

ISSUE ALERTS



REVISING YOUR CONTRACTS TO INCORPORATE INCOTERMS® 2020

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International Commercial Terms, otherwise known as Incoterms®, represent a standard set of rules which define the responsibilities of buyers and sellers for the delivery of goods under sales and purchasing contracts. If you've ever seen the acronyms EXW, FCA, FOB, CPT, etc. in a contract, invoice, or purchase order, you may already have an inkling as to how these terms are used between contracting parties today for sale of goods transactions domestically and around the world. By standardizing the obligations between buyers and sellers under specific terms such as those listed above, the International Chamber of Commerce (the "ICC") aims to reduce the potential for misunderstandings between contracting parties.

Incoterms® are revised by the ICC on an as-needed-basis to reflect current trade practices. Incoterms® were last revised in 2010, and most active sales and purchasing contracts today incorporate these 2010 terms. However, the latest revision, Incoterms® 2020, will take effect on January 1, 2020.

Under the new Incoterms® 2020, there are 11 different shipment and delivery terms. In general, these terms specifically address how costs and risks are divided between buyers and sellers as well as the parties' compliance responsibilities when it comes to packaging, delivery, and transport of the goods. Each of these 11 Incoterms® must be accompanied by a location (e.g., FCA Supplier's Facility in Wichita, Kansas). The location accompanying the Incoterm® indicates where the seller's cost and risk ends. Consequently, the more precise the contracting parties can be in determining this location, the better.

While Incoterms® are not law, when you properly put them in your sales and purchasing contracts, they take effect. Therefore, in order to reduce future misunderstandings in your business practice, we encourage you to take the time to learn how Incoterms® operate—specifically how they apply and do not apply to your contracts.

WHAT YOU NEED TO KNOW

Our supply chain attorneys at Foulston recently attended an Incoterms® seminar led by Frank Reynolds, the United States' ICC representative for the Incoterms® 2000, 2010, and 2020 revisions, and are eager to share their enhanced understanding of the Incoterms® 2020 revisions with you.

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The primary take-away that our attorneys would like our clients to be aware of is the ways in which Incoterms[®] do **NOT** apply to your contracts. Incoterms[®] do not address the transfer of title or ownership. They do not address specific payment terms. They do not address dispute resolution or choice of law. They do not address more than one transaction. **Drafting specific contracting language around your business' use of Incoterms[®] may be needed to ensure that your agreements are clear and your business is better protected.**

With the year 2020 quickly approaching, if you have any questions about Incoterms[®] 2020, please do not hesitate to contact us. We are happy to discuss the Incoterms[®] 2020 revisions in detail with you, provide training for you and your team, and review your supply and customer agreements for necessary revisions.

FOR MORE INFORMATION

If you have questions or want more information, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. Please contact **Francis J. Baalman** at fbalman@foulston.com or 316.291.9559 or **Samantha K. Ernst** at sernst@foulston.com or 316.291.9714. For more information about Foulston, please visit our website at www.foulston.com.

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PRACTICE AREAS

- Supply Chain Management