

Module 5: Trade Operations and Documentations

Online Session 3/6 Drafting an export sales contract; Negotiating suitable INCO Terms

Six Months Certificate Training Program on “Agri-Export and Import Management”

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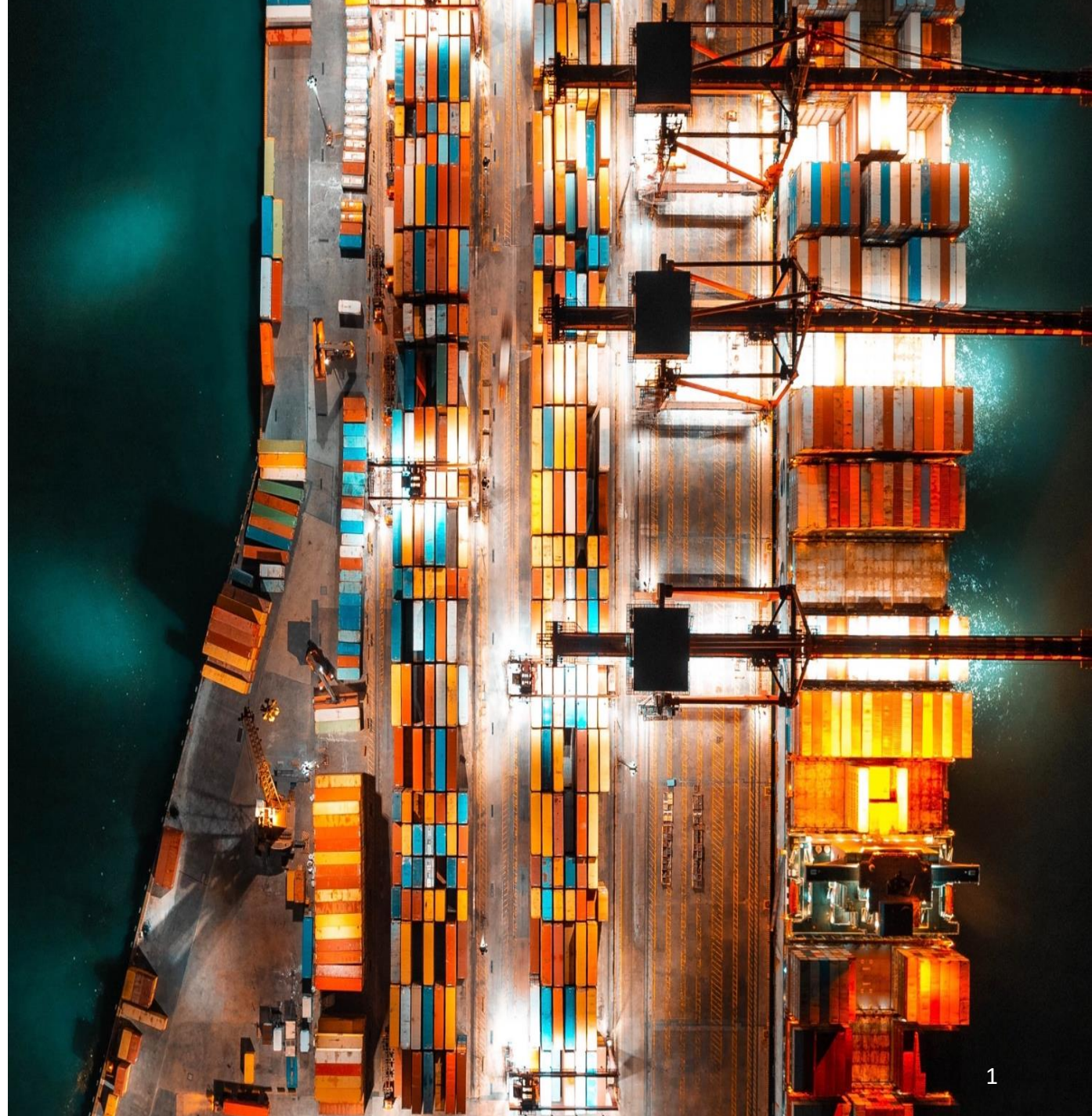
Organized By: “Indo-German Cooperation Project on Agricultural Market Development”

Knowledge Partner: CCS National Institute of Agricultural Marketing

Supported by: Agricultural and Processed Food Products Export Development Authority

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01 Feb 2023




Module 5: Session 3: Drafting an export sales contract; Negotiating suitable INCO Terms



Session 1	Step by Step Process of getting started in Export – Import
Session 2	Clear understanding of export – import documentation
Session 3	Drafting an export sales contract; Negotiating suitable INCO Terms
Session 4	Getting tuned to Operational issues in international business
Session 5	Procedure for clearance of export – import cargo; Duty assessment and payment of import cargo
Session 6	Export clearance and Incentive assessment

Export Sales Contract

- All exports take place thru Export Sales Contracts
- ‘Export Sales Contract is a contract whereby the exporter (seller) transfers/ agrees to transfer the property/ goods to the importer (buyer) for a price’
 - Contract involves 2 different parties: exporter and importer
 - Goods refer to ‘movables’ - existing/ future

SALES CONTRACT						Pages 1 of 1
Seller ABC Exports 4300 Longbeach Blvd Longbeach, California, 90807 United States +121388447711 Randy Clarke Company Tax ID: 93377112 info@abcexports.com			 ABC Exports		Invoice Number INV-34567S	Date 04 Jul 2022
Buyer XYZ Imports 410 Queen Street Brisbane, Queensland, 4814 Australia +61404822536 Bob Jones			Delivery Date 04 Jul 2022			
Method of Dispatch Sea		Type of Shipment FCL		Terms / Method of Payment 30% DEPOSIT, BALANCE UPON BILL OF LADING		
Port of Loading Long Beach		Port of Discharge Sydney				
Product Code	Description of Goods	Unit Quantity	Unit Type	Price	Amount	
B-STOOL	BAR STOOL ALUMINIUM 500 X 100 X 100MM STAINLESS STEEL	150	EACH	77.20	11,580.00	
B-TABLE	BAR TABLE ALUMINIUM 1000 X 600 X 400MM STAINLESS STEEL	75	EACH	110.40	8,280.00	
Total This Page		225			19,860.00	
Consignment Total		225			19,860.00	
Conditions SUBJECT TO OUR STANDARD TRADING CONDITIONS			TOTAL: Incoterms® 2020 FOB LONGBEACH		\$19,860.00 Currency USD	
Bank Details Account Name: ABC EXPORTS Bank Account Number: 845590XXXX Bank Name: Community Federal Savings Bank ACH Routing Number: 02607XXXX Fedwire Routing Number: 02607XXXX SWIFT Code: CMFGUS33 Bank Address: 89-16 Jamaica Ave, Woodhaven, New York, NY 11421			Signatory Company ABC Exports Name of Authorized Signatory Randy Clarke Signature <div style="text-align: right; font-family: cursive; font-size: 1.2em;">Randy Clarke</div>			

- A sales contract is a legally binding document between a buyer and seller.
- Sales contract vs export sales contract
- In a sales contract (domestic sales contract), the applicable law will always be the Indian law.
- In a export sales contract, the applicable law will be that of the importing country, which is mutually agreed to by the parties in the contract.
- The export sale contract follows the basic law of contract covering :
 - *price, offer, acceptance,*
 - *delivery, shipping, acceptance of goods,*
 - *complaints, and returns.*
- The terms of any of these can be changed to suit the parties
- A good sales contract leaves no doubt about either party's rights & obligations during a transaction

Elements of Sales Export Contract

- There is no standard format of export contract as the elements of export contract may vary from individual to individual, transaction to transaction and country to country.
- The elements of an export contract also depend upon the nature of product being exported. However, some of the elements of the export contract that are common are:
 - (a) Name and addresses of the parties, i.e. importer and exporter must be stated clearly and fully.

<https://howtoexportimport.com/Elements-of-Export-Contract-4599.aspx>

Elements of Sales Export Contract

(b) Product standards and specifications such as name of the product, its technical name, if any, applicable national or international standards, etc

(c) Nature, manner and focus of the envisaged inspection, as well as the name of the inspection agency.

(d) Terms of delivery as per the latest applicable version of INCOTERMS presently INCOTERMS 2020.

(e) Quantity in terms of number of units both in figures as well as words and specifications relating to packaging, labelling and marking.

<https://howtoexportimport.com/Elements-of-Export-Contract-4599.aspx>

- (f) Total contract value in words and figures and the currency, responsibility for the payment of taxes, duties and levies.
- (g) Terms and place of dispatch and delivery and the date from which the period of delivery begins.
- (h) Part-shipment, trans-shipment and consolidation of cargo. If goods are to be shipped under a “consolidation of export cargos”, it should be specified.
- (i) Terms of payment, amount, mode and currency, discounts and commissions and their basis.
- (j) Details of insurance goods against loss, damage, or destruction during transportation, type of risk covered and the extent of coverage.

<https://howtoexportimport.com/Elements-of-Export-Contract-4599.aspx>

SALES CONTRACT

PARTIES

- This Sales Contract (hereinafter referred to as the “**Contract**”) is entered into on _____ (the “**Effective Date**”), by and between _____, with an address of _____, (hereinafter referred to as the “**Seller**”) and _____, with an address of _____, (hereinafter referred to as the “**Customer**”) (collectively referred to as the “**Parties**”).

GOODS AND PRICE

- The goods that the Seller is selling to the Customer are enlisted below with their quantities (hereinafter referred to as the “**Goods**”).

Good	Quantity	Price per unit	Total Price

PRICE AND PAYMENTS

- The Seller hereby agrees to sell the Goods to the Customer for an amount of _____.
- The Seller will provide an invoice to the Customer at the time of the delivery.
- All invoices are to be paid in full at least within thirty (30) days.
- Any balances not paid within thirty (30) days will be subject to a five percent (5%) late payment penalty.

DELIVERY AND SHIPPING

- The delivery of the goods (hereinafter referred to as the “Delivery”) will be at the location _____.
- The shipping method will be decided by the _____ and _____ will be responsible for the costs of the shipment.

WARRANTIES

- Except as expressly set forth in this Agreement, the Parties acknowledge and agree that the Goods are provided as is.
- Except for the express warranties set forth herein, neither party makes any representations or grants any warranties, express or implied, either in fact or by operation of law, by statute or otherwise, and each party specifically disclaims any other warranties, whether written or oral, or express or implied, including any warranty of quality, merchantability, or fitness for a particular use or purpose or any warranty as to the validity of any patents or the non-infringement of any intellectual property rights of third parties.

INSPECTION

- Hereby, the Customer acknowledges that it has relied solely on the investigations, examinations, and inspections that the Customer has chosen to make and that the Seller has afforded the Customer the opportunity for full and complete investigations, examinations, and inspections.

RISK OF LOSS AND TITLE

- The risk of loss or damage for the goods will be on the Seller until the goods pass upon delivery to the Customer or its designee.
- The Title of the goods will also remain with the Seller until the goods pass upon delivery to the Customer or its designee.

DELAY OR FAILURE TO PERFORM AND FORCE MAJEURE

- Under no circumstances will the Seller be held liable to the Customer for any delay that may occur, non-delivery or an arising fault of this Agreement that may be due to any labour dispute, shortage in transportation, delay or shortage of materials to produce the Goods, fires, accidents, Acts of God, or any other causes outside Seller's control. The Seller will notify the Customer immediately upon realization that it will not be able to deliver the Goods as promised. Upon such notice, either Party may terminate this Agreement.

TERMINATION

- This Agreement may be terminated by either party or both Parties at any instant provided that the terminating party provides a written notice of termination _____ days in advance.

LIMITATION OF LIABILITY

- Under no circumstances will the Seller be liable for any indirect, special, consequential, or punitive damages (including lost profits) arising out of or relating to this Agreement or the transactions it contemplates (whether for breach of contract, tort, negligence, or other form of action).

GOVERNING LAW

- This Agreement shall be governed by and construed in accordance with the laws of _____.

AMENDMENTS

- The Parties agree that any amendments made to this Agreement must be in writing, where they must be signed by both Parties to this Agreement.
- Accordingly, any amendments made by the Parties will be applied to this Agreement.

SEVERABILITY

- In the event that any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, then the remaining provisions will remain in force in accordance with the Parties' intention.

ENTIRE AGREEMENT

- [This Agreement](#) contains the entire agreement and understanding among the Parties hereto with respect to the subject matter hereof, and supersedes all prior agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof.

FORCE MAJEURE

- The Seller will not be liable for delays in performance or for non-performance due to unforeseen circumstances or causes beyond the Seller's reasonable control.

SIGNATURE AND DATE

- The Parties hereby agree to the terms and conditions set forth in this Agreement and such is demonstrated throughout their signatures below:










CUSTOMER	SELLER
Name: _____	Name: _____
—	—
Signature: _____	Signature: _____
—	—
Date: _____	Date: _____
—	—

INCOTERMS

INCOTERMS

- The Incoterms or International Commercial Terms are a series of pre-defined commercial terms published by the International Chamber of Commerce relating to international commercial law.
- This set of rules, created by the International Chamber of Commerce (ICC), defines the responsibilities of buyers and sellers around the delivery of goods.
- It establishes who's responsible for shipping, insurance, and tariffs in a contract between a buyer and a seller.
- The ICC updates this set of rules every ten years, with the most recent update—the Incoterms 2020 rules—having been released in 2020.

- The Incoterms rules form a crucial part of any agreement between buyers and sellers by dictating who will pay for loading and unloading costs, customs export procedures, insurance, import costs, and more.
- By understanding the Incoterm rule defined in a contract, buyers and sellers can get a firm grasp on their costs and, ultimately, their margins.
- All International purchases will be processed on an agreed Incoterm to define which party legally incurs costs and risks. Incoterms® will be clearly stated on relevant shipping documents.
- By defining eleven different costs in a three-letter designation, the Incoterms rules quickly define who will for what.
- Note: Even though the Incoterms rules were updated in 2020, some parties may still use the Incoterms 2010 rules. (Or an earlier version!) Make sure that both parties to your contract are working from the same version when entering into a contract.

INCOTERM	 LOADING ON TRUCK	 EXPORT CUSTOMS DECLARATION	 CARRIAGE TO PORT OF EXPORT	 UNLOAD AT PORT OF EXPORT	 LOADING AT PORT OF EXPORT	 TRANSIT TO PORT OF IMPORT	 UNLOADING AT PORT OF IMPORT	 LOADING TRUCK AT PORT OF IMPORT	 CARRIAGE TO DESTINATION	 UNLOADING AT NAMED DESTINATION	 CARGO INSURANCE	 IMPORT CUSTOMS CLEARANCE	 IMPORT TAXES
(EXW) Exworks	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER
(FCA) Free Carrier	SELLER	SELLER	SELLER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER
(FAS) Free Alongside Ship	SELLER	SELLER	SELLER	SELLER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER
(FOB) Free Onboard	SELLER	SELLER	SELLER	SELLER	SELLER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER
(CFR) Cost and Freight	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER	BUYER
(CIF) Cost, Insurance, and Freight	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	BUYER	BUYER	BUYER	SELLER	SELLER (Clause C)	BUYER	BUYER
(CPT) Carriage paid to	SELLER	SELLER	SELLER	BUYER	SELLER	BUYER	SELLER	SELLER	SELLER	BUYER	BUYER	BUYER	BUYER
(CIP) Carriage & insurance paid to	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER (Clause A)	BUYER	BUYER
(DAP) Delivered at place	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	BUYER	BUYER
(DPU) Delivered at a place unloaded	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	BUYER	BUYER	BUYER	SELLER	BUYER	BUYER
(DDP) Delivered duty paid	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER	SELLER

Incoterms® is a registered trademark of The International Chamber of Commerce
 To learn more visit: <https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-rules-2010/>

INCOTERMS explains the Import – Export contract

- As an importer/ buyer defining his agreement with exporter/ seller, he will negotiate two elements:
 1. *The three-letter Incoterms designation (from the chart).*
 2. *The named place for the final destination (to ensure delivery to a location where the importer can access the freight, either to pick them up or arrange for further transport.*

Note: It's important to get very specific, especially in cities with multiple ports. Otherwise, you may spend a day chasing your delivery around.

An overview of Incoterms® 2020 for 11 Terms

1. EXW – Ex-Works or Ex-Warehouse
2. FCA – Free Carrier
3. FAS – Free Alongside Ship
4. FOB – Free On Board
5. CFR – Cost and Freight
6. CIF – Cost, Insurance and Freight
7. CPT – Carriage Paid To
8. CIP – Carriage And Insurance Paid To
9. DAP – Delivered At Place
10. DPU – Delivered At Place Unloaded (replaces Incoterm® 2010 DAT)
11. DDP – Delivered Duty Paid

An overview of Incoterms 2020 for 11 Terms

EXW – Ex-Works or Ex-Warehouse

- Ex works is when the seller places the goods at the disposal of the buyer at the seller's premises or at another named place (i.e., works, factory, warehouse, etc.).
- The seller does not need to load the goods on any collecting vehicle. Nor does it need to clear them for export, where such clearance is applicable.

FCA – Free Carrier

- The seller delivers the goods to the carrier or another person nominated by the buyer at the seller's premises or another named place.
- The parties are well advised to specify as explicitly as possible the point within the named place of delivery, as the risk passes to the buyer at that point.

An overview of Incoterms 2020 for 11 Terms

FAS – Free Alongside Ship

- The seller delivers when the goods are placed alongside the vessel (e.g., on a quay or a barge) nominated by the buyer at the named port of shipment.
- The risk of loss of or damage to the goods passes when the products are alongside the ship. The buyer bears all costs from that moment onwards.

FOB – Free On Board

- The seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered.
- The risk of loss of or damage to the goods passes when the products are on board the vessel. The buyer bears all costs from that moment onwards.

An overview of Incoterms 2020 for 11 Terms

CFR – Cost and Freight

- The seller delivers the goods on board the vessel or procures the goods already so delivered.
- The risk of loss of or damage to the goods passes when the products are on board the vessel.
- The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.

An overview of Incoterms 2020 for 11 Terms

CIF – Cost, Insurance and Freight

- The seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the products are on the ship.
- The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.
- The seller also contracts for insurance cover against the buyer's risk of loss of or damage to the goods during the carriage.
- The buyer should note that under CIF the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree as much expressly with the seller or to make its own extra insurance arrangements.

An overview of Incoterms® 2020 for 11 Terms

CPT – Carriage Paid To

- The seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such site is agreed between parties).
- The seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination.

CIP – Carriage And Insurance Paid To

- The seller has the same responsibilities as CPT, but they also contract for insurance cover against the buyer's risk of loss of or damage to the goods during the carriage.
- The buyer should note that under CIP the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree as much expressly with the seller or to make its own extra insurance arrangements.

An overview of Incoterms® 2020 for 11 Terms, 7 for any mode of transport.

DAP – Delivered At Place

- The seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination.
- The seller bears all risks involved in bringing the goods to the named place.

An overview of Incoterms[®] 2020 for 11 Terms

DPU – Delivered At Place Unloaded (replaces Incoterm[®] 2010 DAT)

- DPU replaces the former Incoterm[®] DAT (Delivered At Terminal). The seller delivers when the goods, once unloaded are placed at the disposal of the buyer at a named place of destination.
- The seller bears all risks involved in bringing the goods to, and unloading them at the named place of destination.



DDP – Delivered Duty Paid

- The seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination.
- The seller bears all the costs and risks involved in bringing the goods to the place of destination. They must clear the products not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.

Differences between Incoterms 2010 and Incoterms 2020

- The main explanations of Incoterms 2020 have remained the same, with a few key updates and changes.
- The main change includes a new DPU term replacing DAT, along with other changes to Incoterms.
- It's imperative that all parties involved in global trade understand these updates and how they may affect your supply chain.

Incoterms[®] 2020 Rules Responsibility Quick Reference Guide

 											
Freight Collect Terms						Freight Prepaid Terms					
Groups	Any Mode or Modes of Transport		Sea and Inland Waterway Transport				Any Mode or Modes of Transport				
Incoterm [®]	EXW	FCA	FAS	FOB	CFR	CIF	CPT	CIP	DAP	DPU	DDP
	Ex Works (Place)	Free Carrier (Place)	Free Alongside Ship (Port)	Free On Board (Port)	Cost and Freight (Port)	Cost Insurance & Freight (Port)	Carriage Paid To (Place)	Carriage & Insurance Paid to (Place)	Delivered at Place (Place)	Delivered at Place Unloaded (Place)	Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Obligations & Charges:											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

*CIF requires at least an insurance with the minimum cover of the Institute Cargo Clause (C) (Number of listed risks, subject to itemized exclusions)

INCOTERMS 2020



EXW	EX WORKS	AGREED PLACE							
FCA	FREE CARRIER	AGREED PLACE							
FAS	FREE ALONGSIDE SHIP	PORT OF LOADING							
FOB	FREE ON BOARD	PORT OF LOADING							
CFR	COST & FREIGHT	PORT OF DESTINATION							
CIF	COST, INSURANCE & FREIGHT	PORT OF DESTINATION							
CPT	COST PAID TO	PLACE OF DESTINATION							
CIP	CARRIER & INSURANCE PAID TO	PLACE OF DESTINATION							
DPU	DELIVERED AT PLACE UNLOADED	PLACE OF DESTINATION							
DAP	DELIVERED AT PLACE	DESTINATION							
DDP	DELIVERED DUTY PAID	DESTINATION							

SELLER'S OBLIGATION

 TRANSFER OF RISK

 BUYER'S OBLIGATION

Thank you

