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Brexit and Incoterms: how three letters can make a big difference

The government's Brexit advice urges businesses trading with the EU to review their contracts for the supply of goods – particularly those based on Incoterms – to ensure that they remain appropriate in the event of "no deal". What are Incoterms, why do they matter and what changes should you make in the light of Brexit?

What are Incoterms and why do they matter?

Incoterms are standard provisions drawn up by the International Chamber of Commerce (ICC) for use in contracts relating to international trade in goods. They are not obligatory but they are widely used in practice.

Incoterms govern the following issues:

- which party has the obligation to arrange transport (known as "carriage") and insurance of the goods;
- which party will be responsible for the costs of transport, insurance and customs duties; and
- at what point delivery is deemed to take place and risk (but not title) passes to the customer.

How does Brexit make a difference?

Under current arrangements, a business which imports goods from the EU will not have to worry about paying customs duties because the UK is part of the EU Customs Union. But in a "no deal" Brexit scenario, tariffs are likely to be payable. Liability to pay tariffs normally rests with the customer, not the supplier. So unless the customer contracts to have goods supplied on DDP (Delivery Duty Paid) terms (or similar), it is

Key Incoterms

The following Incoterms can be used for any mode of transport. They are on a sliding scale, starting with the most supplier-favourable position (EXW) and ending with the most customer-favourable (DDP):

- **EXW:** Ex Works
- **FCA:** Free Carrier
- **CPT:** Carriage Paid To
- **CIP:** Carriage and Insurance Paid to
- **DAT:** Delivery at Terminal
- **DAP:** Delivery at Place
- **DDP:** Delivery Duty Paid

See overleaf for Incoterms relevant to sea and inland waterway transport only.

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likely to be responsible for paying any tariffs imposed by the UK authorities, as well as carrying out any relevant customs formalities so that the goods are cleared for import.

Brexit could also make a difference to obligations to arrange transport. For example, goods passing through the Channel ports or Channel tunnel may be subject to significant delays because of increased border checks. Whilst Incoterms do not stipulate the time for delivery, the party responsible for transport will usually be expected to deliver within a reasonable time – and Brexit may make any such contractual commitments difficult to meet. Transport costs could also increase, e.g. due to the need to pay HGV drivers more per trip because of longer journey times or the need to use different routes to avoid "pinch points" such as the Channel ports.

For suppliers, all these factors are likely to make it less desirable to be the party responsible for transport (even though this may have been an acceptable position in the past); they may therefore prefer to contract on EXW (Ex Works) terms, where the customer takes delivery at the supplier's premises and is responsible for transport, insurance and customs issues (including tariffs).

What changes should you make to your contracts?

For customers contracting on Incoterms, the most favourable position is DDP– whereas for suppliers, the most favourable position is EXW. However, it is important not to approach Incoterms in isolation from the rest of the contract. Other contractual terms can make a significant difference to your exposure, such as provisions imposing specific timing requirements for delivery and those dealing with force majeure and liability. Equally, for supply contracts not based on Incoterms but which involve import from or export to the EU, check their provisions governing responsibility for transportation (and cost), risk and customs duties and assess the impact of a "no deal" Brexit on their fulfilment.

For more analysis of these issues, see our briefing "[Brexit: the impact on contracts.](#)" Fuller definitions of individual Incoterms can be found on the [ICC website](#).

Shipping Incoterms

You may also come across other Incoterms such as the following – which are for use where the transport is by sea or inland waterway *only* (as opposed to where some other mode of transport is involved, such as road or rail – whether on its own or in addition to transport by ship):

- **FAS:** Free Alongside Ship
- **FOB:** Free On Board
- **CFR:** Cost and Freight
- **CIF:** Cost, Insurance and Freight

Again, these are arranged on a sliding scale with FAS being most favourable to the supplier and CIF being most favourable to the customer.

FOR FURTHER INFORMATION, PLEASE CONTACT

10 Snow Hill
London EC1A 2AL
T: +44 (0)20 7295 3000
F: +44 (0)20 7295 3500
www.traverssmith.com



Tom Purton

Partner, Commercial, IP & Technology

E: tom.purton@traverssmith.com
T: +44 (0)20 7295 3277



Richard Brown

Partner, Commercial, IP & Technology

E: richard.brown@traverssmith.com
T: +44 (0)20 7295 3254



Ben Chivers

Partner, Commercial, IP & Technology

E: ben.chivers@traverssmith.com
T: +44 (0)20 7295 3370