



International Chamber of Commerce

The world business organization



Incoterms® 2010
by the International Chamber of Commerce (ICC)

NOTE ON DELIVERY

1. ICC has been asked to comment on the definition of « delivery » in the introduction to the Incoterms® 2010 rules. The following note is issued by way of guidance to users of the Incoterms® 2010 rules.
2. One of the main advantages of the Incoterms® rules has been to give a precise definition of the contractual place of delivery based on the physical location of the goods in the supply chain. Under the Incoterms® rules (unlike many sales laws) the place of delivery is also the place where the risk for the consequences of loss of or damage to the goods transfers from the seller to the buyer under the contract of sale.
3. Both notions – delivery and risk - are crucial since the physical delivery and transfer of risk mark the point at which the seller performs what is usually its most significant obligation under the contract of sale, i.e., to pass the goods to the buyer.
4. Since delivery and transfer of risk can be defined differently under the law applicable to the sales contract, it may often be complicated to determine under a particular sales contract when exactly the seller performs its delivery obligation and when risk passes to the buyer. This may cause misunderstandings and conflicts between the parties to the contract of sale. Delivery could take place at the seller's premises, at the buyer's premises or at a point in between. Thus, for example, Article 31 of CISG fixes delivery at the place where the goods are handed over to the first carrier.
5. Article A4 in each Incoterms® rules specifies the place of delivery. Therefore, by incorporating one of the Incoterms® rules into a sales contract, the parties can clarify precisely where the seller performs its obligation to deliver under the sales contract.
6. In order for article A4 in each Incoterms® rule to work to its best advantage, however, it is important for the parties to clearly define in the contract the precise point within the agreed place of delivery.
7. It should be noted that under most Incoterms® rules contractual delivery takes place when the goods are handed over not directly to the buyer but to a third party – often a carrier – at a pre-determined place. Moreover, customs for handing over goods to carriers may vary depending on the place.
8. It is at the point of delivery that the risk passes from the seller to the buyer (subject to some narrow exceptions). This is clarified in article A5 of each Incoterms® rule and explained in the Introduction to *Incoterms® 2010*. The clear identification of the place of delivery therefore avoids the confusion that could arise because different applicable laws might fix the passage of risk to diverging places.
9. In conclusion, the Incoterms® 2010 rules, as do all prior versions, respond to the practical need for a clear definition of the contractual place of delivery.

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