FCA). This term allows the delivery of goods at the premises of the seller and at various points like transport centers, ports, airports, container terminals which are all in the country of the sellers; as a result of this, the contracting parties are required to specify the place of delivery (https://www.tradefinanceglobal.com). When the goods are delivered to the seller's premises, he must load them on the first carrier. Again, suppose the merchandise is delivered at some other point. In that case, the seller must deliver the goods ready for unloading and delivery to the carrier that the buyer for International Transport has designated. However, when the goods are delivered at the seller's premises, the delivery documents are usually a receipt of the carrier sent by the buyer to the seller's premises. When the goods are transported in a container, and the place of delivery is the port of shipment, FCA is the recommended term to use (https://www.globalnegotiator.com). The seller in this

type of transaction must complete and bear the costs of export clearance and is responsible for obtaining the necessary documents for it. While the buyer carries the import clearance formalities (https://www.tradefinanceglobal.com), it is, therefore, a free carrier paid by the seller and delivered to the named place for the onward carriage paid by the buyer (https://www.researchgate.net.3497). The seller includes transportation costs in its price and assumes the risk of loss until the carrier receives the goods (https://www.investopedia.com).

v. Free Alongside Ship (FAS). Is it a situation whereby the seller provides the goods and commercial invoice conforming to the contractual agreement? The seller is also requiring delivering the goods by placing them alongside the vessel named by the buyer at the loading point if indicated by the buyer. The seller must deliver the goods according to the terms agreed in the contractual document or customary at the port. If the buyer mentions no specific loading point, the seller can select the point within the named port of shipment that best suits its purpose. The buyer must pay the goods price as provided in the contract of sale. He must take delivery of the goods when they are delivered and bears all risks of loss of or damage to the goods from the time they have been delivered (https://www.nsa.com). Where applicable, the seller must carry out and pay for all export clearance formalities required by the export country. The risk of loss of or damage to the transfer of the goods when the goods are alongside the ship, and the buyer bears all costs from that moment onwards (https://www.nsa.com>2019/12). The goods pass when they are alongside the ship, which means the buyer has to bear all costs and risk of loss of or damage to the goods from the moment the seller, however, deliver when the goods are placed alongside the vessel nominated by the buyer at the named port of shipment, (https://www.lawinsider.com). One of the recognized commercial terms used by export and import businesses stipulates that the seller must arrange for goods to be delivered to a designated port and a specific vessel for more effortless transfer (https://www.investopedia.com). FAS is rarely used these days but still might be appropriate in shipments of heavy machinery brought to the harbor or barged up to them alongside the vessel. It should not be used for the shipment of containers (https://www.tradefinanceglobal.com). When using this term, the buyer and seller are required to reach an agreement on who pays the freight cost and insurance costs (https://www.thebusinessprofessor.com).

vi. Cost and Freight (CFR). Cost means the cost of goods, while freight indicates all other costs relating to all the means of transportation of the goods. In this contract of sale, the seller must pay the costs and freight necessary to bring the goods to a named port of destination and procure marine insurance against the buyer's risk or loss to the goods during the carriage (https://economictimes.indiatime.com). The seller bears all risks of loss of or damage to the goods until they have been delivered and must notify the buyer that the goods have been delivered and give the buyer any notice required to enable the buyer to receive them. While the buyer must pay all costs relating to the goods from the time they have been delivered and the costs of transit, unloading costs, and charges related to assisting in obtaining documents and information and, where applicable, duties, taxes and any other cost related to transit or

import clearance, (https://www.nsa.com). In this term, the seller is required to arrange for the carriage of goods by sea to a port of destination and provide the buyer with the documentation necessary to obtain them from the carrier. The seller, therefore, is not responsible for procuring marine insurance against the risk of loss or damage to the Cargo during transit. In this contractual term, the seller has to arrange and pay for transportation to the port and is responsible for delivering the goods, clearing them for export and loading them into the transport ship. Once the shipment is loaded into the vessel, the buyer's risk of loss or damage falls (https://www.investopedia.com).

vii. Cost Insurance and Freight (CIF). It is also an International Shipping agreement where the seller pays the charges to cover the cost, insurance, and freight of a buyer's order while the Cargo is in transit. The seller here. It covers transport to the port of origin, main carriage, insurance and export clearance and fees. At the same time, the buyer must pay the cost of the goods, import clearance and carriage from the port of destination. This transaction applies to ocean and inland waterways and is commonly used for bulk Cargo, oversized or heavyweight shipments (https://www.freightright.com). When goods are shipped on board, the risk passes to the buyer, who will have to pay for them even if they are lost on the voyage. Again, the property in goods passes when the seller transfers the shipping document to the buyer (Awolabi and Badmus, 1999).

viii. Carriage Paid To (CPT). In this International Trade, the seller delivers goods after clearing them to a carrier or another person nominated by the seller. In this situation, the seller assumes all risks, including loss, until the goods are in the nominated party's care. The carrier could be the person or entity responsible for the carriage by either sea, rail, road etc., of the goods or the person or entity enlisted to procure the performance of the carriage. The seller also pays the freight charges (https://www.investopedia.com). The risk of damage or loss to the goods is transferred to the buyer when the goods have been delivered to the carrier. The seller is not responsible for ensuring the shipment of the goods during the transport. For example, if a truck caring a shipment to the airport is involved in an accident in which the goods are damaged, the seller is not responsible because the goods had already been transferred to the first carrier: the truck (https://www.investopedia.com). However, the seller's obligations in this transaction are to check the quality, measuring, packaging and marking of goods and handover them over to the carrier along with the usual transport documents or those required and clear them for export. He has no obligation to make a contract of insurance. On the other hand, the buyer must pay the price of the goods as agreed in the contract and bear all the risk of loss or damage, apparent goods for import, assist the seller with export clearance, and be under no obligation to make a contract of insurance, (https://www.incoterms.com).

ix. Carriage and Insurance Paid To (CIP). It is an agreement where the seller is responsible for freight and insurance costs of goods up to an agreed location. The buyer is also responsible for carriage and insurance once the goods are transferred to them at the agreed place. It is used for all modes of transport (https://www.freightright.com>cip. c). In this type of contract,

the sellers deliver the goods and transfer risk to the buyer by handing them over to the carrier or another person named by the seller has to contract for and pay the costs of carriage (https://www.aeb.com). This is one of the terms commonly used in International Contract sales. It can be used for all modes of transport or multimodal transport. For example, a shipping agreement usually puts CIP and the destination place like CIP Nigeria. The seller would have to pay the freight and insurance charges to Nigeria. The buyer must clarify the terminal handling charges made by the terminal operator and whether it is part of the freight charges. The risk passes to the buyer once the goods reach the first carrier and not the destination, but the seller needs to buy the insurance for the entire transit route to the goods. This means he covers against the buyer's risk of loss and must make available all insurance documents to the buyer to claim insurance in case of anything like an accident—the buyer needs to get a minimum insurance cover also (https://efinancemanagement.com).

x. They were delivered at Place Unloaded (DPU). Delivered at the place unloaded was formally known as delivered at the terminal. In this transaction, the seller assumes all costs and risks until the goods are unloaded at the named place agreed upon in the contract. The buyer's responsibility is to be sought for import customs formalities. It can be applied to any mode of transport (multiple modes of transport) (https://craneww.com>dpu-delivered). Under this term, the seller bears all the risk of loss and damage to the goods. The responsibility and risk pass to the buyer only when the goods are unloaded at the arriving destination. The arrival and delivery destination are also the same. It is, therefore, the only incoterm that requires the seller to take charge of unloading at the destination. Both the seller and the buyer are not required to obtain insurance (https://www.shipfreight.com). The seller must make sure that packaging, marking, and checking. Are properly made, deliver the goods and documents required, export clearance, transit clearance, contract of carriage, transport security, and notify the buyers that the goods have been delivered. In contrast, the buyer must make import clearance and bear all risks of loss or damage to the goods from the time of delivery (https://www.shipfreight.com>inco). This is a risky term for the seller because he may not get a competent local customs broker, and import clearance differs from country to country (https://www.tradefinanceglobal.com).

xi. Delivered Duty Paid (DDP). Under this term, the seller provides the goods and the commercial invoice according to the contract of sale and any other evidence required by the contract. He is to deliver the goods by placing them at the buyer's disposal at the agreed date or within the agreed periods and bear all risk of loss or damage to the goods until they have been delivered. The seller has no obligation to the buyer to make an insurance contract. On the other hand, the buyer has no obligation to the seller to make a contract carriage, contract to insurance. Still, at the seller's request, he must provide the seller with risk and cost and anything the seller needs to obtain insurance (https://www.nsa.com>2019/12). A transport document or equivalent electronic message is the proof of delivery in this transaction. The

seller, therefore, must provide the buyer but at the buyer's expense with the delivery order, which includes the usual transport document like the negotiable bill of lading, a non-negotiable sea waybill, an inland waterway document, an air waybill, a railway consignment note or a multimodal transport document unless the seller and buyer agree on electronic communication, (https://fr.scribd.com>document).

CLASSIFICATION OF INCOTERMS RULES 2020

Incoterms rules are classified into four (4) main groups based on fees, risk, responsibility for formality and issues related to import and export (https://www.shiphub.com). The categories are as follows:

i. C GROUPS - (MAIN CARRIAGE PAID). Group c consists of the following incoterms:

a- CFR
b- CIF
c- CPT
d- CIP.

The seller here concludes a transport contract with the forwarder and takes costs. He is also responsible for doing export clearance. The risk here is transferred when posting the goods to the buyer. However, there are different levels of insurance cover under CIP and CIF; for the CIP, the parties involved can opt for a higher insurance cover. CPT and CIP can use any mode of transport while CFR and CIF are restricted to see the mode of transport.

ii. D GROUP (Arrival)

This group includes the following incoterms:

a- DAP
b- DPU
c- DDP

In this, the seller must deliver the goods to a specific place or the port of the destination. Thus, the sellers are allowed to use their vehicle or means of transport to transport their goods under DAP, DDU and DDP rules and can use any mode of transport.

iii. E GROUP (Departure)

There is only one term in this group, which is EXW.

EXW and FCA have similarities for transactions in the seller's premises (David and Vogt, 2021). In this group, the seller makes the goods available to the buyer at the delivery point dedicated by the seller. The seller also is not obliged either to customs or export clearance and does not bear the risk and costs of loading. EXW can use any mode of transport (https://www.tradefinanceglobal.com).

iv. F Group (Main Carriage Unpaid)

This group cover the following incoterms:

a- FCA
b- FAS
c- FOB

However, the seller here must perform export custom clearance; he cannot pay transport and insurance costs. In FCA terms, the contracting parties can agree that the buyer will instruct the ship on an on-board bill of lading to the seller once the goods are loaded. The seller will then share the document with the buyers (David and Vogt, 2021). FCA can use any mode of transportation, but FAS and FOB are restricted to sea transportation (https://www.tradefinanceglobal.com). In EXW, FCA, FAS and FOB, the buyer will pay the main transportation fee, and in CPT, CFR, CIP, CIF, DAP, DPU and DDP, it is the seller (exporter) that will pay the transfer. Therefore, the incoterms that transfer risks in the country of origin are EXW, FCA, FAS, FOB, CPT, CFR, and CIP, while those transfer risks in the destination country are DAP, DDU and DDP (https://www.globalnegotiator.com).

CONCLUSION

It is essential to understand that international commercial terms rules do not involve trade terms codified for national purposes. They are, however, accepted to be used in domestic and international trade. Lastly, the incoterms rules are rules made by exporters and importers within the International Chamber of Commerce to regulate certain foreign trade operations. Therefore, these terms do not have the force of law, and there is no obligation to use them in international trade. However, the terms can be used once accepted by the contracting parties (https://www.globalnegotiator.com). Therefore, ICC described incoterms as the essential commercial term of trade accepted worldwide in international contracts for the sale of goods.

OBSERVATION AND RECOMMENDATION

This research paper observed that some incoterms are similar and course confusion. The researchers recommended using incoterms correctly and clearly to the understanding and requirement of contracting parties and law to avoid shipping costs. In Nigeria, many exporters and importers are not aware of this incoterm. As a result, the researchers recommended using media for enlightenment so that the public, in general, can benefit.

REFERENCES

Awolabi, N.B. and Badmus, M.A. (1999) Nigerian Business and Co-operative Law, Nigeria: Printarts Limited p.221

Barone, A. (2021) - Cost and Freight https://www.investopedia.com Accessed 2 January 2022.

Carriage and Insurance Paid To meaning, obligations and more (https://efinancemanagement.com) Accessed 28 December 2021.

Categories of incoterms 2020 (https://www.shiphub.com>incoterms) Accessed 2 January 2022.

CIP Carriage and Insurance Paid to (Incoterms – https://www.aeb.com) glossary-ci Accessed 28 December 2021.

Council for the Regulation of Freight Forwarding in Nigeria, module 4 transport insurance.

CPT incoterm (Carriage Paid To) – use and meaning (2014) https://www.containers.com Accessed 3 January 2022.

Davis, J. and Vogt, J. (2021) incoterms 2020 and the missed opportunities 2020 for the next version, International Journal of Logistics Research and Application (https://doi.org/1080/13675867.2021.1897074).

DDP - Delivered Duty Paid explained 5pp PDF https://fr.scribd.com document Accessed 3 January 2022.

Definition of Cost and Freight https://economictimes.com Accessed 2 January 2022.

PDF -delivered at palace unloaded incoterms, https://craneww.com>dpu - delivery Accessed 3 January 2022.

Free Alongside Ship – https://www.nsa.Com>2011/12 DBF Accessed 2 January 2022.

Free Alongside Ship (FAS) - explained the business professor https://thebusinessprofessor.com Accessed 2 January 2022.

Free Carrier – https://www.investopedia.com Accessed 4th January 2022

Glossary of Shipping Terms (2008) Maritime Administration 1200 New Jersey Avenue, SE Washington, DC 20590 pg 114 https://www.gov.bra>pt-br PDF

Griffins, D. (2003), The Law of International Trade (3rd Edition London Butterworths)

Hayes, A, Free Alongside Ship (FAS) https://www.investopedia.com

Incoterms 2020 (2021) changes that you need to know (https://www.cagoport.com>blogs) Accessed.

Incoterms 2020 https://www.tradefinanceglobal.com Accessed 1 January 2022

Incoterms 2020: Changes that you need to know (https://www.cagoport.com>blogs) Accessed 2 January 2022

International Journal of Logistics – Doi:10.1080/13675567.2021.1897974 https://www.researchgate.net.3497 incoterms 2020 PDF

Kenton, W. (2021), Carriage Paid To (CPT) https://www.investopedia.com Accessed 2 January 2022.

Michael, W. 2016, Incoterms Definition, explanation and complete list of all incoterms https://forto.com>home>blog Accessed 4 January 2022.

Noah, D. (2021), An Introduction to Incoterms https://www.mshippingsolutions.com Accessed 1 January 2022

Practical Guide Incoterms 2020 (2019) (https://www.global/negotiator.com) Accessed 3 January 2022.

Practical Guide to Incoterms 2020 – Global Negotiator https://globalnegotiator.com PDF Accessed 29 December 2021

Vishny, P.H. (1981) Guide to International Commerce Law, Saint Paul, Min: West Group

Vogt. J. and Davis J. 2020, The state of incoterms research: Researchgate, transportation journal 59(3). Doi:10:5325/transportation 59. 3. 0 .304.

What are CIF costs and Freight https//www.investopedia.com Accessed 2 January 2022?

CIP Carriage and Insurance Paid Shipping - Freight Right https://www.freightright.com>cip-c Accessed 2 January 2022.

What is Ex-works – wall street journal, Forbes, the Chicago Tribune, Quartz, the San Francisco Chronicle – https://learn.robinhood.com>articles 7 October 2020 Accessed 30 December 2020

What is Ex-works: Meaning and its usage in the shipping industry – https://www.cagoport.com Accessed 20 December 2020