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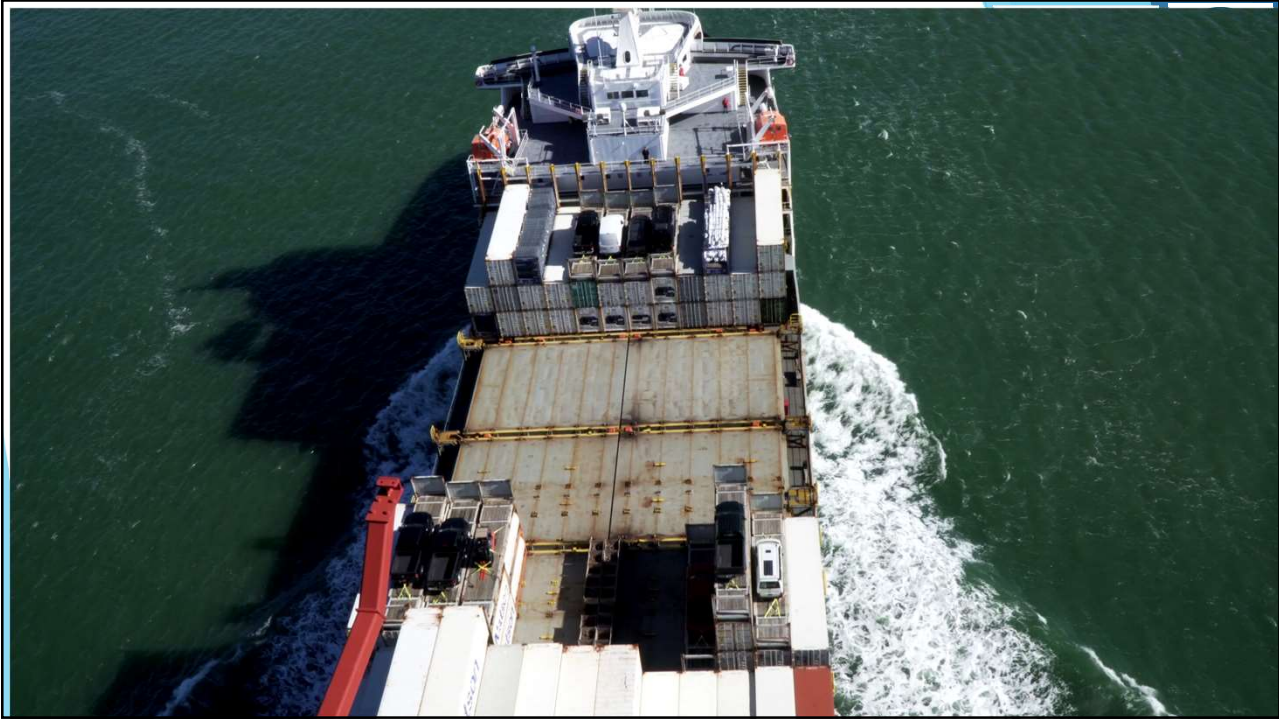
**Strong & Herd**  
Import and Export Services

**Incoterms<sup>®</sup> 2020 – A Brief Overview**


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## Today's Agenda

1. What are Incoterms® and what are they for?
2. What Incoterms don't do
3. Incoterms and Brexit

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## Export and Import Procedures - Who Does What?

- ▶ That's what INCOTERMS ® are for
- ▶ What are they?
- ▶ International commercial terms
- ▶ Devised by the International Chambers of Commerce
- ▶ Recognised throughout the world
- ▶ Published in 25 languages
- ▶ Legally enforceable

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## Incoterms ® 2020 Rules

- ▶ Incoterms ® 2020
  - ▶ International Commercial Terms
- ▶ This is the latest version and was launched by the International Chamber of Commerce in Autumn 2019
  - ▶ Replacing the 2010 Set of Rules
- ▶ Incoterms Rules are not law - but they are an important consideration when agreeing the responsibilities of the seller and buyer in the sale or purchase of goods
- ▶ But what must we also consider.....?
- ▶ What Incoterms Rules do not do!

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## INCOTERMS ® 2020

### What is the purpose of Incoterms?


- ▶ The basic purpose of each Incoterm is to clarify how functions, costs and risks are split between the buyer and seller in connection with the delivery of the goods as required by the sales contract. Delivery, Risks, Obligations and Costs are known as the critical points. DROC for short.

The terms range from a situation in which everything is fundamentally the responsibility of the buyer to the other extreme where everything is fundamentally the responsibility of the seller.

- ▶ Parties to a contract are often unaware that there are different trading practices in their respective countries, for example FOB for an American company may have a different meaning to FOB for a UK trader. This can lead to misunderstanding and, in the worst scenario, costly litigation.

Incoterms 2020 is set out to avoid this problem by giving a set of standard rules that are recognised throughout the world.

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## WHERE DO WE APPLY INCOTERMS ® 2020?

- ▶ Used in contracts for the supply of goods.
- ▶ Incoterms are split into 4 Groups.  
E terms, F terms, C terms and D terms

### Giving us

- ▶ 11 Terms - 14 choices, e.g. FOB, CIF, CPT, FCA, DAP
- ▶ In use throughout the world (25+ Languages)

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## What do Incoterms ® rules do for us?

- Incoterms ® 2020 may be included in a sales contract if the parties desire the following:
- They relate to the rights/ obligations in respect of DELIVERY OF GOODS
- To complete a sale of goods.
- To indicate each contracting party's delivery, risks, obligation and costs with regard to delivery of the goods as follows:
  - When is the delivery completed?
  - Which party must comply with requisite licenses and government-imposed formalities?
  - What are the mode and terms of carriage?
  - What are the delivery terms and what is required as proof of delivery?
  - When is the risk of loss transferred from the seller to the buyer?
  - How will transport costs be divided between the parties?
  - What notices are the parties required to give to each other regarding the transport and transfer of the goods?
- To establish basic terms for transport and delivery in a short format.
- They are used for legal protection.

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### Where is your customer, supplier, recipient or sender?

- ▶ We can use Incoterms in three different ways
- ▶ Domestically
  - ▶ Manchester to Leeds
- ▶ In the EU
  - ▶ Berlin to Paris
- ▶ Rest of the World
  - ▶ Glasgow to Auckland

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### Where is your customer, supplier, recipient or sender?

- ▶ Whilst a compliant trader must consider their responsibilities...
- ▶ Incoterms doesn't differentiate between where the goods are being supplied to....
- ▶ Or where the goods are being purchased from....
- ▶ Therefore it is important to consider and agree your Incoterms carefully!
  - ▶ Can we adhere to what the Incoterm says we must do?



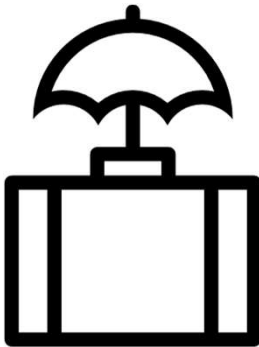
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## Insurance (with two exceptions)



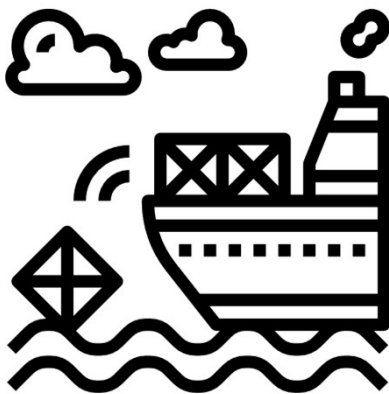
- ▶ Every Incoterm makes the Seller and Buyer consider their Risk and when that risk transfers between the two parties
- ▶ However apart from two exceptions there is no requirement for either party to insure their risk
- ▶ The two exceptions to the requirement to insure the goods are
  - ▶ **CIP (Carriage and Insurance Paid to..)**
  - ▶ **CIF (Cost Insurance and Freight...)**
  - ▶ Each with a specific criteria and level of Insurance Cover (unless agreed otherwise) as per the Incoterms rules
  - ▶ Remember “**I**” = Insurance!

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## Insurance - Your considerations



- ▶ In every instance establish where your risk transfers
  - ▶ For a sale
  - ▶ For a purchase
  - ▶ Or for goods that move for other reasons
  - ▶ For repair / testing / trade shows etc
- ▶ Decide if Insurance is needed
- ▶ If required
  - ▶ Check the Policy / Cover is adequate
  - ▶ Does it cover the Risk?

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## When does Title pass from Seller to Buyer ?



- ▶ An vitally important consideration for any seller or buyer!
- ▶ **Definition of Title;**
  - ▶ **The change of ownership from one person to another**
- ▶ **Potentially** title of the goods passes when the Buyer has paid the Seller the price in the contract
- ▶ **Potentially** there could be another clause in the contract that agrees when Title passes from Seller to Buyer
- ▶ However, we cannot rely on Incoterms Rules to establish when Title passes between Seller and Buyer
  - ▶ Incoterms do not cover the provision for the transfer of title

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## Revenue Recognition?

- ▶ When does a seller recognise their revenue?
- ▶ An important point when it is..
  - ▶ Year end
  - ▶ Period end
  - ▶ Month end
  - ▶ Even Weekend!
- ▶ Some sellers link their Incoterms Rules to the point when they can invoice the shipment and recognise the sale...
- ▶ But there is no link between Revenue Recognition and any of the Incoterms

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## When do I get paid against a Contract of Sale?

- ▶ There is no link between a payment term that is agreed between a Seller and a Buyer and the agreed Incoterms Rule
- ▶ Therefore how and when a buyer will be paid and in what currency they will be paid are not covered by the Incoterms rules
- ▶ **In fact we can take this a step further....**
- ▶ Incoterms do not deal whether there is a contract of sale in existence or not
- ▶ And Incoterms Rules do not define remedies for a breach of contract
- ▶ And other breaches in the performance of contractual obligations

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## Specification of Goods

- ▶ Specifications
  - ▶ The “precise requirements”
  - ▶ Potentially documented?
  - ▶ To provide clarity on what the customer wants
- ▶ Considerations will include
  - ▶ Product
  - ▶ Material
  - ▶ Design
- ▶ Incoterms Rules will not resolve the issue of any problems relating to the specification of the goods supplied
- ▶ An example which underlines the importance of ensuring that there is contract in place which agrees the finer details of what must be supplied

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## The goods have arrived safely but....



- ▶ An example....
- ▶ A supplier delivers the goods to the buyer under the terms of the agreed Incoterm
- ▶ A subsequent quality check by the buyer finds that the required goods have been supplied but they are not suitable for their needs
- ▶ **What would happen next?**
- ▶ Maybe an awkward call or correspondence between the two parties?
- ▶ Unfortunately unless there is a clause in the contract that can assist - the buyer must pay the seller as the goods have been delivered as per the agreed Incoterm

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## Imposition of Tariffs

- ▶ A Tariff, a rate of duty and tax applicable when goods are imported into a country or Customs Union
- ▶ However the duty rate can be increased....
- ▶ For example, Anti-Dumping Duty
  - ▶ **An import duty charged in addition to normal Customs Duty implemented to take action against goods sold at less than their normal value, defined as the price for 'like goods' sold in the exporter's home market.**
- ▶ Other recent examples include an increase in duty for certain goods; EU to US, US to EU, China to US
- ▶ The potential for an increase on the Import Tariffs and who pays those charges are not covered under Incoterms



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## Sanctions and Prohibitions

- ▶ Sanctions - Various types including;
  - ▶ Trade Sanctions affecting the movement of goods
  - ▶ Financial Sanctions, including asset freezes
- ▶ Embargoes
  - ▶ An official ban on trade or other commercial activity that one country places on another.
- ▶ The implementation of Sanctions and Embargoes reflect is a constantly changing picture. As the relationship between countries evolves and alters this means the restrictions or controls can be implemented, amended or removed.
- ▶ Incoterms does not cover the consideration of Sanctions and Prohibitions being implemented during the lifespan of a contract of supply.

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## Force Majeure

- ▶ Force Majeure
  - ▶ **Meaning “Superior Force”**
  - ▶ Resulting in unforeseeable circumstances that prevent a business from fulfilling a contract.
  - ▶ Examples; War, Strike, Riot, Epidemic, “Act of God”
  - ▶ Meaning a party’s ability to supply has become impossible (this could potentially be a temporary situation)
- ▶ However, Any provisions for Force Majeure are not covered under Incoterms




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## Hardship




- ▶ Hardship
  - ▶ Definition - Hardship is the performance of the disadvantaged party becoming much more burdensome but still possible
  - ▶ Hardship clauses typically recognise that parties must perform their contractual obligations even if events have rendered performance more onerous than would reasonably have been anticipated at the time of the conclusion of the contract. unforeseeable circumstances that prevent someone from fulfilling a contract.
- ▶ Provisions for Hardship are not covered under Incoterms



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## Intellectual Property Rights

- ▶ Intellectual Property Rights
  - ▶ Definition - The assignment of Property Rights through examples such as Patents, Copyrights and Trademarks
  - ▶ These Property Rights enable people to earn recognition or financial benefit from what they invent or create.
- ▶ Incoterms do not cover the question of Intellectual Property Rights
- ▶ In addition, Incoterms do not cover the method, venue or dispute resolution in case of a breach relating to Intellectual Property Rights



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**Which brings us to our final point...**

- ▶ Incoterms doesn't cover every other clause that is required in a contract of sale of purchase
- ▶ Incoterms are an important consideration and best practice is to use them as part of a contract but as we've seen it doesn't cover everything that needs to be considered.
- ▶ So consider
  - ▶ The detail...
  - ▶ The Terms and Conditions...
  - ▶ All aspects of the contract...

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**So to sum up**

- ▶ Think of agreeing an Incoterm as part of the toolbox that is needed to agree a contract - a builder wouldn't leave the house with just a hammer - and there are many other points to consider in a contract of sale or purchase...
- ▶ **But!**
- ▶ If you decide to apply Incoterms....
  - ▶ Use them compliantly
  - ▶ Consider your responsibilities
  - ▶ And your costs
  - ▶ Not forgetting your risks
  - ▶ Insure or not?

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The graphic shows two silhouetted figures with megaphones standing on the edges of two large, stylized ships. The ship on the left is decorated with the Union Jack (United Kingdom flag), and the ship on the right is decorated with the European Union flag (blue with yellow stars). The background is a light blue sky and sea. In the top right corner, there is a logo for 'Incoterms 2020' by the International Chamber of Commerce (ICC) and a globe icon. The text '#IGOTrade' is visible in the bottom right corner.


## Incoterms 2020 and Brexit

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## Incoterms® within the EU

- ▶ Because trade within the customs union usually involves relatively few legal/customs requirements, terms of business are usually at one of two extremes:
- ▶ EXW Customer collects, customer responsible for everything and carries risk from point of collection
- ▶ DDP Supplier delivers, supplier responsible for everything and carries risk to point of delivery



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## The Trouble with EXW...

- ▶ Puts the responsibility on the buyer to complete the export declaration in the seller's country.
- ▶ Is this even possible? (Buyer needs GB EORI)
- ▶ Even if it is, is it desirable?
- ▶ UK exporter needs **EVIDENCE OF EXPORT**



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## FCA?

- ▶ Easiest solution might be to change from EXW to FCA
- ▶ FCA = Free Carrier (Exporter does the export declaration)
- ▶ Customer can still collect and arrange shipment
- ▶ Customer responsible for import clearance and payment of duties



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## The Trouble with DDP

- ▶ DDP = Delivered Duty Paid
- ▶ Exporter is responsible for virtually everything (Export clearance, shipping, import clearance, payment of local taxes and duties)
- ▶ Not possible without an EORI from an EU country
- ▶ Even if possible, is it desirable? Exporter pays local VAT, recovery may not be possible)



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## DAP?

- ▶ Easiest solution might be to change to DAP
- ▶ Similar to DDP, but importer responsible for import clearance and payment of local duties and taxes



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## The Trouble With Not Agreeing an Incoterm®

- ▶ Brexit means several additional steps and costs related to moving goods
- ▶ Contract may not be clear who is responsible
- ▶ Contract may not be clear who is at risk
- ▶ Incoterms® are internationally recognised and legally enforceable
- ▶ Provide clarity and legal protection, provided they are understood and expressly agreed by both parties

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### Any Questions?

Thank you for listening and taking part in this session today

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