

- (i) upon issue of a certificate of Default by a third party (who may without limitation be an independent architect or engineer or a Pre-Arbitral referee of the ICC) if the Bond so provides and the service of such certificate or a certified copy thereof upon the Guarantor, or
 - (ii) if the Bond does not provide for the issue of a certificate by a third party, upon the issue of a certificate of Default by the Guarantor, or
 - (iii) by the final judgement, order or award of a court or tribunal of competent jurisdiction, and the issue of a certificate of Default under paragraph (i) or (ii) shall not restrict the rights of the parties to seek or require the determination of any dispute or difference arising under the Contract or the Bond or the review of any certificate of Default or payment made pursuant thereto by a court or tribunal of competent jurisdiction.
- (k) A copy of any certificate of Default issued under (j) (i) or (ii) shall be given by the Guarantor to the Principal and the Beneficiary forthwith.
- (l) The Guarantor shall consider any claim expeditiously and, if such claim is rejected, shall immediately give notice thereof to the Beneficiary by authenticated tele-transmission or other telefax, facsimile transmission, telex, cable or EDI, confirming the same by letter, setting out the grounds for such refusal including any defences or other matters raised under paragraph (d) of Article 3.

Article 8

Jurisdiction and settlement of disputes

(a) The Applicable Law shall be the law of the country selected by the parties to govern the operation of the Bond and, in the absence of any express choice of law, shall be the law governing the Contract and any dispute or difference arising under these Rules in relation to a Bond shall be determined in accordance with the Applicable Law.

(b) All disputes arising between the Beneficiary, the Principal and the Guarantor or any of them in relation to a Bond governed by these Rules shall, unless otherwise agreed, be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

(c) If the Bond shall exclude the operation of the arbitration provisions of this Article 8, any dispute between the parties to the Bond shall be determined by the courts of the country nominated in the Bond, or, if there is no such nomination, the competent court of the Guarantor's principal place of business or, at the option of the Beneficiary, the competent court of the country in which the branch of the Guarantor which issued the Bond is situated.

C. ICC INCOTERMS 2000: Report of the Secretary-General (A/CN.9/479) [Original: English]

1. By letter of 28 February 2000 (reproduced in annex I), the Secretary-General of the International Chamber of Commerce (ICC) requested the Commission to consider endorsing Incoterms 2000 for worldwide use. This report gives the background to the previous actions of the Commission in respect of Incoterms 1953 and Incoterms 1990 and a short summary of the reasons for the preparation of the current revision. The original English text of Incoterms 2000 is reproduced in annex II to this document. Translations into Arabic, Chinese, French, Spanish or Russian are reproduced in annex II to the respective language versions of this document.

2. At the Commission's first session in 1968, in deciding on its programme of work, the Commission identified Incoterms 1953 as an international instrument of special importance with regard to the harmonization and unification of the law of the international sale of goods.¹ At its second session in 1969, with a view to encouraging the worldwide use of Incoterms 1953, the Commission, requested the Secretary-General to inform the ICC that Incoterms 1953 should be given the widest possible dissemination and to bring the views of the Commission to the attention of the United Nations regional economic commissions.²

3. Amendments to Incoterms were made and additional terms were added in 1976 and 1980. However, those changes in Incoterms were not officially brought to the attention of the Commission and the Commission took no action leading towards endorsing the revision. By the late 1980s ICC decided to completely revise Incoterms 1953 in order to adapt them to contemporary commercial practice. Incoterms 1990 was adopted by the ICC with a date of entry into force on 1 July 1990 and became available as ICC publication no. 460.

4. At its twenty-fifth session in 1992, the Commission considered a request of the Acting Secretary-General of the ICC to endorse Incoterms 1990 for worldwide use. At that session, the Commission was agreed that Incoterms 1990 succeeded in providing a modern set of international rules for the interpretation of the most commonly used trade terms in international trade and took the following decision endorsing Incoterms 1990:

“The United Nations Commission on International Trade Law,

“Expressing its appreciation to the International Chamber of Commerce for having transmitted to it the revised text of Incoterms, which was approved by the Commercial Practices Commission of the International Chamber of Commerce and entered into force on 1 July 1990, and for requesting the Commission to consider endorsing Incoterms 1990 for worldwide use,

“Congratulating the International Chamber of Commerce on having made a further contribution to the facilitation of international trade by revising Incoterms to take

¹Report of the United Nations Commission on International Trade Law on the work of its first session, *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216)*, para. 48.

²Report of the United Nations Commission on International Trade Law on the work of its second session, *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 16 (A/7218)*, para. 60.

account of changes in transportation techniques and to adapt the terms to the increasing use of electronic data interchange,

“Noting that Incoterms constitute a valuable contribution to the facilitation of international trade,

“Commends the use of Incoterms 1990 in international sales transactions.”³

³Report of the United Nations Commission on International Trade Law on the work of its twenty-fifth session, *Official Records of the General Assembly, Forty-seventh Session*, (Supplement No.17 (A/47/17), paras. 160 and 161.

5. With regard to the reasons for the preparation of Incoterms 2000, the Foreword to Incoterms 2000 states:

“Since the creation of Incoterms by ICC in 1936, this undisputed worldwide contractual standard has been regularly updated to keep pace with the development of international trade. Incoterms 2000 take account of the recent spread of customs-free zones, the increased use of electronic communications in business transactions, and changes in transport practices. Incoterms 2000 offer a simpler and clearer presentation of the 13 definitions, all of which have been revised.”

6. Incoterms 2000 has been adopted by the ICC with a date of entry into force on 1 January 2000. It is available from ICC as publication no. 560.

ANNEX I

Letter of Ms. Maria Livanos Cattai, Secretar-General of the International Chamber of Commerce

I am writing to request endorsement of Incoterms 2000—the ICC official rules for the interpretation of trade terms—by the United Nations Commission on International Trade Law.

Incoterms 2000 have been released in September 1999 under ICC publication reference number 560 and have entered into force on 1 January 2000.

Incoterms 2000 are already used in countless commercial sales contracts. Incoterms are contractual terms, the incorporation of which in sales contracts usefully complements the provisions of the United Nations Convention on Contracts for the International Sale of Goods and reduces the risk of misunderstanding that could lead to legal complications.

This text of Incoterms 2000 is the result of a very comprehensive consultation process—in fact, Incoterms 2000 are based on the largest survey among business ever conducted in the history of Incoterms. We are therefore confident that the 13 new Incoterms reflect common commercial practice and respond to a business need for a global standard for the interpretation of trade terms.

Although the only authoritative text of Incoterms 2000 is the English one, ICC has decided to submit Incoterms 2000 to UNCITRAL in the six United Nations official languages. Please note, however, that in case of discrepancies between the various texts, only the English text should be considered as original, all other texts being translations.

ICC trusts that UNCITRAL will appreciate the effort made by ICC to facilitate international trade and to involve all interested parties in the dissemination of legal rules that have proven to reflect the needs of modern commercial transactions. As such, we hope that UNCITRAL will respond favourably to this formal request for endorsement of Incoterms 2000.

Therefore, as with the previous version of this authoritative legal standard, ICC would like to request formal endorsement of Incoterms by UNCITRAL.

ANNEX II

ICC INCOTERMS 2000

Entry into force 1 January 2000

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INTRODUCTION

1. PURPOSE AND SCOPE OF INCOTERMS

The purpose of Incoterms is to provide a set of international rules for the interpretation of the most commonly used trade terms in foreign trade. Thus, the uncertainties of different interpretations of such terms in different countries can be avoided or at least reduced to a considerable degree.

Frequently, parties to a contract are unaware of the different trading practices in their respective countries. This can give rise to misunderstandings, disputes and litigation, with all the waste of time and money that this entails. In order to remedy these problems, the International Chamber of Commerce first published in 1936 a set of international rules for the interpretation of trade terms. These rules were known as “Incoterms 1936”. Amendments and additions were later made in 1953, 1967, 1976, 1980, 1990 and presently in 2000 in order to bring the rules in line with current international trade practices.

It should be stressed that the scope of Incoterms is *limited* to matters relating to the rights and obligations of the parties to the contract of sale with respect to the *delivery of goods sold* (in the sense of “tangibles”, not including “intangibles” such as computer software).

It appears that two particular misconceptions about Incoterms are very common. First, Incoterms are frequently misunderstood as applying to the contract of carriage rather than to the contract of sale. Second, they are sometimes wrongly assumed to provide for all the duties which parties may wish to include in a contract of sale.

As has always been underlined by ICC, Incoterms deal only with the relation between sellers and buyers under the contract of sale, and, moreover, only do so in some very distinct respects.

While it is essential for exporters and importers to consider the very practical relationship between the various contracts needed to perform an international sales transaction—where not only the contract of sale is required, but also contracts of carriage, insurance and financing—Incoterms relate to only one of these contracts, namely the contract of sale.

Nevertheless, the parties’ agreement to use a particular Incoterm would necessarily have implications for the other contracts. To mention a few examples, a seller having agreed to a CFR—or CIF—contract cannot perform such a contract by any other mode of transport than carriage by sea, since under these terms he must present a bill of lading or other maritime document to the buyer which is simply not possible if other modes of transport are used. Furthermore, the document required under a documentary credit would necessarily depend upon the means of transport intended to be used.

Second, Incoterms deal with a number of identified obligations imposed on the parties—such as the seller’s obligation to place the goods at the disposal of the buyer or hand them over for carriage or deliver them at destination—and with the distribution of risk between the parties in these cases.

Further, they deal with the obligations to clear the goods for export and import, the packing of the goods, the buyer’s obligation to take delivery as well as the obligation to provide proof that the respective obligations have been duly fulfilled. Although Incoterms are extremely important for the implementation of the contract of sale, a great number of problems which may occur in such a contract are not dealt with at all, like transfer of ownership and other property rights, breaches of contract and the consequences following from such breaches as well as exemptions from liability in certain situations. It should be stressed that Incoterms are not intended to replace such contract terms that are needed for a complete contract of sale either by the incorporation of standard terms or by individually negotiated terms.

Generally, Incoterms do not deal with the consequences of breach of contract and any exemptions from liability owing to various impediments. These questions must be resolved by other stipulations in the contract of sale and the applicable law.

Incoterms have always been primarily intended for use where goods are sold for delivery across national boundaries: hence, international commercial terms. However, Incoterms are in practice at times also incorporated into contracts for the sale of goods within purely domestic markets. Where Incoterms are so used, the A2 and B2 clauses and any other stipulation of other articles dealing with export and import do, of course, become redundant.

2. WHY REVISIONS OF INCOTERMS?

The main reason for successive revisions of Incoterms has been the need to adapt them to contemporary commercial practice. Thus, in the 1980 revision the term Free Carrier (now FCA) was introduced in order to deal with the frequent case where the reception point in maritime trade was no longer the traditional FOB-point (passing of the ship’s rail) but rather a point on land, prior to loading on board a vessel, where the goods were stowed into a container for subsequent transport by sea or by different means of transport in combination (so-called combined or multimodal transport).

Further, in the 1990 revision of Incoterms, the clauses dealing with the seller’s obligation to provide proof of delivery permitted a replacement of paper documentation by EDI-messages provided the parties had agreed to communicate electronically. Needless to say, efforts are constantly made to improve upon the drafting and presentation of Incoterms in order to facilitate their practical implementation.

3. INCOTERMS 2000

During the process of revision, which has taken about two years, ICC has done its best to invite views and responses to successive drafts from a wide-ranging spectrum of world traders, represented as these various sectors are on the national committees through which ICC operates. Indeed, it has been gratifying to see that this revision process has attracted far more reaction from users around the world than any of the previous revisions of Incoterms. The result of this dialogue is Incoterms 2000, a version which when compared with Incoterms 1990 may appear to have effected few changes. It is clear, however, that Incoterms now enjoy worldwide recognition and ICC has therefore decided to consolidate upon that recognition and avoid change for its own sake. On the other hand, serious efforts have been made to ensure that the wording used in Incoterms 2000 clearly and accurately reflects trade practice. Moreover, substantive changes have been made in two areas:

- the customs clearance and payment of duty obligations under FAS and DEQ; and
- the loading and unloading obligations under FCA.

All changes, whether substantive or formal have been made on the basis of thorough research among users of Incoterms and particular regard has been given to queries received since 1990 by the Panel of Incoterms Experts, set up as an additional service to the users of Incoterms.

4. INCORPORATION OF INCOTERMS INTO THE CONTRACT OF SALE

In view of the changes made to Incoterms from time to time, it is important to ensure that where the parties intend to incorporate Incoterms into their contract of sale, an express reference is always made to the current version of Incoterms. This may easily be overlooked when, for example, a reference has been made to an earlier version in standard contract forms or in order forms used by merchants. A failure to refer to the current version may then result in disputes as to whether the parties intended to incorporate that version or an earlier version as a part of their contract. Merchants wishing to use Incoterms 2000 should therefore clearly specify that their contract is governed by "Incoterms 2000".

5. THE STRUCTURE OF INCOTERMS

In 1990, for ease of understanding, the terms were grouped in four basically different categories; namely starting with the term whereby the seller only makes the goods available to the buyer at the seller's own premises (the "E"-term Ex works); followed by the second group whereby the seller is called upon to deliver the goods to a carrier appointed by the buyer (the "F"-terms FCA, FAS and FOB); continuing with the "C"-terms where the seller has to contract for carriage, but without assuming the risk of loss of or damage to the goods or additional costs due to events occurring after shipment and dispatch (CFR, CIF, CPT and CIP); and, finally, the "D"-terms whereby the seller has to bear all costs and risks needed to bring the goods to the place of destination (DAF, DES, DEQ, DDU and DDP). The following chart sets out this classification of the trade terms.

INCOTERMS 2000

<i>Group E</i>	<i>Departure</i>
	EXW Ex Works (... named place)
<i>Group F</i>	<i>Main carriage unpaid</i>
	FCA Free Carrier (... named place)

FAS Free Alongside Ship (... named port of shipment)

FOB Free On Board (... named port of shipment)

Group C *Main carriage paid*

CFR Cost and Freight (... named port of destination)

CIF Cost, Insurance and Freight (... named port of destination)

CPT Carriage Paid To (... named place of destination)

CIP Carriage and Insurance Paid To (... named place of destination)

Group D *Arrival*

DAF Delivered At Frontier (... named place)

DES Delivered Ex Ship (... named port of destination)

DEQ Delivered Ex Quay (... named port of destination)

DDU Delivered Duty Unpaid (... named place of destination)

DDP Delivered Duty Paid (... named place of destination)

Further, under all terms, as in Incoterms 1990, the respective obligations of the parties have been grouped under 10 headings where each heading on the seller's side "mirrors" the position of the buyer with respect to the same subject matter.

6. TERMINOLOGY

While drafting Incoterms 2000, considerable efforts have been made to achieve as much consistency as possible and desirable with respect to the various expressions used throughout the thirteen terms. Thus, the use of different expressions intended to convey the same meaning has been avoided. Also, whenever possible, the same expressions as appear in the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) have been used.

"shipper"

In some cases it has been necessary to use the same term to express two different meanings simply because there has been no suitable alternative. Traders will be familiar with this difficulty both in the context of contracts of sale and also of contracts of carriage. Thus, for example, the term "shipper" signifies both the person handing over the goods for carriage and the person who makes the contract with the carrier: however, these two "shippers" may be different persons, for example under a FOB contract where the seller would hand over the goods for carriage and the buyer would make the contract with the carrier.

"delivery"

It is particularly important to note that the term "delivery" is used in two different senses in Incoterms. First, it is used to determine when the seller has fulfilled his delivery obligation which is specified in the A4 clauses throughout Incoterms. Second, the term "delivery" is also used in the context of the buyer's obligation to take or accept delivery of the goods, an obligation which appears in the B4 clauses throughout Incoterms. Used in this second context, the word "delivery" means first that the buyer "accepts" the very nature of the "C"-terms, namely that the seller fulfils his obligations upon the shipment of the goods and, second that the buyer is obliged to receive the goods. This latter

obligation is important so as to avoid unnecessary charges for storage of the goods until they have been collected by the buyer. Thus, for example under CFR and CIF contracts, the buyer is bound to accept delivery of the goods and to receive them from the carrier and if the buyer fails to do so, he may become liable to pay damages to the seller who has made the contract of carriage with the carrier or, alternatively, the buyer might have to pay demurrage charges resting upon the goods in order to obtain the carrier's release of the goods to him. When it is said in this context that the buyer must "accept delivery", this does not mean that the buyer has accepted the goods as conforming with the contract of sale, but only that he has accepted that the seller has performed his obligation to hand the goods over for carriage in accordance with the contract of carriage which he has to make under the A3 *a*) clauses of the "C"-terms. So, if the buyer upon receipt of the goods at destination were to find that the goods did not conform to the stipulations in the contract of sale, he would be able to use any remedies which the contract of sale and the applicable law gave him against the seller, matters which, as has already been mentioned, lie entirely outside the scope of Incoterms.

Where appropriate, Incoterms 2000, have used the expression "placing the goods at the disposal of" the buyer when the goods are made available to the buyer at a particular place. This expression is intended to bear the same meaning as that of the phrase "handing over the goods" used in the 1980 United Nations Convention on Contracts for the International Sale of Goods.

"usual"

The word "usual" appears in several terms, for example in EXW with respect to the time of delivery (A4) and in the "C"-terms with respect to the documents which the seller is obliged to provide and the contract of carriage which the seller must procure (A8, A3). It can, of course, be difficult to tell precisely what the word "usual" means, however, in many cases, it is possible to identify what persons in the trade usually do and this practice will then be the guiding light. In this sense, the word "usual" is rather more helpful than the word "reasonable", which requires an assessment not against the world of practice but against the more difficult principle of good faith and fair dealing. In some circumstances it may well be necessary to decide what is "reasonable". However, for the reasons given, in Incoterms the word "usual" has been generally preferred to the word "reasonable".

"charges"

With respect to the obligation to clear the goods for import it is important to determine what is meant by "charges" which must be paid upon import of the goods. In Incoterms 1990 the expression "official charges payable upon exportation and importation of the goods" was used in DDP A6. In Incoterms 2000 DDP A6 the word "official" has been deleted, the reason being that this word gave rise to some uncertainty when determining whether the charge was "official" or not. No change of substantive meaning was intended through this deletion. The "charges" which must be paid only concern such charges as are a necessary consequence of the import as such and which thus have to be paid according to the applicable import regulations. Any additional charges levied by private parties in connection with the import are not to be included in these charges, such as charges for storage unrelated to the clearance obligation. However, the performance of that obligation may well result in some costs to customs brokers or freight forwarders if the party bearing the obligation does not do the work himself.

"ports", "places", "points" and "premises"

So far as concerns the place at which the goods are to be delivered, different expressions are used in Incoterms. In the terms intended to be used exclusively for carriage of goods by sea—such as FAS, FOB, CFR, CIF, DES and DEQ—the expressions "port

of shipment" and "port of destination" have been used. In all other cases the word "place" has been used. In some cases, it has been deemed necessary also to indicate a "point" within the port or place as it may be important for the seller to know not only that the goods should be delivered in a particular area like a city but also where within that area the goods should be placed at the disposal of the buyer. Contracts of sale would frequently lack information in this respect and Incoterms therefore stipulate that if no specific point has been agreed within the named place, and if there are several points available, the seller may select the point which best suits his purpose (as an example see FCA A4). Where the delivery point is the seller's "place" the expression "the seller's premises" (FCA A4) has been used.

"ship" and "vessel"

In the terms intended to be used for carriage of goods by sea, the expressions "ship" and "vessel" are used as synonyms. Needless to say, the term "ship" would have to be used when it is an ingredient in the trade term itself such as in "free alongside ship" (FAS) and "delivery ex ship" (DES). Also, in view of the traditional use of the expression "passed the ship's rail" in FOB, the word "ship" has had to be used in that connection.

"checking" and "inspection"

In the A9 and B9 clauses of Incoterms the headings "checking—packaging and marking" and "inspection of the goods" respectively have been used. Although the words "checking" and "inspection" are synonyms, it has been deemed appropriate to use the former word with respect to the seller's delivery obligation under A4 and to reserve the latter for the particular case when a "pre-shipment inspection" is performed, since such inspection normally is only required when the buyer or the authorities of the export or import country want to ensure that the goods conform with contractual or official stipulations before they are shipped.

7. THE SELLER'S DELIVERY OBLIGATIONS

Incoterms focus on the seller's delivery obligation. The precise distribution of functions and costs in connection with the seller's delivery of the goods would normally not cause problems where the parties have a continuing commercial relationship. They would then establish a practice between themselves ("course of dealing") which they would follow in subsequent dealings in the same manner as they have done earlier. However, if a new commercial relationship is established or if a contract is made through the medium of brokers—as is common in the sale of commodities—one would have to apply the stipulations of the contract of sale and, whenever Incoterms 2000 have been incorporated into that contract, apply the division of functions, costs and risks following therefrom.

It would, of course, have been desirable if Incoterms could specify in as detailed a manner as possible the duties of the parties in connection with the delivery of the goods. Compared with Incoterms 1990, further efforts have been made in this respect in some specified instances (see for example FCA A4). But it has not been possible to avoid reference to customs of the trade in FAS and FOB A4 ("in the manner customary at the port"), the reason being that particularly in commodity trade the exact manner in which the goods are delivered for carriage in FAS and FOB contracts vary in the different sea ports.

8. PASSING OF RISKS AND COSTS RELATING TO THE GOODS

The risk of loss of or damage to the goods, as well as the obligation to bear the costs relating to the goods, passes from the

seller to the buyer when the seller has fulfilled his obligation to deliver the goods. Since the buyer should not be given the possibility to delay the passing of the risk and costs, all terms stipulate that the passing of risk and costs may occur even before delivery, if the buyer does not take delivery as agreed or fails to give such instructions (with respect to time for shipment and/or place for delivery) as the seller may require in order to fulfil his obligation to deliver the goods. It is a requirement for such premature passing of risk and costs that the goods have been identified as intended for the buyer or, as is stipulated in the terms, set aside for him (appropriation).

This requirement is particularly important under EXW, since under all other terms the goods would normally have been identified as intended for the buyer when measures have been taken for their shipment or dispatch ("F"- and "C"-terms) or their delivery at destination ("D"-terms). In exceptional cases, however, the goods may have been sent from the seller in bulk without identification of the quantity for each buyer and, if so, passing of risk and cost does not occur before the goods have been appropriated as aforesaid (cf. also article 69.3 of the 1980 United Nations Convention on Contracts for the International Sale of Goods).

9. THE TERMS

9.1 *The "E"-term is the term in which the seller's obligation is at its minimum:* the seller has to do no more than place the goods at the disposal of the buyer at the agreed place—usually at the seller's own premises. On the other hand, as a matter of practical reality, the seller would frequently assist the buyer in loading the goods on the latter's collecting vehicle. Although EXW would better reflect this if the seller's obligations were to be extended so as to include loading, it was thought desirable to retain the traditional principle of the seller's minimum obligation under EXW so that it could be used for cases where the seller does not wish to assume any obligation whatsoever with respect to the loading of the goods. If the buyer wants the seller to do more, this should be made clear in the contract of sale.

9.2 *The "F"-terms* require the seller to deliver the goods for carriage as instructed by the buyer. The point at which the parties intend delivery to occur in the FCA term has caused difficulty because of the wide variety of circumstances which may surround contracts covered by this term. Thus, the goods may be loaded on a collecting vehicle sent by the buyer to pick them up at the seller's premises; alternatively, the goods may need to be unloaded from a vehicle sent by the seller to deliver the goods at a terminal named by the buyer. Incoterms 2000 take account of these alternatives by stipulating that, when the place named in the contract as the place of delivery is the seller's premises, delivery is complete when the goods are loaded on the buyer's collecting vehicle and, in other cases, delivery is complete when the goods are placed at the disposal of the buyer not unloaded from the seller's vehicle. The variations mentioned for different modes of transport in FCA A4 of Incoterms 1990 are not repeated in Incoterms 2000.

The *delivery point* under FOB, which is the same under CFR and CIF, has been left unchanged in Incoterms 2000 in spite of a considerable debate. Although the notion under FOB to deliver the goods "across the ship's rail" nowadays may seem inappropriate in many cases, it is nevertheless understood by merchants and applied in a manner which takes account of the goods and the available loading facilities. It was felt that a change of the FOB-point would create unnecessary confusion, particularly with respect to sale of commodities carried by sea typically under charter parties.

Unfortunately, the word "FOB" is used by some merchants merely to indicate *any* point of delivery—such as "FOB factory",

"FOB plant", "FOB Ex seller's works" or other inland points—thereby neglecting what the abbreviation means: **Free On Board**. It remains the case that such use of "FOB" tends to create confusion and should be avoided.

There is an important change of FAS relating to the obligation to clear the goods for export, since it appears to be the most common practice to put this duty on the seller rather than on the buyer. In order to ensure that this change is duly noted it has been marked with capital letters in the preamble of FAS.

9.3 *The "C"-terms* require the seller to contract for carriage on usual terms at his own expense. Therefore, a point up to which he would have to pay transport costs must necessarily be indicated after the respective "C"-term. Under the CIF and CIP terms the seller also has to take out insurance and bear the insurance cost. Since the point for the division of costs is fixed at a point in the country of destination, the "C"-terms are frequently mistakenly believed to be arrival contracts, in which the seller would bear all risks and costs until the goods have actually arrived at the agreed point. However, it must be stressed that the "C"-terms are of the same nature as the "F"-terms in that the seller fulfils the contract in the country of shipment or dispatch. Thus, the contracts of sale under the "C"-terms, like the contracts under the "F"-terms, fall within the category of shipment contracts.

It is in the nature of shipment contracts that, while the seller is bound to pay the normal transport cost for the carriage of the goods by a usual route and in a customary manner to the agreed place, the risk of loss of or damage to the goods, as well as additional costs resulting from events occurring after the goods having been appropriately delivered for carriage, fall upon the buyer. Hence, the "C"-terms are distinguishable from all other terms in that they contain two "critical" points, one indicating the point to which the seller is bound to arrange and bear the costs of a contract of carriage and another one for the allocation of risk. For this reason, the greatest caution must be observed when adding obligations of the seller to the "C"-terms which seek to extend the seller's responsibility beyond the aforementioned "critical" point for the allocation of risk. It is of the very essence of the "C"-terms that the seller is relieved of any further risk and cost after he has duly fulfilled his contract by contracting for carriage and handing over the goods to the carrier and by providing for insurance under the CIF- and CIP-terms.

The essential nature of the "C"-terms as shipment contracts is also illustrated by the common use of documentary credits as the preferred mode of payment used in such terms. Where it is agreed by the parties to the sale contract that the seller will be paid by presenting the agreed shipping documents to a bank under a documentary credit, it would be quite contrary to the central purpose of the documentary credit for the seller to bear further risks and costs after the moment when payment had been made under documentary credits or otherwise upon shipment and dispatch of the goods. Of course, the seller would have to bear the cost of the contract of carriage irrespective of whether freight is pre-paid upon shipment or is payable at destination (freight collect); however, additional costs which may result from events occurring subsequent to shipment and dispatch are necessarily for the account of the buyer.

If the seller has to provide a contract of carriage which involves payment of duties, taxes and other charges, such costs will, of course, fall upon the seller to the extent that they are for his account under that contract. This is now explicitly set forth in the A6 clause of all "C"-terms.

If it is customary to procure several contracts of carriage involving transshipment of the goods at intermediate places in order to reach the agreed destination, the seller would have to pay all these costs, including any costs incurred when the goods are transhipped

from one means of conveyance to the other. If, however, the carrier exercised his rights under a transshipment—or similar clause—in order to avoid unexpected hindrances (such as ice, congestion, labour disturbances, government orders, war or warlike operations) then any additional cost resulting therefrom would be for the account of the buyer, since the seller's obligation is limited to procuring the usual contract of carriage.

It happens quite often that the parties to the contract of sale wish to clarify the extent to which the seller should procure a contract of carriage including the costs of discharge. Since such costs are normally covered by the freight when the goods are carried by regular shipping lines, the contract of sale will frequently stipulate that the goods are to be so carried or at least that they are to be carried under "liner terms". In other cases, the word "landed" is added after CFR or CIF. However, it is advisable not to use abbreviations added to the "C"-terms unless, in the relevant trade, the meaning of the abbreviations is clearly understood and accepted by the contracting parties or under any applicable law or custom of the trade.

In particular, the seller should not—and indeed could not, without changing the very nature of the "C"-terms—undertake any obligation with respect to the arrival of the goods at destination, since the risk of any delay during the carriage is borne by the buyer. Thus, any obligation with respect to time must necessarily refer to the place of shipment or dispatch, for example, "shipment (dispatch) not later than...". An agreement for example, "CFR Hamburg not later than..." is really a misnomer and thus open to different possible interpretations. The parties could be taken to have meant either that the goods must actually arrive at Hamburg at the specified date, in which case the contract is not a shipment contract but an arrival contract or, alternatively, that the seller must ship the goods at such a time that they would normally arrive at Hamburg before the specified date unless the carriage would have been delayed because of unforeseen events.

It happens in commodity trades that goods are bought while they are at sea and that, in such cases, the word "afloat" is added after the trade term. Since the risk of loss of or damage to the goods would then, under the CFR- and CIF-terms, have passed from the seller to the buyer, difficulties of interpretation might arise. One possibility would be to maintain the ordinary meaning of the CFR- and CIF-terms with respect to the allocation of risk between seller and buyer, namely that risk passes on shipment: this would mean that the buyer might have to assume the consequences of events having already occurred at the time when the contract of sale enters into force. The other possibility would be to let the passing of the risk coincide with the time when the contract of sale is concluded. The former possibility might well be practical, since it is usually impossible to ascertain the condition of the goods while they are being carried. For this reason the 1980 United Nations Convention on Contracts for the International Sale of Goods article 68 stipulates that "if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage". There is, however, an exception to this rule when "the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer". Thus, the interpretation of a CFR- or CIF-term with the addition of the word "afloat" will depend upon the law applicable to the contract of sale. The parties are advised to ascertain the applicable law and any solution which might follow therefrom. In case of doubt, the parties are advised to clarify the matter in their contract.

In practice, the parties frequently continue to use the traditional expression C&F (or C and F, C+F). Nevertheless, in most cases it would appear that they regard these expressions as equivalent to CFR. In order to avoid difficulties of interpreting their contract the

parties should use the correct Incoterm which is CFR, the only worldwide-accepted standard abbreviation for the term "Cost and Freight (... named port of destination)".

CFR and CIF in A8 of Incoterms 1990 obliged the seller to provide a copy of the charter party whenever his transport document (usually the bill of lading) contained a reference to the charter party, for example, by the frequent notation "all other terms and conditions as per charter party". Although, of course, a contracting party should always be able to ascertain all terms of his contract—preferably at the time of the conclusion of the contract—it appears that the practice to provide the charterparty as aforesaid has created problems particularly in connection with documentary credit transactions. The obligation of the seller under CFR and CIF to provide a copy of the charterparty together with other transport documents has been deleted in Incoterms 2000.

Although the A8 clauses of Incoterms seek to ensure that the seller provides the buyer with "proof of delivery", it should be stressed that the seller fulfils that requirement when he provides the "usual" proof. Under CPT and CIP it would be the "usual transport document" and under CFR and CIF a bill of lading or a sea waybill. The transport documents must be "clean", meaning that they must not contain clauses or notations expressly declaring a defective condition of the goods and/or the packaging. If such clauses or notations appear in the document, it is regarded as "unclean" and would then not be accepted by banks in documentary credit transactions. However, it should be noted that a transport document even without such clauses or notations would usually not provide the buyer with incontrovertible proof as against the carrier that the goods were shipped in conformity with the stipulations of the contract of sale. Usually, the carrier would, in standardized text on the front page of the transport document, refuse to accept responsibility for information with respect to the goods by indicating that the particulars inserted in the transport document constitute the shipper's declarations and therefore that the information is only "said to be" as inserted in the document. Under most applicable laws and principles, the carrier must at least use reasonable means of checking the correctness of the information and his failure to do so may make him liable to the consignee. However, in container trade, the carrier's means of checking the contents in the container would not exist unless he himself was responsible for stowing the container.

There are only two terms which deal with insurance, namely CIF and CIP. Under these terms the seller is obliged to procure insurance for the benefit of the buyer. In other cases it is for the parties themselves to decide whether and to what extent they want to cover themselves by insurance. Since the seller takes out insurance for the benefit of the buyer, he would not know the buyer's precise requirements. Under the Institute Cargo Clauses drafted by the Institute of London Underwriters, insurance is available in "minimum cover" under Clause C, "medium cover" under Clause B and "most extended cover" under Clause A. Since in the sale of commodities under the CIF term the buyer may wish to sell the goods in transit to a subsequent buyer who in turn may wish to resell the goods again, it is impossible to know the insurance cover suitable to such subsequent buyers and, therefore, the minimum cover under CIF has traditionally been chosen with the possibility for the buyer to require the seller to take out additional insurance. Minimum cover is however unsuitable for sale of manufactured goods where the risk of theft, pilferage or improper handling or custody of the goods would require more than the cover available under Clause C. Since CIP, as distinguished from CIF, would normally not be used for the sale of commodities, it would have been feasible to adopt the most extended cover under CIP rather than the minimum cover under CIF. But to vary the seller's insurance obligation under CIF and CIP would lead to confusion and both terms therefore limit the seller's insurance obligation to the minimum cover. It is particularly important for the CIP-buyer to

observe this: should additional cover be required, he should agree with the seller that the latter could take out additional insurance or, alternatively, arrange for extended insurance cover himself. There are also particular instances where the buyer may wish to obtain even more protection than is available under Institute Clause A, for example insurance against war, riots, civil commotion, strikes or other labour disturbances. If he wishes the seller to arrange such insurance he must instruct him accordingly in which case the seller would have to provide such insurance if procurable.

9.4 The “D”-terms are different in nature from the “C”-terms, since the seller according to the “D”-terms is responsible for the arrival of the goods at the agreed place or point of destination at the border or within *the country of import*. The seller must bear all risks and costs in bringing the goods thereto. Hence, the “D”-terms signify *arrival contracts*, while the “C”-terms evidence *departure* (shipment) *contracts*.

Under the “D”-terms except DDP the seller does not have to deliver the goods cleared for import *in the country of destination*.

Traditionally, the seller had the obligation to clear the goods for import under DEQ, since the goods had to be landed on the quay and thus were brought into the country of import. But owing to changes in customs clearance procedures in most countries, it is now more appropriate that the party domiciled in the country concerned undertakes the clearance and pays the duties and other charges. Thus, a change in DEQ has been made for the same reason as the change in FAS previously mentioned. As in FAS, in DEQ the change has been marked with capital letters in the preamble.

It appears that in many countries trade terms not included in Incoterms are used particularly in railway traffic (“franco border”, “franco-frontière”, “Frei Grenze”). However, under such terms it is normally not intended that the seller should assume the risk of loss of or damage to goods during the transport up to the border. It would be preferable in these circumstances to use CPT indicating the border. If, on the other hand, the parties intend that the seller should bear the risk during the transport, DAF indicating the border would be appropriate.

The DDU term was added in the 1990 version of Incoterms. The term fulfils an important function whenever the seller is prepared to deliver the goods in the country of destination without clearing the goods for import and paying the duty. In countries where import clearance may be difficult and time consuming, it may be risky for the seller to undertake an obligation to deliver the goods beyond the customs clearance point. Although, according to DDU B5 and B6, the buyer would have to bear the additional risks and costs which might follow from his failure to fulfil his obligations to clear the goods for import, the seller is advised not to use the DDU term in countries where difficulties might be expected in clearing the goods for import.

10. THE EXPRESSION “NO OBLIGATION”

As appears from the expressions “the seller must” and “the buyer must” Incoterms are only concerned with the obligations which the parties owe to each other. The words “No obligation” have therefore been inserted whenever one party does not owe an obligation to the other party. Thus, if for instance according to A3 of the respective term the seller has to arrange and pay for the contract of carriage we find the words “No obligation” under the heading “contract of carriage” in B3 *a*) setting forth the buyer’s position. Again, where neither party owes the other an obligation, the words “No obligation” will appear with respect to *both* parties, for example, with respect to insurance.

In either case, it is important to point out that even though one party may be under “No obligation” towards the other to perform a certain task, this does not mean that it is not in his interest to perform that task. Thus, for example, just because a CFR buyer owes his seller no duty to make a contract of insurance under B4, it is clearly in his interest to make such a contract, the seller being under no such obligation to procure insurance cover under A4.

11. VARIANTS OF INCOTERMS

In practice, it frequently happens that the parties themselves by adding words to an Incoterm seek further precision than the term could offer. It should be underlined that Incoterms give no guidance whatsoever for such additions. Thus, if the parties cannot rely on a well-established custom of the trade for the interpretation of such additions they may encounter serious problems when no consistent understanding of the additions could be proven.

If for instance the common expressions “FOB stowed” or “EXW loaded” are used, it is impossible to establish a worldwide understanding to the effect that the seller’s obligations are extended not only with respect to the cost of actually loading the goods in the ship or on the vehicle respectively but also include the risk of fortuitous loss of or damage to the goods in the process of stowage and loading. For these reasons, the parties are strongly advised to clarify whether they only mean that the function or the cost of the stowage and loading operations should fall upon the seller or whether he should also bear the risk until the stowage and loading has actually been completed. These are questions to which Incoterms do not provide an answer: consequently, if the contract too fails expressly to describe the parties’ intentions, the parties may be put to much unnecessary trouble and cost.

Although Incoterms 2000 do not provide for many of these commonly used variants, the preambles to certain trade terms do alert the parties to the need for special contractual terms if the parties wish to go beyond the stipulations of Incoterms.

EXW the added obligation for the seller to load the goods on the buyer’s collecting vehicle;
CIF/CIP the buyer’s need for additional insurance;
DEQ the added obligation for the seller to pay for costs after discharge.

In some cases sellers and buyers refer to commercial practice in liner and charter party trade. In these circumstances, it is necessary to clearly distinguish between the obligations of the parties under the contract of carriage and their obligations to each other under the contract of sale. Unfortunately, there are no authoritative definitions of expressions such as “liner terms” and “terminal handling charges” (THC). Distribution of costs under such terms may differ in different places and change from time to time. The parties are recommended to clarify in the contract of sale how such costs should be distributed between themselves.

Expressions frequently used in charter parties, such as “FOB stowed”, “FOB stowed and trimmed”, are sometimes used in contracts of sale in order to clarify to what extent the seller under FOB has to perform stowage and trimming of the goods onboard the ship. Where such words are added, it is necessary to clarify in the contract of sale whether the added obligations only relate to costs or to both costs and risks.

As has been said, every effort has been made to ensure that Incoterms reflect the most common commercial practice. However in some cases—particularly where Incoterms 2000 differ from Incoterms 1990—the parties may wish the trade terms to operate differently. They are reminded of such options in the preamble of the terms signalled by the word “However”.

12. CUSTOMS OF THE PORT OR OF A PARTICULAR TRADE

Since Incoterms provide a set of terms for use in different trades and regions it is impossible always to set forth the obligations of the parties with precision. To some extent it is therefore necessary to refer to the custom of the port or of the particular trade or to the practices which the parties themselves may have established in their previous dealings (cf. article 9 of the 1980 United Nations Convention on Contracts for the International Sale of Goods). It is of course desirable that sellers and buyers keep themselves duly informed of such customs when they negotiate their contract and that, whenever uncertainty arises, they clarify their legal position by appropriate clauses in their contract of sale. Such special provisions in the individual contract would supersede or vary anything that is set forth as a rule of interpretation in the various Incoterms.

13. THE BUYER'S OPTIONS AS TO THE PLACE OF SHIPMENT

In some situations, it may not be possible at the time when the contract of sale is entered into to decide precisely on the exact point or even the place where the goods should be delivered by the seller for carriage. For instance reference might have been made at this stage merely to a "range" or to a rather large place, for example, seaport, and it is then usually stipulated that the buyer has the right or duty to name later on the more precise point within the range or the place. If the buyer has a duty to name the precise point as aforesaid his failure to do so might result in liability to bear the risks and additional costs resulting from such failure (B5/B7 of all terms). In addition, the buyer's failure to use his right to indicate the point may give the seller the right to select the point which best suits his purpose (FCA A4).

14. CUSTOMS CLEARANCE

The term "customs clearance" has given rise to misunderstandings. Thus, whenever reference is made to an obligation of the seller or the buyer to undertake obligations in connection with passing the goods through customs of the country of export or import it is now made clear that this obligation does not only include the payment of duty and other charges but also the performance and payment of whatever administrative matters are connected with the passing of the goods through customs and the information to the authorities in this connection. Further, it has—although quite wrongfully—been considered in some quarters inappropriate to use terms dealing with the obligation to clear the goods through customs when, as in intra-European Union trade or other free trade areas, there is no longer any obligation to pay duty and no restrictions relating to import or export. In order to clarify the situation, the words "*where applicable*" have been added in the A2 and B2, A6 and B6 clauses of the relevant Incoterms *in order for them to be used without any ambiguity where no customs procedures are required*.

It is normally desirable that customs clearance is arranged by the party domiciled in the country where such clearance should take place or at least by somebody acting there on his behalf. Thus, the exporter should normally clear the goods for export, while the importer should clear the goods for import.

Incoterms 1990 departed from this under the trade terms EXW and FAS (export clearance duty on the buyer) and DEQ (import clearance duty on the seller) but in Incoterms 2000 FAS and DEQ place the duty of clearing the goods for export on the seller and to clear them for import on the buyer respectively, while EXW—representing the seller's minimum obligation—has been left unamended (export clearance duty on the buyer). Under DDP the

seller specifically agrees to do what follows from the very name of the term—**Delivered Duty Paid**—namely to clear the goods for import and pay any duty as a consequence thereof.

15. PACKAGING

In most cases, the parties would know beforehand which packaging is required for the safe carriage of the goods to destination. However, since the seller's obligation to pack the goods may well vary according to the type and duration of the transport envisaged, it has been felt necessary to stipulate that the seller is obliged to pack the goods in such a manner as is required for the transport, but only to the extent that the circumstances relating to the transport are made known to him before the contract of sale is concluded (cf. articles 35.1. and 35.2(b) of the 1980 United Nations Convention on Contracts for the International Sale of Goods where the goods, including packaging, must be "fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement").

16. INSPECTION OF GOODS

In many cases, the buyer may be well advised to arrange for inspection of the goods before or at the time they are handed over by the seller for carriage (so-called pre-shipment inspection or PSI). Unless the contract stipulates otherwise, the buyer would himself have to pay the cost for such inspection that is arranged in his own interest. However, if the inspection has been made in order to enable the seller to comply with any mandatory rules applicable to the export of the goods in his own country, the seller would have to pay for that inspection, unless the EXW term is used, in which case the costs of such inspection are for the account of the buyer.

17. MODE OF TRANSPORT AND THE APPROPRIATE INCOTERM 2000

Any mode of transport

<i>Group E</i>	EXW	Ex Works (... named place)
<i>Group F</i>	FCA	Free Carrier (... named place)
<i>Group C</i>	CPT	Carriage Paid To (... named place of destination)
	CIP	Carriage and Insurance Paid To (... named place of destination)
<i>Group D</i>	DAF	Delivered At Frontier (... named place)
	DDU	Delivered Duty Unpaid (... named place of destination)
	DDP	Delivered Duty Paid (... named place of destination)

Maritime and inland waterway transport only

<i>Group F</i>	FAS	Free Alongside Ship (... named port of shipment)
	FOB	Free On Board (... named port of shipment)
<i>Group C</i>	CFR	Cost and Freight (... named port of destination)
	CIF	Cost, Insurance and Freight (... named port of destination)
<i>Group D</i>	DES	Delivered Ex Ship (... named port of destination)
	DEQ	Delivered Ex Quay (... named port of destination)

18. THE RECOMMENDED USE

In some cases the preamble recommends the use or non-use of a particular term. This is particularly important with respect to the choice between FCA and FOB. Regrettably, merchants continue to use FOB when it is totally out of place thereby causing the seller to incur risks subsequent to the handing over of the goods to the carrier named by the buyer. FOB is only appropriate to use where the goods are intended to be delivered “across the ship’s rail” or, in any event, *to the ship* and not where the goods are handed over *to the carrier* for subsequent entry into the ship, for example stowed in containers or loaded on lorries or wagons in so-called roll on—roll off traffic. Thus, a *strong warning* has been made in the preamble of FOB that the term *should not be used* when the parties do not intend delivery across the ship’s rail.

It happens that the parties by mistake use terms intended for carriage of goods by sea also when another mode of transport is contemplated. This may put the seller in the unfortunate position that he cannot fulfil his obligation to tender the proper document to the buyer (for example a bill of lading, sea waybill or the electronic equivalent). The chart printed at paragraph 17 above makes clear which trade term in Incoterms 2000 it is appropriate to use for which mode of transport. Also, it is indicated in the preamble of each term whether it can be used for all modes of transport or only for carriage of goods by sea.

19. THE BILL OF LADING AND ELECTRONIC COMMERCE

Traditionally, the on board bill of lading has been the only acceptable document to be presented by the seller under the CFR and CIF terms. The bill of lading fulfils three important functions, namely:

- proof of delivery of the goods on board the vessel;
- evidence of the contract of carriage; and
- a means of transferring rights to the goods in transit to another party by the transfer of the paper document to him.

Transport documents other than the bill of lading would fulfil the two first-mentioned functions, but would not control the delivery of the goods at destination or enable a buyer to sell the goods in transit by surrendering the paper document to his buyer. Instead, other transport documents would name the party entitled to receive the goods at destination. The fact that the possession of the bill of lading is required in order to obtain the goods from the carrier at destination makes it particularly difficult to replace by electronic means of communication.

Further, it is customary to issue bills of lading in several originals but it is, of course, of vital importance for a buyer or a bank acting upon his instructions in paying the seller to ensure that all originals are surrendered by the seller (so-called “full set”). This is also a requirement under the ICC Rules for Documentary Credits (the so-called ICC Uniform Customs and Practice, “UCP”; current version at date of publication of Incoterms 2000: ICC publication 500).

The transport document must evidence not only delivery of the goods to the carrier but also that the goods, as far as could be ascertained by the carrier, were received in good order and condition. Any notation on the transport document which would indicate that the goods had not been in such condition would make the document “unclean” and would thus make it unacceptable under the UCP.

In spite of the particular legal nature of the bill of lading it is expected that it will be replaced by electronic means in the near future. The 1990 version of Incoterms had already taken this ex-

pected development into proper account. According to the A8 clauses, paper documents may be replaced by electronic messages provided the parties have agreed to communicate electronically. Such messages could be transmitted directly to the party concerned or through a third party providing added-value services. One such service that can be usefully provided by a third party is registration of successive holders of a bill of lading. Systems providing such services, such as the so-called BOLERO service, may require further support by appropriate legal norms and principles as evidenced by the CMI 1990 Rules for Electronic Bills of Lading and articles 16 and 17 of the 1996 UNCITRAL Model Law on Electronic Commerce.

20. NON-NEGOTIABLE TRANSPORT DOCUMENTS INSTEAD OF BILLS OF LADING

In recent years, a considerable simplification of documentary practices has been achieved. Bills of lading are frequently replaced by non-negotiable documents similar to those which are used for other modes of transport than carriage by sea. These documents are called “sea waybills”, “liner waybills”, “freight receipts”, or variants of such expressions. Non-negotiable documents are quite satisfactory to use except where the buyer wishes to sell the goods in transit by surrendering a paper document to the new buyer. In order to make this possible, the obligation of the seller to provide a bill of lading under CFR and CIF must necessarily be retained. However, when the contracting parties know that the buyer does not contemplate selling the goods in transit, they may specifically agree to relieve the seller from the obligation to provide a bill of lading, or, alternatively, they may use CPT and CIP where there is no requirement to provide a bill of lading.

21. THE RIGHT TO GIVE INSTRUCTIONS TO THE CARRIER

A buyer paying for the goods under a “C”-term should ensure that the seller upon payment is prevented from disposing of the goods by giving new instructions to the carrier. Some transport documents used for particular modes of transport (air, road or rail) offer the contracting parties a possibility to bar the seller from giving such new instructions to the carrier by providing the buyer with a particular original or duplicate of the waybill. However, the documents used instead of bills of lading for maritime carriage do not normally contain such a barring function. The Comité Maritime International has remedied this shortcoming of the above-mentioned documents by introducing the 1990 “Uniform Rules for Sea Waybills” enabling the parties to insert a “no-disposal” clause whereby the seller surrenders the right to dispose of the goods by instructions to the carrier to deliver the goods to somebody else or at another place than stipulated in the waybill.

22. ICC ARBITRATION

Contracting parties who wish to have the possibility of resorting to ICC Arbitration in the event of a dispute with their contracting partner should specifically and clearly agree upon ICC Arbitration in their contract or, in the event that no single contractual document exists, in the exchange of correspondence which constitutes the agreement between them. The fact of incorporating one or more Incoterms in a contract or the related correspondence does NOT by itself constitute an agreement to have resort to ICC Arbitration.

The following standard arbitration clause is recommended by ICC:

“All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.”

EXW**Ex works (... named place)**

“Ex works” means that the seller delivers when he places the goods at the disposal of the buyer at the seller’s premises or another named place (i.e. works, factory, warehouse, etc.) not cleared for export and not loaded on any collecting vehicle. This term thus represents the minimum obligation for the seller, and the buyer has to bear all costs and risks involved in taking the goods from the seller’s premises.

However, if the parties wish the seller to be responsible for the loading of the goods on departure and to bear the risks and all the costs of such loading, this should be made clear by adding explicit wording to this effect in the contract of sale¹. This term should not be used when the buyer cannot carry out the export formalities directly or indirectly. In such circumstances, the FCA term should be used, provided the seller agrees that he will load at his cost and risk.

A The seller’s obligations**B The buyer’s obligations****A1 Provision of goods in conformity with the contract**

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

A2 Licences, authorizations and formalities

The seller must render the buyer, at the latter’s request, risk and expense, every assistance in obtaining, where applicable,² any export licence or other official authorization necessary for the export of the goods.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any export and import licence or other official authorization and carry out, where applicable,³ all customs formalities for the export of the goods.

A3 Contracts of carriage and insurance**(a) Contract of carriage**

No obligation.⁴

(b) Contract of insurance

No obligation.⁵

B3 Contracts of carriage and insurance**(a) Contract of carriage**

No obligation.⁶

(b) Contract of insurance

No obligation.⁷

A4 Delivery

The seller must place the goods at the disposal of the buyer at the named place of delivery, not loaded on any collecting vehicle, on the date or within the period agreed or, if no such time is agreed, at the usual time for delivery of such goods. If no specific point has been agreed within the named place, and if there are several points available, the seller may select the point at the place of delivery which best suits his purpose.

B4 Taking delivery

The buyer must take delivery of the goods when they have been delivered in accordance with A4 and A7/B7.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have been delivered in accordance with A4.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods

- from the time they have been delivered in accordance with A4; and
- from the agreed date or the expiry date of any period fixed for taking delivery which arise because he fails to give notice in accordance with B7, provided, however, that the goods have been duly appropriated to the contract, that is to say clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must, subject to the provisions of B6, pay all costs relating to the goods until such time as they have been delivered in accordance with A4.

B6 Division of costs

The buyer must pay

- all costs relating to the goods from the time they have been delivered in accordance with A4; and
- any additional costs incurred by failing either to take delivery of the goods when they have been placed at his disposal, or to give appropriate notice in accordance with B7 provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and
- where applicable,⁸ all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon export.

The buyer must reimburse all costs and charges incurred by the seller in rendering assistance in accordance with A2.

A7 Notice to the buyer

The seller must give the buyer sufficient notice as to when and where the goods will be placed at his disposal.

¹See Introduction, para. 11.

²Ibid., para. 14.

³Ibid.

⁴Ibid., para. 10.

⁵Ibid.

⁶Ibid.

⁷Ibid.

⁸Ibid., para. 14.

B7 Notice to the seller

The buyer must, whenever he is entitled to determine the time within an agreed period and/or the place of taking delivery, give the seller sufficient notice thereof.

A8 Proof of delivery, transport document or equivalent electronic message

No obligation.⁹

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must provide the seller with appropriate evidence of having taken delivery.

A9 Checking—packaging—marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of placing the goods at the buyer's disposal.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to make the goods of the contract description available unpacked) which is required for the transport of the goods, to the extent that the circumstances relating to the transport (for example modalities, destination) are made known to the seller before the contract of sale is concluded. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection, including inspection mandated by the authorities of the country of export.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages issued or transmitted in the country of delivery and/or of origin which the buyer may require for the export and/or import of the goods and, where necessary, for their transit through any country.

The seller must provide the buyer, upon request, with the necessary information for procuring insurance.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

FCA*Free carrier (... named place)*

"Free Carrier" means that the seller delivers the goods, cleared for export, to the carrier nominated by the buyer at the named place. It should be noted that the chosen place of delivery has an impact on the obligations of loading and unloading the goods at that place. If delivery occurs at the seller's premises, the seller is responsible for loading. If delivery occurs at any other place, the seller is not responsible for unloading.

This term may be used irrespective of the mode of transport, including multimodal transport.

⁹Ibid., para. 10.

"Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport by rail, road, air, sea, inland waterway or by a combination of such modes.

If the buyer nominates a person other than a carrier to receive the goods, the seller is deemed to have fulfilled his obligation to deliver the goods when they are delivered to that person.

*A The seller's obligations**B The buyer's obligations**A1 Provision of goods in conformity with the contract*

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorization and carry out, where applicable,¹⁰ all customs formalities necessary for the export of the goods.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization and carry out, where applicable,¹¹ all customs formalities for the import of the goods and for their transit through any country.

*A3 Contracts of carriage and insurance**(a) Contract of carriage*

No obligation.¹²

However, if requested by the buyer or if it is commercial practice and the buyer does not give an instruction to the contrary in due time, the seller may contract for carriage on usual terms at the buyer's risk and expense. In either case, the seller may decline to make the contract and, if he does, shall promptly notify the buyer accordingly.

(b) Contract of insurance

No obligation.¹³

*B3 Contracts of carriage and insurance**(a) Contract of carriage*

The buyer must contract at his own expense for the carriage of the goods from the named place, except when the contract of carriage is made by the seller as provided for in A3 (a).

(b) Contract of insurance

No obligation.¹⁴

¹⁰Ibid., para. 14.

¹¹Ibid.

¹²Ibid., para. 10.

¹³Ibid.

¹⁴Ibid.

A4 Delivery

The seller must deliver the goods to the carrier or another person nominated by the buyer, or chosen by the seller in accordance with A3 (a), at the named place on the date or within the period agreed for delivery.

Delivery is completed:

(a) If the named place is the seller's premises, when the goods have been loaded on the means of transport provided by the carrier nominated by the buyer or another person acting on his behalf.

(b) If the named place is anywhere other than (a), when the goods are placed at the disposal of the carrier or another person nominated by the buyer, or chosen by the seller in accordance with A3 (a) on the seller's means of transport not unloaded.

If no specific point has been agreed within the named place, and if there are several points available, the seller may select the point at the place of delivery which best suits his purpose.

Failing precise instructions from the buyer, the seller may deliver the goods for carriage in such a manner as the transport mode and/or the quantity and/or nature of the goods may require.

B4 Taking delivery

The buyer must take delivery of the goods when they have been delivered in accordance with A4.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have been delivered in accordance with A4.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods

- from the time they have been delivered in accordance with A4; and
- from the agreed date or the expiry date of any agreed period for delivery which arise either because he fails to nominate the carrier or another person in accordance with A4, or because the carrier or the party nominated by the buyer fails to take the goods into his charge at the agreed time, or because the buyer fails to give appropriate notice in accordance with B7, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must, subject to the provisions of B6, pay

- all costs relating to the goods until such time as they have been delivered in accordance with A4; and
- where applicable,¹⁵ the costs of customs formalities as well as all duties, taxes, and other charges payable upon export.

B6 Division of costs

The buyer must pay

- all costs relating to the goods from the time they have been delivered in accordance with A4; and
- any additional costs incurred, either because he fails to nominate the carrier or another person in accordance with A4 or because the party nominated by the buyer fails to take

the goods into his charge at the agreed time, or because he has failed to give appropriate notice in accordance with B7, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and

- where applicable,¹⁶ all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon import of the goods and for their transit through any country.

A7 Notice to the buyer

The seller must give the buyer sufficient notice that the goods have been delivered in accordance with A4. Should the carrier fail to take delivery in accordance with A4 at the time agreed, the seller must notify the buyer accordingly.

B7 Notice to the seller

The buyer must give the seller sufficient notice of the name of the party designated in A4 and, where necessary, specify the mode of transport, as well as the date or period for delivering the goods to him and, as the case may be, the point within the place where the goods should be delivered to that party.

A8 Proof of delivery, transport document or equivalent electronic message

The seller must provide the buyer at the seller's expense with the usual proof of delivery of the goods in accordance with A4.

Unless the document referred to in the preceding paragraph is the transport document, the seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining a transport document for the contract of carriage (for example a negotiable bill of lading, a non-negotiable sea waybill, an inland waterway document, an air waybill, a railway consignment note, a road consignment note, or a multimodal transport document).

When the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraph may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the proof of delivery in accordance with A8.

A9 Checking—packaging—marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to send the goods of the contract description unpacked) which is required for the transport of the goods, to the extent that the circumstances relating to the transport (for example modalities, destination) are made known to the seller before the contract of sale is concluded. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

¹⁵Ibid., para. 14.

¹⁶Ibid.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in A8) issued or transmitted in the country of delivery and/or of origin which the buyer may require for the import of the goods and, where necessary, for their transit through any country.

The seller must provide the buyer, upon request, with the necessary information for procuring insurance.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith and in contracting for carriage in accordance with A3 (a).

The buyer must give the seller appropriate instructions whenever the seller's assistance in contracting for carriage is required in accordance with A3 (a).

FAS*Free alongside ship (... named port of shipment)*

"Free Alongside Ship" means that the seller delivers when the goods are placed alongside the vessel at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that moment.

The FAS term requires the seller to clear the goods for export.

THIS IS A REVERSAL FROM PREVIOUS INCOTERMS VERSIONS WHICH REQUIRED THE BUYER TO ARRANGE FOR EXPORT CLEARANCE.

However, if the parties wish the buyer to clear the goods for export, this should be made clear by adding explicit wording to this effect in the contract of sale.¹⁷

This term can be used only for sea or inland waterway transport.

*A The seller's obligations**B The buyer's obligations**A1 Provision of goods in conformity with the contract*

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorization and carry out, where applicable,¹⁸ all customs formalities necessary for the export of the goods.

¹⁷Ibid., para. 11.

¹⁸Ibid., para. 14.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization and carry out, where applicable,¹⁹ all customs formalities for the import of the goods and for their transit through any country.

*A3 Contracts of carriage and insurance**(a) Contract of carriage*

No obligation.²⁰

(b) Contract of insurance

No obligation.²¹

*B3 Contracts of carriage and insurance**(a) Contract of carriage*

The buyer must contract at his own expense for the carriage of the goods from the named port of shipment.

(b) Contract of insurance

No obligation.²²

A4 Delivery

The seller must place the goods alongside the vessel nominated by the buyer at the loading place named by the buyer at the named port of shipment on the date or within the agreed period and in the manner customary at the port.

B4 Taking delivery

The buyer must take delivery of the goods when they have been delivered in accordance with A4.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have been delivered in accordance with A4.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods

- from the time they have been delivered in accordance with A4; and
- from the agreed date or the expiry date of the agreed period for delivery which arise because he fails to give notice in accordance with B7, or because the vessel nominated by him fails to arrive on time, or is unable to take the goods, or closes for cargo earlier than the time notified in accordance with B7, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must, subject to the provisions of B6, pay

- all costs relating to the goods until such time as they have been delivered in accordance with A4; and
- where applicable,²³ the costs of customs formalities as well as all duties, taxes, and other charges payable upon export.

¹⁹Ibid., para. 14.

²⁰Ibid., para. 10.

²¹Ibid.

²²Ibid.

²³Ibid., para. 14.

B6 Division of costs

The buyer must pay

- all costs relating to the goods from the time they have been delivered in accordance with A4; and
- any additional costs incurred, either because the vessel nominated by him has failed to arrive on time, or is unable to take the goods, or closes for cargo earlier than the time notified in accordance with B7, or because the buyer has failed to give appropriate notice in accordance with B7 provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and
- where applicable,²⁴ all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon import of the goods and for their transit through any country.

A7 Notice to the buyer

The seller must give the buyer sufficient notice that the goods have been delivered alongside the nominated vessel.

B7 Notice to the seller

The buyer must give the seller sufficient notice of the vessel name, loading point and required delivery time.

A8 Proof of delivery, transport document or equivalent electronic message

The seller must provide the buyer at the seller's expense with the usual proof of delivery of the goods in accordance with A4.

Unless the document referred to in the preceding paragraph is the transport document, the seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining a transport document (for example a negotiable bill of lading, a non-negotiable sea waybill, an inland waterway document).

When the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraphs may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the proof of delivery in accordance with A8.

A9 Checking—packaging—marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to ship the goods of the contract description unpacked) which is required for the transport of the goods, to the extent that the circumstances relating to the transport (for example modalities, destination) are made known to the seller before the contract of sale is concluded. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection, except when such inspection is mandated by the authorities of the country of export.

²⁴Ibid., para. 14.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in A8) issued or transmitted in the country of shipment and/or of origin which the buyer may require for the import of the goods and, where necessary, for their transit through any country.

The seller must provide the buyer, upon request, with the necessary information for procuring insurance.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

FOB*Free on board (... named port of shipment)*

"Free on Board" means that the seller delivers when the goods pass the ship's rail at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point. The FOB term requires the seller to clear the goods for export. This term can be used only for sea or inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the FCA term should be used.

*A The seller's obligations**B The buyer's obligations**A1 Provision of goods in conformity with the contract*

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorization and carry out, where applicable,²⁵ all customs formalities necessary for the export of the goods.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization and carry out, where applicable,²⁶ all customs formalities for the import of the goods and, where necessary, for their transit through any country.

*A3 Contracts of carriage and insurance**(a) Contract of carriage*

No obligation.²⁷

(b) Contract of insurance

No obligation.²⁸

²⁵Ibid., para. 14.

²⁶Ibid.

²⁷Ibid., para. 10.

²⁸Ibid.

*B3 Contracts of carriage and insurance**(a) Contract of carriage*

The buyer must contract at his own expense for the carriage of the goods from the named port of shipment.

(b) Contract of insurance

No obligation.²⁹

A4 Delivery

The seller must deliver the goods on the date or within the agreed period at the named port of shipment and in the manner customary at the port on board the vessel nominated by the buyer.

B4 Taking delivery

The buyer must take delivery of the goods when they have been delivered in accordance with A4.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have passed the ship's rail at the named port of shipment.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods

- from the time they have passed the ship's rail at the named port of shipment; and
- from the agreed date or the expiry date of the agreed period for delivery which arise because he fails to give notice in accordance with B7, or because the vessel nominated by him fails to arrive on time, or is unable to take the goods, or closes for cargo earlier than the time notified in accordance with B7, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must, subject to the provisions of B6, pay

- all costs relating to the goods until such time as they have passed the ship's rail at the named port of shipment; and
- where applicable,³⁰ the costs of customs formalities necessary for export as well as all duties, taxes and other charges payable upon export.

B6 Division of costs

The buyer must pay

- all costs relating to the goods from the time they have passed the ship's rail at the named port of shipment; and
- any additional costs incurred, either because the vessel nominated by him fails to arrive on time, or is unable to take the goods, or closes for cargo earlier than the time notified in accordance with B7, or because the buyer has failed to give appropriate notice in accordance with B7, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and
- where applicable,³¹ all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon import of the goods and for their transit through any country.

A7 Notice to the buyer

The seller must give the buyer sufficient notice that the goods have been delivered in accordance with A4.

B7 Notice to the seller

The buyer must give the seller sufficient notice of the vessel name, loading point and required delivery time.

A8 Proof of delivery, transport document or equivalent electronic message

The seller must provide the buyer at the seller's expense with the usual proof of delivery in accordance with A4.

Unless the document referred to in the preceding paragraph is the transport document, the seller must render the buyer, at the latter's request, risk and expense, every assistance in obtaining a transport document for the contract of carriage (for example, a negotiable bill of lading, a non-negotiable sea waybill, an inland waterway document, or a multimodal transport document).

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraph may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the proof of delivery in accordance with A8.

A9 Checking—packaging—marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to ship the goods of the contract description unpacked) which is required for the transport of the goods, to the extent that the circumstances relating to the transport (for example modalities, destination) are made known to the seller before the contract of sale is concluded. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in A8) issued or transmitted in the country of shipment and/or of origin which the buyer may require for the import of the goods and, where necessary, for their transit through any country.

The seller must provide the buyer, upon request, with the necessary information for procuring insurance.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

²⁹Ibid., para. 10.

³⁰Ibid., para. 14.

³¹Ibid.

CFR**Cost and freight (... named port of destination)**

“Cost and Freight” means that the seller delivers when the goods pass the ship’s rail in the port of shipment.

The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer.

The CFR term requires the seller to clear the goods for export.

This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship’s rail, the CPT term should be used.

A The seller’s obligations**B The buyer’s obligations****A1 Provision of goods in conformity with the contract**

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorization and carry out, where applicable,³² all customs formalities necessary for the export of the goods.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization and carry out, where applicable,³³ all customs formalities for the import of the goods and for their transit through any country.

A3 Contracts of carriage and insurance**(a) Contract of carriage**

The seller must contract on usual terms at his own expense for the carriage of the goods to the named port of destination by the usual route in a seagoing vessel (or inland waterway vessel as the case may be) of the type normally used for the transport of goods of the contract description.

(b) Contract of insurance

No obligation.³⁴

B3 Contracts of carriage and insurance**(a) Contract of carriage**

No obligation.³⁵

(b) Contract of insurance

No obligation.³⁶

A4 Delivery

The seller must deliver the goods on board the vessel at the port of shipment on the date or within the agreed period.

B4 Taking delivery

The buyer must accept delivery of the goods when they have been delivered in accordance with A4 and receive them from the carrier at the named port of destination.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have passed the ship’s rail at the port of shipment.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods from the time they have passed the ship’s rail at the port of shipment.

The buyer must, should he fail to give notice in accordance with B7, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the period fixed for shipment provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must, subject to the provisions of B6, pay

- all costs relating to the goods until such time as they have been delivered in accordance with A4; and
- the freight and all other costs resulting from A3 (a), including the costs of loading the goods on board and any charges for unloading at the agreed port of discharge which were for the seller’s account under the contract of carriage; and
- where applicable,³⁷ the costs of customs formalities necessary for export as well as all duties, taxes and other charges payable upon export, and for their transit through any country if they were for the seller’s account under the contract of carriage.

B6 Division of costs

The buyer must, subject to the provisions of A3 (a), pay

- all costs relating to the goods from the time they have been delivered in accordance with A4; and
- all costs and charges relating to the goods whilst in transit until their arrival at the port of destination, unless such costs and charges were for the seller’s account under the contract of carriage; and
- unloading costs including lighterage and wharfage charges, unless such costs and charges were for the seller’s account under the contract of carriage; and
- all additional costs incurred if he fails to give notice in accordance with B7, for the goods from the agreed date or the expiry date of the period fixed for shipment, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and

³²Ibid., para. 14.

³³Ibid.

³⁴Ibid., para. 10.

³⁵Ibid.

³⁶Ibid., para. 10.

³⁷Ibid., para. 14.

- where applicable,³⁸ all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon import of the goods and, where necessary, for their transit through any country unless included within the cost of the contract of carriage.

A7 Notice to the buyer

The seller must give the buyer sufficient notice that the goods have been delivered in accordance with A4 as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take the goods.

B7 Notice to the seller

The buyer must, whenever he is entitled to determine the time for shipping the goods and/or the port of destination, give the seller sufficient notice thereof.

A8 Proof of delivery, transport document or equivalent electronic message

The seller must at his own expense provide the buyer without delay with the usual transport document for the agreed port of destination.

This document (for example a negotiable bill of lading, a non-negotiable sea waybill or an inland waterway document) must cover the contract goods, be dated within the period agreed for shipment, enable the buyer to claim the goods from the carrier at the port of destination and, unless otherwise agreed, enable the buyer to sell the goods in transit by the transfer of the document to a subsequent buyer (the negotiable bill of lading) or by notification to the carrier.

When such a transport document is issued in several originals, a full set of originals must be presented to the buyer.

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraphs may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the transport document in accordance with A8 if it is in conformity with the contract.

A9 Checking—packaging—marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to ship the goods of the contract description unpacked) which is required for the transport of the goods arranged by him. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent

electronic messages (other than those mentioned in A8) issued or transmitted in the country of shipment and/or of origin which the buyer may require for the import of the goods and, where necessary, for their transit through any country.

The seller must provide the buyer, upon request, with the necessary information for procuring insurance.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

CIF

Cost, insurance and freight (... named port of destination)

“Cost, Insurance and Freight” means that the seller delivers when the goods pass the ship's rail in the port of shipment.

The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer. However, in CIF the seller also has to procure marine insurance against the buyer's risk of loss of or damage to the goods during the carriage.

Consequently, the seller contracts for insurance and pays the insurance premium. The buyer should note that under the CIF term the seller is required to obtain insurance only on minimum cover.³⁹ Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements.

The CIF term requires the seller to clear the goods for export.

This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the CIP term should be used.

A The seller's obligations

B The buyer's obligations

A1 Provision of goods in conformity with the contract

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorization and carry out, where applicable,⁴⁰ all customs formalities necessary for the export of the goods.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization and carry out, where appli-

³⁸Ibid., para. 14.

³⁹Ibid., para. 9.3.

⁴⁰Ibid., para. 14.

cable,⁴¹ all customs formalities for the import of the goods and for their transit through any country.

A3 *Contracts of carriage and insurance*

(a) Contract of carriage

The seller must contract on usual terms at his own expense for the carriage of the goods to the named port of destination by the usual route in a seagoing vessel (or inland waterway vessel as the case may be) of the type normally used for the transport of goods of the contract description.

(b) Contract of insurance

The seller must obtain at his own expense cargo insurance as agreed in the contract, such that the buyer, or any other person having an insurable interest in the goods, shall be entitled to claim directly from the insurer and provide the buyer with the insurance policy or other evidence of insurance cover.

The insurance shall be contracted with underwriters or an insurance company of good repute and, failing express agreement to the contrary, be in accordance with minimum cover of the Institute Cargo Clauses (Institute of London Underwriters) or any similar set of clauses. The duration of insurance cover shall be in accordance with B5 and B4. When required by the buyer, the seller shall provide at the buyer's expense war, strikes, riots and civil commotion risk insurances if procurable. The minimum insurance shall cover the price provided in the contract plus 10 per cent (i.e. 110 per cent) and shall be provided in the currency of the contract.

B3 *Contracts of carriage and insurance*

(a) Contract of carriage

No obligation.⁴²

(b) Contract of insurance

No obligation.⁴³

A4 *Delivery*

The seller must deliver the goods on board the vessel at the port of shipment on the date or within the agreed period.

B4 *Taking delivery*

The buyer must accept delivery of the goods when they have been delivered in accordance with A4 and receive them from the carrier at the named port of destination.

A5 *Transfer of risks*

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have passed the ship's rail at the port of shipment.

B5 *Transfer of risks*

The buyer must bear all risks of loss of or damage to the goods from the time they have passed the ship's rail at the port of shipment.

The buyer must, should he fail to give notice in accordance with B7, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the period fixed for shipment provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

⁴¹Ibid., para. 14.

⁴²Ibid., para. 10.

⁴³Ibid.

A6 *Division of costs*

The seller must, subject to the provisions of B6, pay

- all costs relating to the goods until such time as they have been delivered in accordance with A4; and
- the freight and all other costs resulting from A3 (a), including the costs of loading the goods on board;
- and the costs of insurance resulting from A3 (b); and
- any charges for unloading at the agreed port of discharge which were for the seller's account under the contract of carriage; and
- where applicable,⁴⁴ the costs of customs formalities necessary for export as well as all duties, taxes and other charges payable upon export, and for their transit through any country if they were for the seller's account under the contract of carriage.

B6 *Division of costs*

The buyer must, subject to the provisions of A3, pay

- all costs relating to the goods from the time they have been delivered in accordance with A4; and
- all costs and charges relating to the goods whilst in transit until their arrival at the port of destination, unless such costs and charges were for the seller's account under the contract of carriage; and
- unloading costs including lighterage and wharfage charges, unless such costs and charges were for the seller's account under the contract of carriage; and
- all additional costs incurred if he fails to give notice in accordance with B7, for the goods from the agreed date or the expiry date of the period fixed for shipment, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and
- where applicable,⁴⁵ all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon import of the goods and, where necessary, for their transit through any country unless included within the cost of the contract of carriage.

A7 *Notice to the buyer*

The seller must give the buyer sufficient notice that the goods have been delivered in accordance with A4 as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take the goods.

B7 *Notice to the seller*

The buyer must, whenever he is entitled to determine the time for shipping the goods and/or the port of destination, give the seller sufficient notice thereof.

A8 *Proof of delivery, transport document or equivalent electronic message*

The seller must, at his own expense, provide the buyer without delay with the usual transport document for the agreed port of destination.

This document (for example a negotiable bill of lading, a non-negotiable sea waybill or an inland waterway document) must cover the contract goods, be dated within the period agreed for shipment, enable the buyer to claim the goods from the carrier at the port of destination and, unless otherwise agreed, enable the

⁴⁴Ibid., para. 14.

⁴⁵Ibid.

buyer to sell the goods in transit by the transfer of the document to a subsequent buyer (the negotiable bill of lading) or by notification to the carrier.

When such a transport document is issued in several originals, a full set of originals must be presented to the buyer.

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraphs may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the transport document in accordance with A8 if it is in conformity with the contract.

A9 Checking—packaging—marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to ship the goods of the contract description unpacked) which is required for the transport of the goods arranged by him. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in A8) issued or transmitted in the country of shipment and/or of origin which the buyer may require for the import of the goods and, where necessary, for their transit through any country.

The seller must provide the buyer, upon request, with the necessary information for procuring any additional insurance.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

The buyer must provide the seller, upon request, with the necessary information for procuring insurance.

CPT

Carriage paid to (... named place of destination)

“Carriage Paid to...” means that the seller delivers the goods to the carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any other costs occurring after the goods have been so delivered.

“Carrier” means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport, by rail, road, air, sea, inland waterway or by a combination of such modes.

If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier.

The CPT term requires the seller to clear the goods for export.

This term may be used irrespective of the mode of transport including multimodal transport.

A The seller's obligations

B The buyer's obligations

A1 Provision of goods in conformity with the contract

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorization and carry out, where applicable,⁴⁶ all customs formalities necessary for the export of the goods.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization and carry out, where applicable,⁴⁷ all customs formalities for the import of the goods and for their transit through any country.

A3 Contracts of carriage and insurance

(a) Contract of carriage

The seller must contract on usual terms at his own expense for the carriage of the goods to the agreed point at the named place of destination by a usual route and in a customary manner. If a point is not agreed or is not determined by practice, the seller may select the point at the named place of destination which best suits his purpose.

(b) Contract of insurance

No obligation⁴⁸

B3 Contracts of carriage and insurance

(a) Contract of carriage

No obligation.⁴⁹

(b) Contract of insurance

No obligation.⁵⁰

A4 Delivery

The seller must deliver the goods to the carrier contracted in accordance with A3 or, if there are subsequent carriers to the first carrier, for transport to the agreed point at the named place on the date or within the agreed period.

⁴⁶Ibid., para. 14.

⁴⁷Ibid.

⁴⁸Ibid., para. 10.

⁴⁹Ibid.

⁵⁰Ibid.

B4 Taking delivery

The buyer must accept delivery of the goods when they have been delivered in accordance with A4 and receive them from the carrier at the named place.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have been delivered in accordance with A4.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered in accordance with A4.

The buyer must, should he fail to give notice in accordance with B7, bear all risks of the goods from the agreed date or the expiry date of the period fixed for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must, subject to the provisions of B6, pay

- all costs relating to the goods until such time as they have been delivered in accordance with A4 as well as the freight and all other costs resulting from A3 (a), including the costs of loading the goods and any charges for unloading at the place of destination which were for the seller's account under the contract of carriage; and
- where applicable,⁵¹ the costs of customs formalities necessary for export as well as all duties, taxes or other charges payable upon export, and for their transit through any country if they were for the seller's account under the contract of carriage.

B6 Division of costs

The buyer must, subject to the provisions of A3 (a), pay

- all costs relating to the goods from the time they have been delivered in accordance with A4; and
- all costs and charges relating to the goods whilst in transit until their arrival at the agreed place of destination, unless such costs and charges were for the seller's account under the contract of carriage; and
- unloading costs unless such costs and charges were for the seller's account under the contract of carriage; and
- all additional costs incurred if he fails to give notice in accordance with B7, for the goods from the agreed date or the expiry date of the period fixed for dispatch, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and
- where applicable,⁵² all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon import of the goods and for their transit through any country unless included within the cost of the contract of carriage.

A7 Notice to the buyer

The seller must give the buyer sufficient notice that the goods have been delivered in accordance with A4 as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take the goods.

⁵¹Ibid., para. 14.

⁵²Ibid.

B7 Notice to the seller

The buyer must, whenever he is entitled to determine the time for dispatching the goods and/or the destination, give the seller sufficient notice thereof.

A8 Proof of delivery, transport document or equivalent electronic message

The seller must provide the buyer at the seller's expense, if customary, with the usual transport document or documents (for example a negotiable bill of lading, a non-negotiable sea waybill, an inland waterway document, an air waybill, a railway consignment note, a road consignment note, or a multimodal transport document) for the transport contracted in accordance with A3.

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraph may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the transport document in accordance with A8 if it is in conformity with the contract.

A9 Checking—packaging—marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to send the goods of the contract description unpacked) which is required for the transport of the goods arranged by him. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in A8) issued or transmitted in the country of dispatch and/or of origin which the buyer may require for the import of the goods and for their transit through any country.

The seller must provide the buyer, upon request, with the necessary information for procuring insurance.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

CIP***Carriage and insurance paid to (... named place of destination)***

"Carriage and Insurance Paid to..." means that the seller delivers the goods to the carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to

the named destination. This means that the buyer bears all risks and any additional costs occurring after the goods have been so delivered. However, in CIP the seller also has to procure insurance against the buyer's risk of loss of or damage to the goods during the carriage.

Consequently, the seller contracts for insurance and pays the insurance premium.

The buyer should note that under the CIP term the seller is required to obtain insurance only on minimum cover.⁵³ Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements.

"Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport, by rail, road, air, sea, inland waterway or by a combination of such modes.

If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier.

The CIP term requires the seller to clear the goods for export.

This term may be used irrespective of the mode of transport including multimodal transport.

A The seller's obligations

B The buyer's obligations

A1 Provision of goods in conformity with the contract

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorization and carry out, where applicable,⁵⁴ all customs formalities necessary for the export of the goods.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization and carry out, where applicable,⁵⁵ all customs formalities for the import of the goods and for their transit through any country.

A3 Contracts of carriage and insurance

(a) Contract of carriage

The seller must contract on usual terms at his own expense for the carriage of the goods to the agreed point at the named place of destination by a usual route and in a customary manner. If a point is not agreed or is not determined by practice, the seller may select the point at the named place of destination which best suits his purpose.

⁵³Ibid., para. 9.3.

⁵⁴Ibid., para. 14.

⁵⁵Ibid.

(b) Contract of insurance

The seller must obtain at his own expense cargo insurance as agreed in the contract, such that the buyer, or any other person having an insurable interest in the goods, shall be entitled to claim directly from the insurer and provide the buyer with the insurance policy or other evidence of insurance cover.

The insurance shall be contracted with underwriters or an insurance company of good repute and, failing express agreement to the contrary, be in accordance with minimum cover of the Institute Cargo Clauses (Institute of London Underwriters) or any similar set of clauses. The duration of insurance cover shall be in accordance with B5 and B4. When required by the buyer, the seller shall provide at the buyer's expense war, strikes, riots and civil commotion risk insurances if procurable. The minimum insurance shall cover the price provided in the contract plus 10 per cent (i.e. 110 per cent) and shall be provided in the currency of the contract.

B3 Contracts of carriage and insurance

(a) Contract of carriage

No obligation.⁵⁶

(b) Contract of insurance

No obligation.⁵⁷

A4 Delivery

The seller must deliver the goods to the carrier contracted in accordance with A3 or, if there are subsequent carriers to the first carrier, for transport to the agreed point at the named place on the date or within the agreed period.

B4 Taking delivery

The buyer must accept delivery of the goods when they have been delivered in accordance with A4 and receive them from the carrier at the named place.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have been delivered in accordance with A4.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered in accordance with A4.

The buyer must, should he fail to give notice in accordance with B7, bear all risks of the goods from the agreed date or the expiry date of the period fixed for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must, subject to the provisions of B6, pay

- all costs relating to the goods until such time as they have been delivered in accordance with A4 as well as the freight and all other costs resulting from A3 (a), including the costs of loading the goods and any charges for unloading at the place of destination which were for the seller's account under the contract of carriage; and
- the costs of insurance resulting from A3 (b); and

⁵⁶Ibid., para. 10.

⁵⁷Ibid.

- where applicable,⁵⁸ the costs of customs formalities necessary for export as well as all duties, taxes or other charges payable upon export, and for their transit through any country if they were for the seller's account under the contract of carriage.

B6 Division of costs

The buyer must, subject to the provisions of A3 (a), pay

- all costs relating to the goods from the time they have been delivered in accordance with A4; and
- all costs and charges relating to the goods whilst in transit until their arrival at the agreed place of destination, unless such costs and charges were for the seller's account under the contract of carriage; and
- unloading costs unless such costs and charges were for the seller's account under the contract of carriage; and
- all additional costs incurred if he fails to give notice in accordance with B7, for the goods from the agreed date or the expiry date of the period fixed for dispatch, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and
- where applicable,⁵⁹ all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon import of the goods and for their transit through any country unless included within the cost of the contract of carriage.

A7 Notice to the buyer

The seller must give the buyer sufficient notice that the goods have been delivered in accordance with A4 as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take the goods.

B7 Notice to the seller

The buyer must, whenever he is entitled to determine the time for dispatching the goods and/or the destination, give the seller sufficient notice thereof.

A8 Proof of delivery, transport document or equivalent electronic message

The seller must provide the buyer at the seller's expense, if customary, with the usual transport document or documents (for example a negotiable bill of lading, a non-negotiable sea waybill, an inland waterway document, an air waybill, a railway consignment note, a road consignment note, or a multimodal transport document) for the transport contracted in accordance with A3.

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraph may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the transport document in accordance with A8 if it is in conformity with the contract.

A9 Checking—packaging—marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are

necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to send the goods of the contract description unpacked) which is required for the transport of the goods arranged by him. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in A8) issued or transmitted in the country of dispatch and/or of origin which the buyer may require for the import of the goods and for their transit through any country.

The seller must provide the buyer, upon request, with the necessary information for procuring any additional insurance.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

The buyer must provide the seller, upon request, with the necessary information for procuring any additional insurance.

DAF

Delivered at frontier (... named place)

"Delivered at Frontier" means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport not unloaded, cleared for export, but not cleared for import at the named point and place at the frontier, but before the customs border of the adjoining country. The term "frontier" may be used for any frontier including that of the country of export. Therefore, it is of vital importance that the frontier in question be defined precisely by always naming the point and place in the term.

However, if the parties wish the seller to be responsible for the unloading of the goods from the arriving means of transport and to bear the risks and costs of unloading, this should be made clear by adding explicit wording to this effect in the contract of sale.⁶⁰

This term may be used irrespective of the mode of transport when goods are to be delivered at a land frontier. When delivery is to take place in the port of destination, on board a vessel or on the quay (wharf), the DES or DEQ terms should be used.

A The seller's obligations

B The buyer's obligations

A1 Provision of goods in conformity with the contract

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

⁵⁸Ibid., para. 14.

⁵⁹Ibid.

⁶⁰Ibid., para. 11.

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorization or other document necessary for placing the goods at the buyer's disposal.

The seller must carry out, where applicable,⁶¹ all customs formalities necessary for the export of the goods to the named place of delivery at the frontier and for their transit through any country.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization or other documents and carry out, where applicable,⁶² all customs formalities necessary for the import of the goods, and for their subsequent transport.

*A3 Contracts of carriage and insurance**(a) Contract of carriage*

(i) The seller must contract at his own expense for the carriage of the goods to the named point, if any, at the place of delivery at the frontier. If a point at the named place of delivery at the frontier is not agreed or is not determined by practice, the seller may select the point at the named place of delivery which best suits his purpose.

(ii) However, if requested by the buyer, the seller may agree to contract on usual terms at the buyer's risk and expense for the on-going carriage of the goods beyond the named place at the frontier to the final destination in the country of import named by the buyer. The seller may decline to make the contract and, if he does, shall promptly notify the buyer accordingly.

(b) Contract of insurance

No obligation.⁶³

*B3 Contracts of carriage and insurance**(a) Contract of carriage*

No obligation.⁶⁴

(b) Contract of insurance

No obligation.⁶⁵

A4 Delivery

The seller must place the goods at the disposal of the buyer on the arriving means of transport not unloaded at the named place of delivery at the frontier on the date or within the agreed period.

B4 Taking delivery

The buyer must take delivery of the goods when they have been delivered in accordance with A4.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have been delivered in accordance with A4.

⁶¹Ibid., para. 14.

⁶²Ibid.

⁶³Ibid., para. 10.

⁶⁴Ibid.

⁶⁵Ibid.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered in accordance with A4.

The buyer must, should he fail to give notice in accordance with B7, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the agreed period for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must, subject to the provisions of B6, pay

- in addition to the costs resulting from A3 (a), all costs relating to the goods until such time as they have been delivered in accordance with A4; and
- where applicable,⁶⁶ the costs of customs formalities necessary for export as well as all duties, taxes or other charges payable upon export of the goods and for their transit through any country prior to delivery in accordance with A4.

B6 Division of costs

The buyer must pay

- all costs relating to the goods from the time they have been delivered in accordance with A4 including the expenses of unloading necessary to take delivery of the goods from the arriving means of transport at the named place of delivery at the frontier; and
- all additional costs incurred if he fails to take delivery of the goods when they have been delivered in accordance with A4, or to give notice in accordance with B7, provided, however, that the goods have been appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and
- where applicable,⁶⁷ the cost of customs formalities as well as all duties, taxes and other charges payable upon import of the goods and for their subsequent transport.

A7 Notice to the buyer

The seller must give the buyer sufficient notice of the dispatch of the goods to the named place at the frontier as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take delivery of the goods.

B7 Notice to the seller

The buyer must, whenever he is entitled to determine the time within an agreed period and/or the point of taking delivery at the named place, give the seller sufficient notice thereof.

A8 Proof of delivery, transport document or equivalent electronic message

(i) The seller must provide the buyer at the seller's expense with the usual document or other evidence of the delivery of the goods at the named place at the frontier in accordance with A3 (a) (i).

(ii) The seller must, should the parties agree on on-going carriage beyond the frontier in accordance with A3 (a) (ii), provide the buyer at the latter's request, risk and expense, with the through document of transport normally obtained in the country of dis-

⁶⁶Ibid., para. 14.

⁶⁷Ibid.

patch covering on usual terms the transport of the goods from the point of dispatch in that country to the place of final destination in the country of import named by the buyer.

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraph may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the transport document and/or other evidence of delivery in accordance with A8.

A9 Checking—packaging—marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is agreed or usual for the particular trade to deliver the goods of the contract description unpacked) which is required for the delivery of the goods at the frontier and for the subsequent transport to the extent that the circumstances (for example modalities, destination) are made known to the seller before the contract of sale is concluded. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in A8) issued or transmitted in the country of dispatch and/or origin which the buyer may require for the import of the goods and, where necessary, for their transit through any country.

The seller must provide the buyer, upon request, with the necessary information for procuring insurance.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

If necessary, according to A3 (a) (ii), the buyer must provide the seller at his request and the buyer's risk and expense with the exchange control authorization, permits, other documents or certified copies thereof, or with the address of the final destination of the goods in the country of import for the purpose of obtaining the through document of transport or any other document contemplated in A8 (ii).

DES

Delivered ex ship (... named port of destination)

“Delivered Ex Ship” means that the seller delivers when the goods are placed at the disposal of the buyer on board the ship not cleared for import at the named port of destination. The seller has to bear all the costs and risks involved in bringing the goods to the

named port of destination before discharging. If the parties wish the seller to bear the costs and risks of discharging the goods, then the DEQ term should be used.

This term can be used only when the goods are to be delivered by sea or inland waterway or multimodal transport on a vessel in the port of destination.

A The seller's obligations

B The buyer's obligations

A1 Provision of goods in conformity with the contract

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorization or other documents and carry out, where applicable,⁶⁸ all customs formalities necessary for the export of the goods and for their transit through any country.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization and carry out, where applicable,⁶⁹ all customs formalities necessary for the import of the goods.

A3 Contracts of carriage and insurance

(a) Contract of carriage

The seller must contract at his own expense for the carriage of the goods to the named point, if any, at the named port of destination. If a point is not agreed or is not determined by practice, the seller may select the point at the named port of destination which best suits his purpose.

(b) Contract of insurance

No obligation.⁷⁰

B3 Contracts of carriage and insurance

(a) Contract of carriage

No obligation.⁷¹

(b) Contract of insurance

No obligation.⁷²

A4 Delivery

The seller must place the goods at the disposal of the buyer on board the vessel at the unloading point referred to in A3 (a), in the named port of destination on the date or within the agreed period, in such a way as to enable them to be removed from the vessel by unloading equipment appropriate to the nature of the goods.

⁶⁸Ibid., para. 14.

⁶⁹Ibid.

⁷⁰Ibid., para. 10.

⁷¹Ibid.

⁷²Ibid.

B4 Taking delivery

The buyer must take delivery of the goods when they have been delivered in accordance with A4.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have been delivered in accordance with A4.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered in accordance with A4.

The buyer must, should he fail to give notice in accordance with B7, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the agreed period for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must, subject to the provisions of B6, pay

- in addition to costs resulting from A3 (a), all costs relating to the goods until such time as they have been delivered in accordance with A4; and
- where applicable,⁷³ the costs of customs formalities necessary for export as well as all duties, taxes or other charges payable upon export of the goods and for their transit through any country prior to delivery in accordance with A4.

B6 Division of costs

The buyer must pay

- all costs relating to the goods from the time they have been delivered in accordance with A4, including the expenses of discharge operations necessary to take delivery of the goods from the vessel; and
- all additional costs incurred if he fails to take delivery of the goods when they have been placed at his disposal in accordance with A4, or to give notice in accordance with B7, provided, however, that the goods have been appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and
- where applicable,⁷⁴ the costs of customs formalities as well as all duties, taxes and other charges payable upon import of the goods.

A7 Notice to the buyer

The seller must give the buyer sufficient notice of the estimated time of arrival of the nominated vessel in accordance with A4 as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take delivery of the goods.

B7 Notice to the seller

The buyer must, whenever he is entitled to determine the time within an agreed period and/or the point of taking delivery in the named port of destination, give the seller sufficient notice thereof.

⁷³Ibid., para. 14.

⁷⁴Ibid.

A8 Proof of delivery, transport document or equivalent electronic message

The seller must provide the buyer at the seller's expense with the delivery order and/or the usual transport document (for example a negotiable bill of lading, a non-negotiable sea waybill, an inland waterway document, or a multimodal transport document) to enable the buyer to claim the goods from the carrier at the port of destination.

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraph may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the delivery order or the transport document in accordance with A8.

A9 Checking—packaging—marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to deliver the goods of the contract description unpacked) which is required for the delivery of the goods. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in A8) issued or transmitted in the country of dispatch and/or of origin which the buyer may require for the import of the goods.

The seller must provide the buyer, upon request, with the necessary information for procuring insurance.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

DEQ*Delivered ex quay (... named port of destination)*

“Delivered Ex Quay” means that the seller delivers when the goods are placed at the disposal of the buyer not cleared for import on the quay (wharf) at the named port of destination. The seller has to bear costs and risks involved in bringing the goods to the named port of destination and discharging the goods on the quay (wharf). The DEQ term requires the buyer to clear the goods for import and to pay for all formalities, duties, taxes and other charges upon import.

THIS IS A REVERSAL FROM PREVIOUS INCOTERMS VERSIONS WHICH REQUIRED THE SELLER TO ARRANGE FOR IMPORT CLEARANCE.

If the parties wish to include in the seller's obligations all or part of the costs payable upon import of the goods, this should be made clear by adding explicit wording to this effect in the contract of sale.⁷⁵

This term can be used only when the goods are to be delivered by sea or inland waterway or multimodal transport on discharging from a vessel onto the quay (wharf) in the port of destination. However if the parties wish to include in the seller's obligations the risks and costs of the handling of the goods from the quay to another place (warehouse, terminal, transport station, etc.) in or outside the port, the DDU or DDP terms should be used.

A The seller's obligations

B The buyer's obligations

A1 Provision of goods in conformity with the contract

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence or other official authorization or other documents and carry out, where applicable,⁷⁶ all customs formalities necessary for the export of the goods, and for their transit through any country.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization or other documents and carry out, where applicable,⁷⁷ all customs formalities necessary for the import of the goods.

A3 Contracts of carriage and insurance

(a) Contract of carriage

The seller must contract at his own expense for the carriage of the goods to the named quay (wharf) at the named port of destination. If a specific quay (wharf) is not agreed or is not determined by practice, the seller may select the quay (wharf) at the named port of destination which best suits his purpose.

(b) Contract of insurance

No obligation.⁷⁸

B3 Contracts of carriage and insurance

(a) Contract of carriage

No obligation.⁷⁹

⁷⁵Ibid., para. 11.

⁷⁶Ibid., para. 14.

⁷⁷Ibid.

⁷⁸Ibid., para. 10.

⁷⁹Ibid.

(b) Contract of insurance

No obligation.⁸⁰

A4 Delivery

The seller must place the goods at the disposal of the buyer on the quay (wharf) referred to in A3 (a), on the date or within the agreed period.

B4 Taking delivery

The buyer must take delivery of the goods when they have been delivered in accordance with A4.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have been delivered in accordance with A4.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered in accordance with A4.

The buyer must, should he fail to give notice in accordance with B7, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the agreed period for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must, subject to the provisions of B6, pay

- in addition to costs resulting from A3 (a), all costs relating to the goods until such time as they are delivered on the quay (wharf) in accordance with A4; and
- where applicable,⁸¹ the costs of customs formalities necessary for export as well as all duties, taxes and other charges payable upon export of the goods and for their transit through any country prior to delivery.

B6 Division of costs

The buyer must pay

- all costs relating to the goods from the time they have been delivered in accordance with A4, including any costs of handling the goods in the port for subsequent transport or storage in warehouse or terminal; and all additional costs incurred if he fails to take delivery of the goods when they have been placed at his disposal in accordance with A4, or to give notice in accordance with B7, provided, however, that the goods have been appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and
- where applicable,⁸² the cost of customs formalities as well as all duties, taxes and other charges payable upon import of the goods and for their subsequent transport.

⁸⁰Ibid., para. 10.

⁸¹Ibid., para. 14.

⁸²Ibid.

A7 Notice to the buyer

The seller must give the buyer sufficient notice of the estimated time of arrival of the nominated vessel in accordance with A4, as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take delivery of the goods.

B7 Notice to the seller

The buyer must, whenever he is entitled to determine the time within an agreed period and/or the point of taking delivery in the named port of destination, give the seller sufficient notice thereof.

A8 Proof of delivery, transport document or equivalent electronic message

The seller must provide the buyer at the seller's expense with the delivery order and/or the usual transport document (for example a negotiable bill of lading, a non-negotiable sea waybill, an inland waterway document or a multimodal transport document) to enable him to take the goods and remove them from the quay (wharf).

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraph may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the delivery order or transport document in accordance with A8.

A9 Checking—packaging—marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to deliver the goods of the contract description unpacked) which is required for the delivery of the goods. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

A10 Other obligations

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in A8) issued or transmitted in the country of dispatch and/or origin which the buyer may require for the import of the goods.

The seller must provide the buyer, upon request, with the necessary information for procuring insurance.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

DDU*Delivered duty unpaid (... named place of destination)*

"Delivered Duty Unpaid" means that the seller delivers the goods to the buyer, not cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear the costs and risks involved in bringing the goods thereto, other than, where applicable,⁸³ any "duty" (which term includes the responsibility for and the risks of the carrying out of customs formalities, and the payment of formalities, customs duties, taxes and other charges) for import in the country of destination. Such "duty" has to be borne by the buyer as well as any costs and risks caused by his failure to clear the goods for import in time.

However, if the parties wish the seller to carry out customs formalities and bear the costs and risks resulting therefrom as well as some of the costs payable upon import of the goods, this should be made clear by adding explicit wording to this effect in the contract of sale.⁸⁴

This term may be used irrespective of the mode of transport but when delivery is to take place in the port of destination on board the vessel or on the quay (wharf), the DES or DEQ terms should be used.

*A The seller's obligations**B The buyer's obligations**A1 Provision of the goods in conformity with the contract*

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export licence and other official authorization or other documents and carry out, where applicable,⁸⁵ all customs formalities necessary for the export of the goods and for their transit through any country.

B2 Licences, authorizations and formalities

The buyer must obtain at his own risk and expense any import licence or other official authorization or other documents and carry out, where applicable,⁸⁶ all customs formalities necessary for the import of the goods.

*A3 Contracts of carriage and insurance**(a) Contract of carriage*

The seller must contract at his own expense for the carriage of the goods to the named place of destination. If a specific point is not agreed or is not determined by practice, the seller may select the point at the named place of destination which best suits his purpose.

⁸³Ibid., para. 14.

⁸⁴Ibid., para. 11.

⁸⁵Ibid., para. 14.

⁸⁶Ibid.

(b) Contract of insurance

No obligation.⁸⁷

B3 *Contracts of carriage and insurance*

(a) Contract of carriage

No obligation.⁸⁸

(b) Contract of insurance

No obligation.⁸⁹

A4 *Delivery*

The seller must place the goods at the disposal of the buyer, or at that of another person named by the buyer, on any arriving means of transport not unloaded, at the named place of destination on the date or within the period agreed for delivery.

B4 *Taking delivery*

The buyer must take delivery of the goods when they have been delivered in accordance with A4.

A5 *Transfer of risks*

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have been delivered in accordance with A4.

B5 *Transfer of risks*

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered in accordance with A4.

The buyer must, should he fail to fulfil his obligations in accordance with B2, bear all additional risks of loss of or damage to the goods incurred thereby.

The buyer must, should he fail to give notice in accordance with B7, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the agreed period for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 *Division of costs*

The seller must, subject to the provisions of B6, pay

- in addition to costs resulting from A3 (a), all costs relating to the goods until such time as they have been delivered in accordance with A4; and
- where applicable,⁹⁰ the costs of customs formalities necessary for export as well as all duties, taxes and other charges payable upon export and for their transit through any country prior to delivery in accordance with A4.

B6 *Division of costs*

The buyer must pay

- all costs relating to the goods from the time they have been delivered in accordance with A4; and
- all additional costs incurred if he fails to fulfil his obligations in accordance with B2, or to give notice in accordance with B7, provided, however, that the goods have been duly

appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods; and

- where applicable,⁹¹ the costs of customs formalities as well as all duties, taxes and other charges payable upon import of the goods.

A7 *Notice to the buyer*

The seller must give the buyer sufficient notice of the dispatch of the goods as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take delivery of the goods.

B7 *Notice to the seller*

The buyer must, whenever he is entitled to determine the time within an agreed period and/or the point of taking delivery at the named place, give the seller sufficient notice thereof.

A8 *Proof of delivery, transport document or equivalent electronic message*

The seller must provide the buyer at the seller's expense the delivery order and/or the usual transport document (for example a negotiable bill of lading, a non-negotiable sea waybill, an inland waterway document, an air waybill, a railway consignment note, a road consignment note, or a multimodal transport document) which the buyer may require to take delivery of the goods in accordance with A4/B4.

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraph may be replaced by an equivalent electronic data interchange (EDI) message.

B8 *Proof of delivery, transport document or equivalent electronic message*

The buyer must accept the appropriate delivery order or transport document in accordance with A8.

A9 *Checking—packaging—marking*

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to deliver the goods of the contract description unpacked) which is required for the delivery of the goods. Packaging is to be marked appropriately.

B9 *Inspection of goods*

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

A10 *Other obligations*

The seller must render the buyer at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages (other than those mentioned in A8) issued or transmitted in the country of dispatch and/or of origin which the buyer may require for the import of the goods.

The seller must provide the buyer, upon request, with the necessary information for procuring insurance.

⁸⁷Ibid., para. 10.

⁸⁸Ibid.

⁸⁹Ibid.

⁹⁰Ibid., para. 14.

⁹¹Ibid.

B10 Other obligations

The buyer must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in A10 and reimburse those incurred by the seller in rendering his assistance in accordance therewith.

DDP*Delivered duty paid (... named place of destination)*

“Delivered Duty Paid” means that the seller delivers the goods to the buyer, cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear all the costs and risks involved in bringing the goods thereto including, where applicable,⁹² any “duty” (which term includes the responsibility for and the risks of the carrying out of customs formalities and the payment of formalities, customs duties, taxes and other charges) for import in the country of destination.

Whilst the EXW term represents the minimum obligation for the seller, DDP represents the maximum obligation.

This term should not be used if the seller is unable directly or indirectly to obtain the import licence.

However, if the parties wish to exclude from the seller’s obligations some of the costs payable upon import of the goods (such as value-added tax: VAT), this should be made clear by adding explicit wording to this effect in the contract of sale.⁹³

If the parties wish the buyer to bear all risks and costs of the import, the DDU term should be used.

This term may be used irrespective of the mode of transport but when delivery is to take place in the port of destination on board the vessel or on the quay (wharf), the DES or DEQ terms should be used.

A The seller’s obligations**B The buyer’s obligations***A1 Provision of the goods in conformity with the contract*

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity which may be required by the contract.

B1 Payment of the price

The buyer must pay the price as provided in the contract of sale.

A2 Licences, authorizations and formalities

The seller must obtain at his own risk and expense any export and import licence and other official authorization or other documents and carry out, where applicable,⁹⁴ all customs formalities necessary for the export of the goods, for their transit through any country and for their import.

B2 Licences, authorizations and formalities

The buyer must render the seller at the latter’s request, risk and expense, every assistance in obtaining, where appli-

able,⁹⁵ any import licence or other official authorization necessary for the import of the goods.

*A3 Contracts of carriage and insurance**(a) Contract of carriage*

The seller must contract at his own expense for the carriage of the goods to the named place of destination. If a specific point is not agreed or is not determined by practice, the seller may select the point at the named place of destination which best suits his purpose.

(b) Contract of insurance

No obligation.⁹⁶

*B3 Contracts of carriage and insurance**(a) Contract of carriage*

No obligation.⁹⁷

(b) Contract of insurance

No obligation.⁹⁸

A4 Delivery

The seller must place the goods at the disposal of the buyer, or at that of another person named by the buyer, on any arriving means of transport not unloaded at the named place of destination on the date or within the period agreed for delivery.

B4 Taking delivery

The buyer must take delivery of the goods when they have been delivered in accordance with A4.

A5 Transfer of risks

The seller must, subject to the provisions of B5, bear all risks of loss of or damage to the goods until such time as they have been delivered in accordance with A4.

B5 Transfer of risks

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered in accordance with A4.

The buyer must, should he fail to fulfil his obligations in accordance with B2, bear all additional risks of loss of or damage to the goods incurred thereby.

The buyer must, should he fail to give notice in accordance with B7, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the agreed period for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A6 Division of costs

The seller must, subject to the provisions of B6, pay

- in addition to costs resulting from A3 (a), all costs relating to the goods until such time as they have been delivered in accordance with A4; and

⁹²Ibid., para. 14.

⁹³Ibid., para. 11.

⁹⁴Ibid., para. 14.

⁹⁵Ibid., para. 14.

⁹⁶Ibid., para. 10.

⁹⁷Ibid.

⁹⁸Ibid.

- where applicable,⁹⁹ the costs of customs formalities necessary for export and import as well as all duties, taxes and other charges payable upon export and import of the goods, and for their transit through any country prior to delivery in accordance with A4.

B6 Division of costs

The buyer must pay

- all costs relating to the goods from the time they have been delivered in accordance with A4; and
- all additional costs incurred if he fails to fulfil his obligations in accordance with B2, or to give notice in accordance with B7, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

A7 Notice to the buyer

The seller must give the buyer sufficient notice of the dispatch of the goods as well as any other notice required in order to allow the buyer to take measures which are normally necessary to enable him to take delivery of the goods.

B7 Notice to the seller

The buyer must, whenever he is entitled to determine the time within an agreed period and/or the point of taking delivery at the named place, give the seller sufficient notice thereof.

A8 Proof of delivery, transport document or equivalent electronic message

The seller must provide the buyer at the seller's expense with the delivery order and/or the usual transport document (for example a negotiable bill of lading, a non-negotiable sea waybill, an inland waterway document, an air waybill, a railway consignment note, a road consignment note, or a multimodal transport document) which the buyer may require to take delivery of the goods in accordance with A4/B4.

⁹⁹Ibid., para. 14.

Where the seller and the buyer have agreed to communicate electronically, the document referred to in the preceding paragraph may be replaced by an equivalent electronic data interchange (EDI) message.

B8 Proof of delivery, transport document or equivalent electronic message

The buyer must accept the appropriate delivery order or transport document in accordance with A8.

A9 Checking—packaging—marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of delivering the goods in accordance with A4.

The seller must provide at his own expense packaging (unless it is usual for the particular trade to deliver the goods of the contract description unpacked) which is required for the delivery of the goods. Packaging is to be marked appropriately.

B9 Inspection of goods

The buyer must pay the costs of any pre-shipment inspection except when such inspection is mandated by the authorities of the country of export.

A10 Other obligations

The seller must pay all costs and charges incurred in obtaining the documents or equivalent electronic messages mentioned in B10 and reimburse those incurred by the buyer in rendering his assistance herewith.

The seller must provide the buyer, upon request, with the necessary information for procuring insurance.

B10 Other obligations

The buyer must render the seller, at the latter's request, risk and expense, every assistance in obtaining any documents or equivalent electronic messages issued or transmitted in the country of import which the seller may require for the purpose of making the goods available to the buyer in accordance therewith.