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The Importance of Incoterms in International Transport Management

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Italian Abstract

I termini di commercio internazionale, o Incoterms, istituiti dalla Camera di Commercio Internazionale nel 1936, sono acronimi che racchiudono regole contrattuali la cui inclusione nel contratto di compravendita garantisce alle parti la chiarezza sulla natura e la disciplina del rapporto contrattuale. Lo scopo principale delle regole Incoterms è definire i ruoli reciproci, i doveri, le responsabilità e il trasferimento dei rischi. Il loro vantaggio risiede nella comprensibilità e nell'interpretazione uniforme tra le parti contraenti.

L'obiettivo di questa tesi è analizzare la natura degli Incoterms attraverso uno sguardo alla loro storia e ai relativi sviluppi, per poi passare a un'analisi operativa più dettagliata. Il focus è quindi posto sull'analisi storica e operativa delle regole Incoterms, al fine di dimostrarne l'efficacia nel tracciare un insieme di regole uniformi nel commercio internazionale.

Lo studio e lo sviluppo di questo argomento sono il risultato di un percorso formativo presso l'Università di Modena e Reggio Emilia. Inoltre, il mio particolare interesse per questo tema nasce dall'esperienza lavorativa maturata nel reparto After Sales presso F.B.L. Food Machinery S.R.L.

Questa tesi esplora il ruolo cruciale degli Incoterms nella strutturazione del commercio internazionale, con un'attenzione particolare alle implicazioni giuridiche, logistiche e giurisdizionali. A partire dall'evoluzione storica degli Incoterms, lo studio esamina i vantaggi, la terminologia chiave e i criteri per la scelta del termine più appropriato nelle transazioni transfrontaliere.

Successivamente, l'analisi si sposta sul piano giuridico del commercio internazionale, esaminando la competenza dei tribunali alla luce del Regolamento Bruxelles I bis dell'Unione Europea (Regolamento UE 1215/2012). Questa sezione illustra le norme che disciplinano la competenza giurisdizionale, la competenza esclusiva, gli accordi tra le parti in merito al foro competente e il riconoscimento e l'esecuzione delle sentenze, soprattutto nelle controversie che coinvolgono Stati terzi.

Infine, il terzo capitolo è incentrato su uno studio di caso riguardante l'Incoterm Ex-Works nel contesto giuridico italiano. Attraverso un'analisi approfondita della sentenza "Conelcom Engineering and Controllino GmbH vs. Embit s.r.l.", la tesi mette in luce le sfide operative e giuridiche affrontate dalle imprese italiane nell'utilizzo dell'Incoterm Ex-Works. L'interpretazione di questo caso segnala nuove tendenze giurisprudenziali e sottolinea le difficoltà pratiche nell'applicazione di tale Incoterm in Italia.

English Abstract

The International Commercial Terms or Inconterms, established by the International Chamber of Commerce in 1936, are acronyms containing contractual rules whose inclusion in the contract of sale and purchase guarantees the parties on the nature and discipline of the contractual relationship. The main purpose of the Incoterms rules is to define the mutual roles, duties, responsibilities and transfer of risks. Their advantage is comprehensibility and uniform interpretation between the contracting parties. The aim of this thesis is to analyze the nature of Incoterms through a look at the history and developments to more detailed operational analysis. The focus is therefore on the historical and operational analysis of Incoterms rules in order to demonstrate how effective they are in drawing a set of uniform rules in international trade. The study and development of this topic are the result of an educational experience at the University of Modena and Reggio Emilia. Furthermore, my particular interest in this topic stems from my work experience in the After Sales Department at F.B.L. Food Machinery S.R.L. This thesis explores the critical role of Incoterms in structuring international trade, with a particular focus on their legal, logistical, and jurisdictional implications. Beginning with the historical evolution of Incoterms, the study examines their advantages, key terminology, and the criteria for selecting the appropriate term in cross-border transactions. It then shifts to the legal dimension of international commerce, analyzing the competence of courts under the European Union's Brussels I bis Regulation (Regulation EU 1215/2012). This section outlines the rules governing jurisdiction, exclusive competence, court agreements, and the recognition and enforcement of judgments, especially in disputes involving third states.

Finally, a case study of the Ex-Works Incoterm in the Italian legal context forms the core of the third chapter. Through an in-depth analysis of the "Conelcom Engineering and Controllino GmbH vs. Embit s.r.l." judgment, the thesis highlights the operational and legal challenges faced by Italian businesses using Ex-Works. The interpretation of this case signals new judicial trends and underlines the practical difficulties in applying this Incoterm in Italy.

Introduction

International trade has always depended on clarity, predictability, and fairness in transactions across borders. As commercial exchanges became increasingly global in the 20th and 21st centuries, the diversity of legal systems, languages, customs, and trade practices presented growing risks of misunderstandings and costly disputes. In response to this need, Incoterms (International Commercial Terms) were developed as a key tool for structuring international transactions. By clearly defining the responsibilities, risks, and costs shared between buyers and sellers, Incoterms create a common language that helps prevent misunderstandings and promotes smoother logistics and greater legal certainty.

The Incoterms rules are not binding legal instruments per se, but when incorporated into a sales contract, they form a powerful interpretative tool that courts and contracting parties can rely on. Their utility lies in their ability to reduce transaction costs, prevent disputes, and promote efficiency, especially in cross-border contexts where legal uncertainty might otherwise undermine the transaction.

This thesis examines the role and relevance of Incoterms in in managing international transport from several angles. The first chapter looks at the origins and evolution of Incoterms, explaining how the International Chamber of Commerce created these standardized rules in response to the growing complexity of global trade. It also outlines the benefits of using Incoterms, particularly in improving efficiency and reducing conflicts in international business.

The second chapter examines the legal landscape governing cross-border disputes within the European Union. Focusing on the Brussels I bis Regulation (EU Regulation No. 1215/2012), this section discusses how rules on jurisdiction interact with international trade agreements and influence how courts determine which country has authority in commercial cases. This legal context is crucial for understanding how contracts are enforced and how judgments are recognized across EU member states.

In the third chapter, the focus shifts to a case study involving the Ex-Works (EXW) Incoterm within Italy. The chapter analyzes the court decision in *Conelcom Engineering and Controllino GmbH vs. Embit s.r.l.*, shedding light on both the operational and legal challenges that can arise when this

specific term is applied. The case highlights the practical issues companies may face and illustrates how courts interpret and apply Incoterms in real-world disputes.

By integrating historical development, legal framework, and practical case analysis, this thesis seeks to demonstrate that Incoterms remain a vital instrument in international trade, despite certain limitations and interpretative challenges. They embody a balance between commercial flexibility and legal structure, offering parties a reliable way to allocate risks and responsibilities while supporting the broader goals of legal certainty, economic efficiency, and international cooperation.

In an era marked by growing geopolitical tensions, digitalization of trade documentation, and shifting trade alliances, the role of Incoterms in facilitating smooth, predictable, and legally enforceable trade flows remains more important than ever. The continuing evolution of these terms, and their reception by courts and businesses alike, provides a lens through which we can better understand the intersection of law, logistics, and commerce in the global economy.

Chapter 1: The Origin and Evolution of Incoterms: The Structuring of International Trade Rules

1.1. The Genesis of Incoterms

The role of global logistics as a common key term of international and domestic trade has become leading in the modern era of globalization. When performing their cross-border businesses, it is impossible for the manufacturers to apply them without a set of standard operating procedures. In the early 20th century, international trade was growing rapidly. Industrialization had significantly boosted production, and advancements in transportation, particularly the rise of steamships and railways, made it much easier and faster to move goods between countries. A number of major developments drove this growth: the Second Industrial Revolution increased the demand for raw materials and access to overseas markets; new infrastructure like the Suez Canal, which opened in 1869, greatly reduced shipping times; and the gold standard brought a degree of currency stability that helped trade operate more smoothly.

Still, even as trade volumes increased, business practices remained inconsistent from one country to another. There was no common framework, and this often led to confusion in cross-border transactions. Each country used different commercial terms to define the responsibilities, risks, and costs between buyers and sellers. This led to:

- Frequent misunderstandings between trading partners.
- Numerous legal disputes.
- Uncertainty in the execution of international contracts.

World War I disrupted global trade like never before.

- Supply chains broke down completely
- Shipping routes were militarized or blocked.
- After the war, Europe was hit hard by inflation and economic problems.

To protect their own industries and try to get back on their feet, many countries started putting up trade barriers. At the same time, people realized that working together across borders was essential to bring stability back and get trade moving again.
That's when, in 1919, a group of business leaders in Paris came together to create the International Chamber of Commerce (ICC). They called themselves "the merchants of peace" and wanted to encourage open trade and cooperation instead of conflict.

The 1920s saw a partial recovery in trade and attempts at liberalization. However, challenges remained:

- The lack of harmonized legal systems governing cross-border transactions.
- Different interpretations of trade terms like FOB (Free on Board), CIF (Cost, Insurance, and Freight), and EXW (Ex Works), which could mean different things in different jurisdictions.
- Disputes in shipping, especially over who bore the risk at different stages of the journey.
- Increasing use of multi-modal transport (e.g., rail + sea), which further complicated matters.

This confusion caused frequent legal conflicts, delayed deliveries, and rising costs, highlighting the urgent need for standardized terminology.
There was a clear need for a common commercial language that could be understood and applied globally.

By 1923, the ICC began a study of the most used international trade terms. This led to the publication of a document called "Trade Terms", which attempted to clarify the meanings of these terms, but it was not yet a formal set of rules. Incoterms, short for "International Commercial Terms", are a set of standardized rules that define the responsibilities and obligations of buyers and sellers involved in international transactions. Developed to simplify and harmonize global trade, these terms help determine how costs, risks, and responsibilities for transporting goods are divided between the parties, including aspects like delivery, insurance, and customs duties.

Incoterms were first introduced in the early 20th century, as the growth of international trade made clear the need for common definitions and clearer commercial practices. Before their creation, differences in business customs across countries often led to misunderstandings, legal conflicts, and delays in shipments.

Over the past 80 years, international trade has evolved dramatically but Incoterms have remained a vital tool in ensuring clarity and consistency in global transactions.
These changes include new methods of transport, modifications in the types of international sales contracts, amendments to customs clearance of goods.
And as such behavior changes, so must the terms that govern them. The ICC's objectives of revising Incoterms are to guarantee that the set of transport terms keeps up with the pace of progress and adapts to the evolving needs of international trade.
After ICC's creation in 1919, one of its first initiatives was to facilitate international trade. ICC set out to understand the commercial trade terms used by merchants through a study of six commonly used terms in 13 countries. The findings were published in 1923, highlighting disparities in interpretation.[1]

The Great Depression, which lasted from 1929 to 1939, pretty much froze global trade. Countries kept raising tariffs and turning inward, making it harder and more unpredictable to do business across borders. In the middle of all this, the ICC stepped up its work to create clearer rules for international trade. Businesses were looking for ways to reduce risks and avoid disputes in a market that was anything but stable.

It was in this context that the ICC released the first edition of the Incoterms in 1936, a practical tool to:

- Define clearly and precisely the obligations of buyers and sellers.
- Indicate where responsibility transfers from one party to the other.
- Establish standard meanings for common trade terms.
- Reduce litigation and transaction costs.

It is also important to add that in the 1920s and 1930s, fundamental elements for the future of commerce were being developed:

- Telegraph and radio communications, which allowed faster communications between buyers and sellers.

[1] International Chamber of Commerce website, Incoterms Rules history https://iccwbo.org/business-solutions/incoterms-rules/incoterms-rules-history/

- Standardized trade documents such as bills of lading and letters of credit.
- International banking systems for settling payments (anticipating the modern use of letters of credit).

These tools, however, needed precise and shared legal terms, which Incoterms began to provide.

The first version of the Incoterms rules was published in 1936 and included the terms FAS, FOB, C&F, CIF, Ex Ship and Ex Quay, which will be analyzed in depth later.
The first Incoterms revision came after WWII in 1953. Rail transportation was on the rise and three new Incoterms were introduced for non-maritime transport: Free on Rail, Free on Truck, and Delivered Costs Paid. EXW Incoterm was also added.
The Incoterms rules have been updated several times over the years in 1967, 1976, 1980, 1990, 2000, and 2010 to keep up with changes in global trade. The latest version, Incoterms 2020, was released on September 10, 2019, reflecting today's fast-moving business world. Back in 1953, the ICC updated the rules to address the rise of railway transport; then in 1976, they adapted them again for air transport, and in 1980, for the growth of container shipping. The latest version includes more detailed explanatory notes with enhanced graphics to illustrate the responsibilities of importers and exporters for each Incoterms rule. Moreover, it includes a more precise explanation of how to choose the most appropriate rule for a given transaction or how a sale contract interacts with ancillary contracts.

By the early 1990s, the world was undergoing major geopolitical and economic transformations: the Cold War was ending., the European Union was forming a unified market, and globalization was accelerating with new markets opening, especially in Asia. Furthermore, multimodal transport (road, sea, air, rail) was increasingly common.
In this rapidly changing environment, international traders needed more than basic maritime clauses: they needed precise, modern, and versatile rules. This is where the 1990 revision of the Incoterms played a decisive role. For the first time, the Incoterms clearly distinguished:

- Who bears the cost
- Who bears the risk
- Who is responsible for customs clearance and transport

This reduced ambiguities and disputes in international contracts. Indeed, each Incoterm in the 1990 edition included: seller and buyer obligations, transfer point of risk, cost responsibilities, delivery location and transport requirements.
The release of Incoterms 2020 by the International Chamber of Commerce marked the most recent update in the long history of these international trade terms. Published in September 2019 and entering into force on January 1, 2020, this edition was shaped by a decade of significant changes in global trade and logistics.

Incoterms 2020 defines 11 rules, the same number as defined by Incoterms 2010. One rule of the 2010 version ("Delivered at Terminal"; DAT) was removed and is replaced by a new rule ("Delivered at Place Unloaded"; DPU) in the 2020 rules.[2]

Incoterms rule the key elements of a sale contract because they tell the parties what to do with respect to:

- Carriage of the goods from Seller to Buyer: the moment in which the transportation risk passes from the Seller to the Buyer.
- Export and import clearance: which party is responsible for paying the carrier, the insurance cover and other costs such as import or export clearance during the different phases of transportation.
- Distribution of cost and risks between the parties: where the risk transfers from the Seller to the Buyer and which party is responsible for the costs (transport, packaging, loading or unloading costs, security costs…).

Incoterms may become part of the contract of sale by simply stating in the contract the name of the trade term chosen and the expression “as per Incoterms 2020”. When drafting a contract, it is crucial to specify the edition of the Incoterm chosen by the parties because different editions may have diverse rules to be applied. Usually, it is more advantageous to refer to the last version of Incoterms as it takes into consideration the latest means of transportation and solves issues that parties may have encountered while using the previous editions. To conclude, Incoterms historical development reflects the changing landscape of international trade, logistics, and law. Each revision

[2] "From the introduction of Incoterms 2020". ICC. Aug 262 2019.

responds to emerging needs, such as multimodal transport, containerization, and digitalization, ensuring that global trade continues to function smoothly and predictably.

1.2. The advantages of Incoterms in Global Trade

As previously mentioned, Incoterms offer numerous advantages in international and domestic trade, as they establish standardized and universally recognized rules defining responsibilities, risks and costs between seller and buyer. Here are the main advantages:

1. Clarity and reduction of ambiguity

Incoterms reduce misunderstandings between the parties by specifying precisely:

- Who is responsible for the various aspects of the shipment (e.g. transport, insurance, customs).
- When the transfer of risk takes place.
- What costs are to be borne by each party.

2. Reduction of conflicts

Thanks to pre-established rules, misunderstandings and misinterpretations in business transactions are reduced.
The parties know exactly what their obligations are, reducing the risk of legal disputes.

3. Operational efficiency

By standardizing terms, they enable importers and exporters to negotiate contracts quickly. Furthermore, they facilitate the management of logistics and customs operations. They help clarify who is responsible for carrying out customs formalities, whether for import or export.
This clarity avoids delays or penalties resulting from misunderstandings about the tasks assigned.

4. Flexibility and adaptability

Incoterms cover different modes of transport and types of trade (land, sea, air). Consequently, the best terms suited to the specific needs of the trade contract can be chosen to comply with the different needs of the Buyer and/or of the Seller.

5. Greater control over costs

They allow the parties to plan transport, insurance and customs costs more accurately.
Economic responsibilities are clearly distributed, reducing unforeseen costs.

6. Support for international trade

As previously seen, Incoterms are regularly updated by the International Chamber of Commerce (ICC) to align with developments in global trade.
They support companies in expanding into foreign markets by ensuring a common and recognized tool.

1.3. Focus on Incoterms and international trade most used words

In the realm of international trade, language plays a critical role in ensuring mutual understanding between parties across different countries and legal systems. While reading Incoterms, some terms are widely used and considered to be peculiar in the definition of trade. Therefore, they are very often applied and need to be fully understood. Some of them are:

Delivery: In Incoterms, “delivery” does not refer to the physical handing over of goods but rather to the point where the risk of loss or damage to the goods is transferred from the Seller to the Buyer. Understanding this term is essential to determine liability and responsibility for goods at every stage of the supply chain.

Arrival: It refers to the destination point named in the Incoterm where carriage has been organized and paid to.
It is crucial to distinguish between *arrival* and *delivery* in Incoterms, as the point of arrival may not always coincide with the point of risk transfer.

Carrier: 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.

The carrier's obligations typically begin when the goods are handed over for shipment and end at the point of delivery as defined by the contract.

Freight forwarder: A person or a firm that coordinates, organizes or assists the movement of shipments. International freight forwarders typically have information with respect to commercial invoice, shipper's export declaration, bill of lading and other documents required by the carrier or country of export, import.

Terminal: Any place, whether covered or not, such as a dock, warehouse, container yard or road, rail or air cargo terminal. Terminals serve as critical transfer points in international logistics chains. Their functions may include:

- Loading and unloading cargo from different modes of transport
- Storing goods temporarily
- Performing customs inspections
-

The significance of a terminal in Incoterms becomes especially clear in terms such as FCA (Free Carrier) or FAS (Free Alongside Ship), where goods are delivered to a terminal or specific location for onward transportation.

To clear for export: It means obtaining all necessary government authorizations for goods to legally leave the country of origin. This process typically involves: filling a Declaration of Free Export, providing documentation such as the commercial invoice, packing list, certificate of origin.

1.4. Selection of the appropriate Incoterm

Incoterms® 2020 are a set of 11 rules, divided into two groups: universal trade terms, that apply to multiple modes of transport (including land, air and waterway transportation), and single-modal trade terms, that are exclusively designed for sea and inland waterway transportation (Plitz, 2020)[3]. Generally speaking, multi-modal, universal Incoterms can be applied in contracts involving delivery

[3] Plitz, M. (2020). Understanding Incoterms 2020: Key Changes and Impacts on International Trade. Journal of International Trade Law and Policy.

by various means of transport. These ones are: EXW (Ex Works); FCA (Free Carrier); CPT (Carriage Paid To); CIP (Carriage and Insurance Paid to); DAP (Delivered At Place); DPU (Delivered Place Unloaded); DDP (Delivered Duty Paid). Single-modal Incoterms that are intended for sea and inland waterway transportation only, include four terms: FAS (Free Alongside Ship); FOB (Free On Board); CFR (Cost and Freight); CIF (Cost, Insurance and Freight).
We can consider four important groups to classify Incoterms:

- **E GROUP**: it includes only one term, which is Ex-Works (EXW). Ex-Works requires that the seller places the goods at the buyer's disposal while the buyer has to arrange the collection of the goods at the seller's premises. The buyer is responsible for the transport of the goods as well as the custom clearance formalities.

- **F GROUP**: it includes the F terms (FCA – Free Carrier, FAS – Free Alongside Ship, FOB – Free On Board). They impose an obligation on the buyer to bear the costs and risks of the main international carriage. However, the seller is obliged to deliver the goods to the buyer's chosen carrier at a certain place of delivery and to clear them for export at his own expense. In some cases, the seller may also be obliged to load the goods on the means of transport. The buyer must organize and pay for the further transport (bearing the risk of the main carriage) and import clearance into the country of destination.

- **C GROUP**: it contains four terms (CFR – Cost and Freight; CIF – Cost Insurance and Freight, CPT – Carriage Paid To and CIP – Carriage and Insurance Paid To). The seller bears responsibility for all costs to the destination port. Nevertheless, he does not bear the risks, which pass to the buyer as soon as the goods are handed over to the first carrier.

- **D GROUP**: DAP – Delivered at Place, DPU – Delivered at Place Unloaded and DDP – Delivered Duty Paid). The seller has the obligation to bear all costs and risks of the delivery of the goods. However, the buyer remains responsible for clearing the goods for import except for the DDP clause according to which the seller must complete all the formalities related to the clearance of imported products.

Choosing the right Incoterm is crucial as it affects costs, risks and transport management. Several factors influence the choice of Incoterm. Some key considerations are:

- The nature of the goods: the type of goods to be shipped including the value, the fragility, the weight and dimensions. For instance, a high-value or fragile item may require the choice of a term that ensures a good control over shipping insurance.
- The means of transport: whether the shipment is by sea, air, rail, or multimodal transport.
- Cost responsibilities: the payment terms between the Seller and the Buyer
- The transfer of risk and liability: the moment in which the risk passes from seller to buyer. It is essential to manage their responsibilities.
- Extent of Seller's and Buyer's logistics capabilities: parties must assess their ability to manage shipping, insurance, and customs procedures.

Many other elements need to be considered such as transportation expenses, environmental factors, and country risks. Indeed, before choosing the term to apply to the contract of sale, it is important to evaluate the risk tolerance and the ability of the seller to handle shipping, insurance, custom clearance and export practices[4]. Furthermore, it is compulsory to always stay updated with the latest trade regulations and rules. In international trade, it is mandatory to consult the latest directives of the destination country to avoid inconveniences or custom issues. In fact, certain countries may have preferences or restrictions regarding Incoterms.

1.5. Understanding Incoterms: Meaning, Applications and Legal Implications

Global trade relies on a sophisticated system of logistics and protocols designed to facilitate the seamless transfer of goods from sellers to buyers. A key element of this system is the comprehension of Incoterms. In the following paragraphs, I will study in depth all the 11 Incoterms defined by the International Chamber of Commerce.

Ex-Works

As mentioned before, the E group includes only one rule, which is the Ex-Works term. The official ICC website states that "the seller makes delivery by placing the goods at the disposal of the buyer at its premises or at another named place (plant, factory, warehouse, etc.). The seller is not obliged to load the goods onto the collection vehicle, nor to clear them for export, if such customs clearance

[4] Lord Arcamo, Choosing the right Incoterm, Aug 12, 2024

is provided for. EXW implies the minimum level of obligations for the seller". In other words, the delivery point is at the departure of the goods. The Buyer, or his agent, must collect the contact goods where the seller's establishment/factory/warehouse/store is located. Accordingly, the buyer shall have to arrange the collection of the goods by a land carrier that will convey them to a seaport or airport so that the goods may be carried to the country of destination. Furthermore, the buyer must arrange an insurance cover from the moment of collection onwards as he will bear the risk of loss or damage to the goods. The point of delivery, the point of passage of cost and risk are all in the place/port of departure. On the one hand, the Seller is required to:

- Supply conforming goods in the quantity requested, packed/packaged as required and without damages.
- Supply the invoice and any document providing conformity.
- Deliver the goods to the buyer by placing them at his disposal at the agreed time.
- Pay any incidental cost to place the goods at the buyer's disposal.
- Provide any assistance requested by the buyer in respect of obtaining documents facilitating export. If the product has to cross a national border, the seller must produce the necessary licenses and documentation if required.

On the other hand, the Buyer is required to:

- Accept the delivery of the goods and pay for them.
- Obtain appropriate licenses and authorizations for the export of the goods and comply with custom formalities in the country of delivery, a country of transit or the exporting country.
- Pay incidental costs to place the exportation of the goods.

The term EXW, where agreed upon and put in writing on the international contract of sale then signed, implies the minimum level of obligations for the seller (this is the only case out of 11). All obligations and risks are the responsibility of the buyer, who must collect the packaged goods by going to the designated point. In addition, the loading of goods onto the means of transport is also a task placed on the buyer, together with the associated costs and risk of loading goods. Thus, all risks and costs arising during the entire transport (including export and import duties and tariffs if the transaction is international) are borne by the buyer. In any case, the seller has the obligation to provide the buyer with all the relevant information about the danger of transporting some goods (e.g. whether the goods are fragile, perishable or dangerous). Finally, the seller must provide the

buyer with any necessary information for the collection, if there is any very special information in addition to the agreed location, date/time window and packaging. The seller's risk passes to the buyer when the seller makes the agreed goods available (the passing of risk is called “delivery”). However, since it is not a Group C term, the buyer is under no obligation to physically collect the goods in the event of a last-minute change of heart, such that the seller does not close the deal and suffers a loss. Last-minute cooling-off does not occur if, by contract, a period of notice is given (e.g., within 15 days from the contractually agreed collection date). As alternative, the parties may agree on a price to be paid if the buyer does not come to collect the goods produced and prepared by the seller. Generally speaking, the buyer has complete logistical control such that he bears all risks (especially if he does not insure the merchandise).

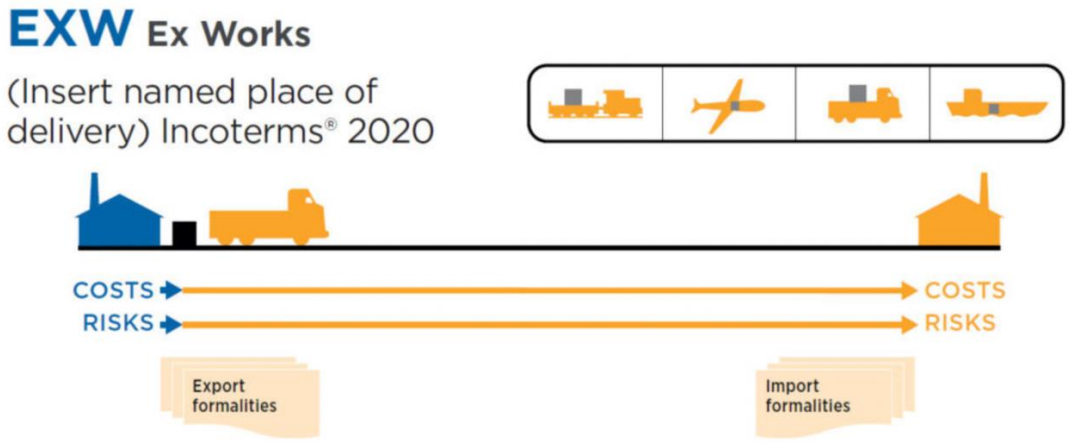


Table 1: Ex-Works, retrieved from https://www.international-arbitration-attorney.com/it/icc-incoterms-in-international-trade/

Free Carrier: FCA

The FCA notation, which must be accompanied by the specific indication of a location, obliges the seller to prepare the goods by the agreed date, provide the appropriate documentation for export from the country of origin, deliver the goods to the freight forwarder’s warehouse (or another party designated by the buyer), and cover the costs related to the customs export procedure. This term is frequently used when the goods are to be transported by containers whether by ship, railroad or a combination of them. From the official ICC website, it is possible to read the following definition:

“The seller delivers the goods to the carrier, or another person designated by the buyer at the seller’s premises or another agreed location. Under FCA, the seller is responsible for clearing the goods for

export, if applicable, but not for import clearance in the destination country. The obligation to clear the goods for import, pay any import duties, and complete any customs formalities at import lies with the buyer. FCA also requires the buyer, if applicable, to instruct the carrier to issue a bill of lading to the seller. FCA is the recommended term for the delivery of containerized goods". To put it differently, the seller fulfills the obligations by delivering the goods into the custody of the carrier at the designated point. At this stage, the risk of loss or damage is transferred.

On the one hand, the Seller is required to:

- Supply conforming goods in the quantity requested, packed/packaged as required and without damages.
- Supply the invoice and any document proving conformity.
- Deliver the goods to the buyer by transferring them to the carrier designated by the buyer at the agreed delivery location, in the specified manner.
- Obtain any export license or official authorization necessary for the export of goods.
- Bear all costs payable with respect to the goods until delivery.
- Provide at his own expense the customary packing of the goods.
- Give the buyer appropriate notice of the arrival of the goods, which means without any delay.
- Assist the buyer in obtaining the contract of carriage and/or insurance if agreed.

On the other hand, the Buyer is required to:

- Accept the delivery of the goods and pay for them.
- Obtain appropriate licenses and authorizations for the import of goods and comply with custom formalities in the country of destination or in the country of transit.
- Bear all costs related to the export of the goods, as well as any expenses incurred by the seller in providing assistance requested by the buyer.
- Contract for the carriage of the goods from the agreed point of delivery and give the seller appropriate notice of the carrier's name and delivery time.

The seller takes care of the production of documents, commercial invoice, licenses and certificates for the export and the possible packing/packaging of the goods as agreed and at his own expense. In the first case, the seller is responsible for making the goods available on the agreed date or time

window and for loading the goods in question onto a vehicle of the buyer at his own expense (whether his own or that of a third party hired by the buyer by means of a forwarding contract is to be specified in the purchase agreement). In summary, the seller not only makes the goods available at his warehouse or plant but loads the goods onto a vehicle. The rest of the transport is organized, controlled and paid for by the buyer. When all the goods are loaded onto the vehicle, the transfer of the risks of transport from the seller to the buyer takes place (this is considered “delivered”). If the goods are not loaded, the seller must notify the buyer.

The seller, as a variant, loads the goods onto a vehicle at his own expense (whether his own or that of a third party hired by the buyer, to be specified in the purchase agreement) and drives to the place designated by the buyer (and with the seller's consent), usually a warehouse of the shipper/carrier or a warehouse of the buyer which the latter provides or a warehouse of the seller. This place may be referred to by the generic name “freight yard”, it is usually frequented by heavy goods vehicles, it may be on the outskirts of large cities, of a customs house, in the vicinity of commercial ports. Even if another location is chosen, the conditions of this term do not vary. At the interport, the goods are unloaded by employees. At the time the goods are unloaded at the interport, the risk of carriage passes from the seller to the buyer as all goods are at the buyer's disposal. If requested, the seller must have a document delivered and sent to the buyer evidencing ‘delivery’ with respect to the loading of goods onto a vehicle or storage facility. Storage costs, as the goods are indicated as ‘delivered’, are also to be borne by the buyer. If his carrier/freight forwarder fails to recover the delivered goods, the seller has no liability.

If the buyer, on his way to the interport, passes through customs, he has to fulfil the import formalities (e.g., payment of duties and tariffs where they exist). But if it is the seller who has to reach a warehouse abroad, it is the party who has to make these payments to customs in order to clear the goods.

Since this is a term from the C group, as briefly mentioned earlier, the buyer is obligated to physically take delivery of the goods (last-minute changes or delays within a specified period are not allowed, as they are under non-C terms). The buyer does not control the entire transport process (the only term that allows this is EXW), and the risk is shared (unlike EXW, where it rests entirely with the buyer).

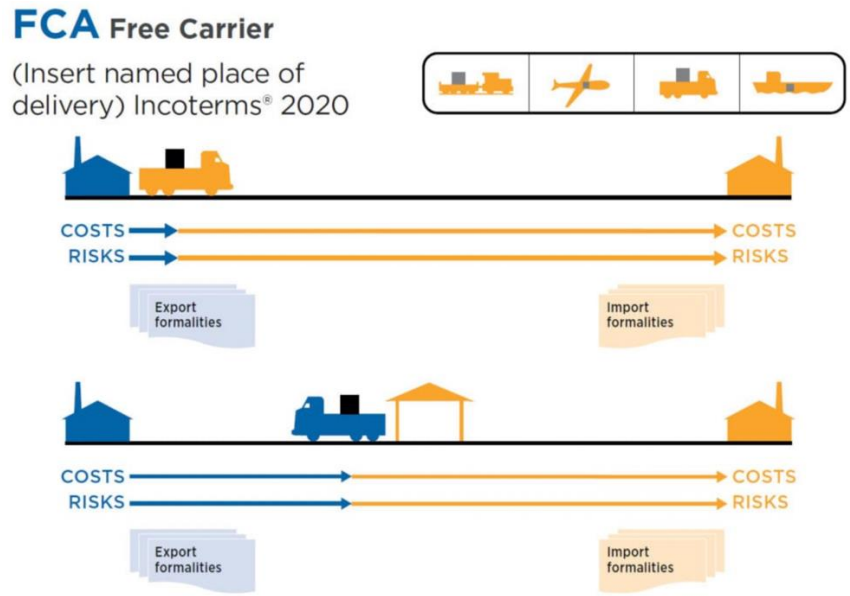


Table 2: Free Carrier, retrieved from https://www.international-arbitration-attorney.com/it/icc-incoterms-in-international-trade/

Free Alongside Ship: FAS

With reference to the FAS term, the Italian ICC website states that "The seller delivers the goods by placing them alongside the ship designated by the buyer at the agreed port of shipment. The risk of loss or damage to the goods transfers when the goods are placed alongside the ship, and the buyer bears all costs from that point onward. The seller must arrange for the goods to be delivered alongside the ship or procure goods already so delivered for shipment. FAS requires the seller, where applicable, to clear the goods for export. However, the seller is not obligated to clear the goods for import, pay any import duties, or fulfill any customs formalities required for importation". In other words, the seller ships the goods (packaged or unpackaged) to the selected port of shipment/loading by the agreed date. Specifically, the goods are delivered to the quay of the commercial port. The goods are not first loaded onto the means of a carrier/forwarder; in such cases, the ICC advises against using the FAS term. In general, the ICC discourages the use of maritime terms when goods are transported in containers, i.e., containerized goods, and instead recommends the term FCA (Free Carrier).

The goods are loaded from the dock or barge (alongside ship) onto the commercial vessel moored at the port of loading at the buyer's expense (the vessel and port are chosen by the buyer and specified in the contract). Consequently, the risks and costs are entirely borne by the buyer, as the seller fulfills their obligations and transfers the risks ("delivery") when the goods are unloaded alongside the vessel or loaded onto a barge. Therefore, the transfer of risks occurs as soon as the seller makes the goods available alongside the ship. The name following the FAS term specifies the exact port of

shipment where the seller unloads the goods alongside the ship (within the port of shipment is the "point of loading"). Therefore, the loading of the goods onto the ship (not onto a barge) is at the buyer's expense, who manages the rest of the transport route and assumes all remaining costs and risks (including the risk of loading the goods onto the ship).
The ship is chartered under a charter party, and the payment required is called the "freight cost" (maritime). The person who ships the goods by ship is called the "sea carrier" or "sea forwarder" and is the second carrier (the first, for example, is a truck or tanker or trailer that reaches the port; the second is the ship; the third, for example, is a goods train that passes through the port of arrival; and so on).

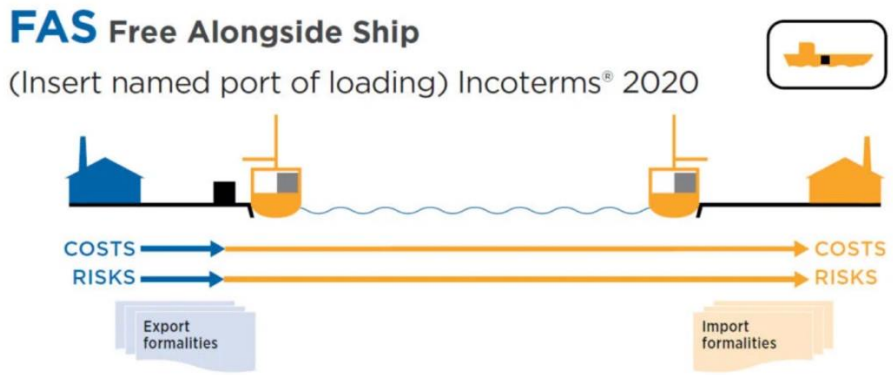


Table 3: Free Alongside Ship, retrieved from https://www.international-arbitration-attorney.com/it/icc-incoterms-in-international-trade/

In conclusion, the Seller is required to:

- Supply conforming goods in the quantity requested, packed/packaged as required and without damages.
- Deliver the goods to the buyer by placing them alongside the vessel designated by the buyer at the named port of shipment at the agreed time without delay and give the buyer sufficient notice of this fact.
- Cover any expenses related to the delivery of the goods.
- Provide proof of delivery and documents proving conformity if required to do so.
- Offer any assistance requested by the buyer to obtain documents required for export and information necessary to insure the goods.

The Buyer is required to:

- Provide the seller with adequate notice regarding the time and place of delivery for the transport of goods from the port of shipment and bear any costs resulting from failure to do so.
- Obtain any appropriate licenses and authorizations for the export of the goods and comply with custom formalities in the country of destination, in the exporting country or in the country of transit.
- Pay for the goods.

When the Incoterms was revised in 2010 for this specific yield, there were no changes, but it was simply stipulated what was already a custom before, namely that it can only be used in case the transport takes place by ship.

Free On Board: FOB

Under the FOB term, the seller is responsible for placing the goods on board a vessel nominated by the buyer, which is docked at the agreed port of shipment. The seller covers all costs up until that point, while the buyer assumes responsibility for all charges incurred thereafter, such as:

- The stowage of the goods
- Freight and marine insurance
- Unloading charges
- Import duty
- Other additional charges payable upon the arrival of the consignment at the destination port.

It works like the FAS (Free Alongside Ship), where the seller delivers the goods (either packed or unpackaged) to an agreed-upon port of shipment/loading by the agreed date. However, the responsibility, costs, and risk of loading from the point of loading (i.e., the quay or a barge) onto the commercial vessel docked at the port of shipment are the seller's, not the buyer's. Indeed, it is

specified that the goods are not just to be unloaded below board (on dock or barge) but are to be delivered by putting them “on board the ship”.

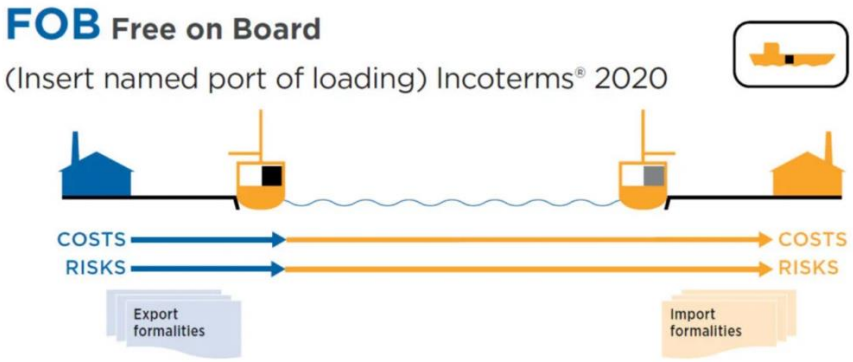


Table 4: Free On Board, retrieved from https://www.international-arbitration-attorney.com/it/icc-incoterms-in-international-trade/

In particular, the Seller is required to:

- Supply conforming goods in the quantity requested, packed/packaged as required and without damages.
- Supply any document proving conformity as well as a commercial invoice.
- Deliver the goods to the buyer by placing them on board, that is, over the rail of the vessel notified by the buyer at the agreed time and give the buyer sufficient notice of the fact.
- Place the goods on the vessel in the position and manner required.
- Pay any cost incidental to the delivery of the goods.
- Obtain the export license if required so, or any other document necessary to export the goods and clear the goods through customs.
- Provide proof of delivery as per the contract.
- Offer any assistance requested by the buyer to obtain documents required for export and information necessary to insure the goods.

The Buyer is then required to:

- Provide the seller with adequate notice regarding the time and place of delivery for the transport of goods from the port of shipment and bear any costs resulting from failure to do so.
- Obtain any appropriate licenses or authorizations for the import of the goods and comply with custom formalities for importation in the country of destination or in the country of transit.
- Pay any incidental cost to the importation of the goods and bear the costs connected to the seller's provision of assistance.
- Pay for the goods.

From the time the goods are considered ready for departure, all other expenses are to be borne by the buyer, including insurance costs.

Cost and Freight: CFR

In this instance, the seller fulfills the delivery obligation by placing the goods on board the ship or ensuring that the goods are already so delivered. The risk of loss or damage transfers to the buyer once the goods are on board the vessel. The seller must enter the contract of carriage[5] and bear the expenses involved in sending the goods to the agreed port of destination. The ICC states that this term has two critical points because the passing of risk and the transfer of expenses occur in different places i.e. the port of departure and the port of destination. Furthermore, while the contract will always specify a port of destination, it may not specify the port of embarkation, where the risk passes to the buyer. If the port of embarkation is of particular interest to the buyer, it is recommended that the parties specify it as clearly as possible in the contract. In addition, if the seller incurs expenses stipulated in the contract of carriage for unloading at a specified location within the port of destination, the Seller is not entitled to recover those costs from the Buyer. It works like FOB (Free On Board): the seller, on or before the agreed date, loads the goods (whether packaged or unpackaged) onto the ship at the port of shipment at their own expense, assuming the risks associated with loading. As soon as the goods pass over the ship's rail, the transfer of risk from

[5] The contract of carriage defines the agreement between the carrier and the user. It carries the duties, rights and liabilities of the parties involved in the contract. In addition, a contracted carrier can choose when and if to provide a service. Definition taken from https://ntslogistics.com/glossary/meaning-of-contract-of-carriage/

the seller to the buyer occurs, which constitutes the “delivery”. The port of shipment/loading and the point of delivery, therefore, coincide.
This specific notation, primarily used in maritime transportation, establishes that all transportation costs up to the destination, as well as expenses for obtaining export licenses and documentation from the country of origin, and export customs clearance fees, are the seller's responsibility.
The buyer, on the other hand, is responsible for insurance costs, while the seller is obligated to promptly provide all necessary information for the issuance of an insurance policy against risks.
From the moment the goods are unloaded at the port of arrival, all other expenses, including customs duties in the destination country, are to be borne by the buyer.

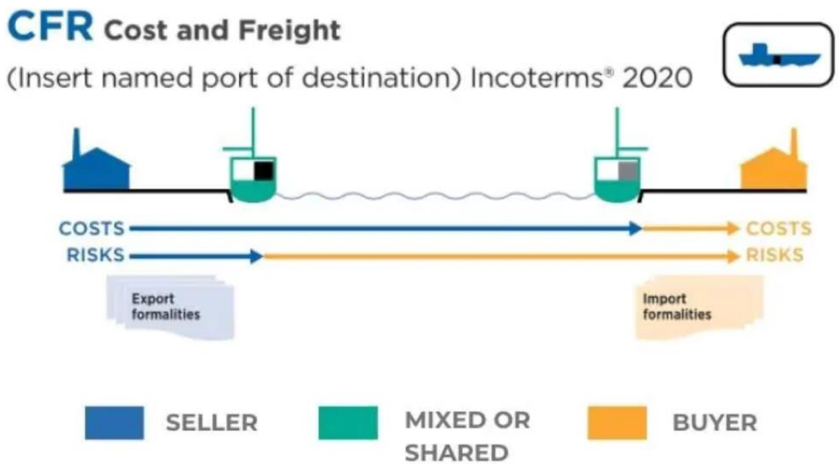


Table 5: Cost and Freight, retrieved from *https://www.tradefinanceglobal.com/incoterms/cfr-cost-and-freight-shipping-meaning/*

Cost, Insurance, Freight: CIF

With reference to this C group term, the Italian ICC website states that: “The seller delivers the goods by placing them on board the ship or procuring the goods already so delivered. The risk of loss or damage to the goods passes when the goods are on board the ship. The seller must arrange the transport contract and bear the necessary costs for sending the goods to the agreed port of destination. [...] The buyer should be aware that, under the CIF rule, the seller is only required to obtain minimum insurance coverage. [...] This rule has two critical points because the transfer of risk and the transfer of costs occur at different locations. While the contract will always specify a port of destination, it may not specify the port of loading, where the risk passes to the buyer”.
Basically, CIF functions like the term CFR Cost and Freight: on/by the agreed date, the seller is obliged to load the goods (packed or loose/unpackaged) at his own expense from the quay or barge on board the vessel at the port of shipment/loading/departure; as soon as the goods physically pass the ship's broadside, the risks of transportation pass from the seller to the buyer as “delivery”

occurs, although the sea leg from the port of embarkation to the port of destination is controlled and expensed by the seller. The precise location indicated after the terms CFR indicates the seller's port of destination, and this should be accompanied by a precise indication of the port of delivery, where the transfer of risks occurred. If multiple ocean carriers stop at multiple ports, the default risk passes when the goods are loaded on the first carrier unless the contracting parties agree otherwise and put it in writing in the contract.
From the legal point of view, the CIF term raises complex issues and embodies the elements of 3 contracts:

- The Contract of Sale
- The Contract of Carriage by sea
- The Contract of Marine Insurance

This is why documents are crucial in a transaction ruled by the CIF term. The documents required for the transaction are the so-called shipping documents and include:

- The Bill of Lading (B/L): it is a document that acts as evidence of the contract of carriage by sea. The bill of lading, which the seller is required to obtain, must be a clean bill, meaning it must not include any qualifications or reservations regarding the statement that the goods have been shipped in apparent good order and condition.
- The Marine Insurance Policy or Certificate: it is a document proving cover against the usual marine risks and many additional risks. Parties can in fact agree in the contract of sale on the nature of the insurance policy which the seller has to tender, for example, whether the policy should be an all-risks policy in the form of Institute Cargo Clauses.
- The invoice: it must be completed in strict agreement with the terms and conditions of the contract.
- Other documents such as the Certificate of Origin (COO), quality etc.… Failure to tender these documents in the proper form will usually have the same consequences ad a failure to tender the appropriate principal documents.

Under the CIF term, the seller’s responsibility for the goods ends when he delivers them at the port of shipment on board the ship; the goods travel at the buyer’s risk, although the seller is responsible for the payment of the freight and marine insurance premium.

If the goods are stolen or damaged during international transport, the buyer owns the goods and must file a claim based on insurance procured by the seller.
In addition, the buyer must clear customs in the country of import and pay for all other transport and insurance in the country of import.
To summarize, the Seller is obliged to:

- Ship the goods conformant to the description contained in the contract and clear the goods for export.
- Procure a contract of carriage by sea under which the goods will be delivered and obtain the bill of lading as evidence if the goods are not bought afloat.
- Arrange minimum insurance cover and provide a policy or insurance document which entitles the buyer to make a claim against the insurer.
- Tender to the buyer in the manner agreed in the contract the bill of lading, the insurance policy, the commercial invoice and any other documents required in the contract of sale or by customs.

The Buyer then is obliged to:

- Accept the documents tendered by the Seller if conformant to the contract and pay the contract price.
- Receive the goods at the agreed port of destination and bear, except for the freight and marine insurance, all costs and charges incurred with respect to the goods until their arrival at the port of destination.
- Bear all risks connected to the goods from the when they have passed the ship's rail until the port of shipment.
- Pay all the costs and charges incurred in obtaining the Certificate of Origin and and other documents.
- Pay all the custom duties and any other duties or taxes upon importation.
- Obtain and provide at their own risk and expense any import license.

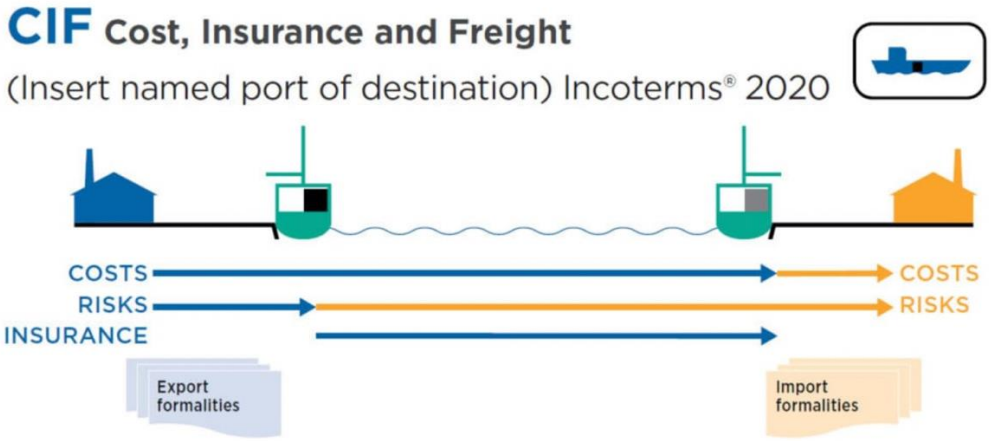


Table 6: Cost, Insurance and Freight, retrieved from https://www.international-arbitration-attorney.com/it/icc-incoterms-in-international-trade/

Carriage Paid to: CPT

Under the CPT term, the seller delivers the goods by handing them over to the carrier or another designated person at a named place. In addition, the seller must enter the contract of carriage and bear the costs of sending the goods to the place of destination. However, even if the seller pays for the whole transportation process until the final destination, the delivery happens at the moment in which the seller hands the goods to the first carrier, meaning that the buyer will support the transportation risks. Basically, when using CPT, CIP, CFR, or CIF, the seller fulfills their obligation to deliver when the goods are handed over to the carrier, not when the goods arrive at the destination[6].

It is important to specify that the CPT term may be used regardless of the mode of transportation including multimodal transport.

Under the legal term CPT, the seller is therefore obligated to load the goods (whether packaged or unpackaged) at their own expense onto their own means of transport (or, subject to a transportation contract, onto a third party's means of transport chosen by the seller) on or by the agreed date. Once the goods are loaded, they are considered both “loaded” and “delivered”. Hence, the transfer of risk occurs when the goods are loaded, not when they are delivered at the final destination controlled by the seller. Therefore, there are two geographical points: the point/port of delivery and the place of destination. In the event that there are multiple carriers, forming a chain of carriers (i.e., when two or more transporters/forwarders handle the goods), the risk of transport transfers from the seller to the buyer when the goods are delivered to the first carrier in the chain. It is therefore sufficient that

[6] Information taken from https://www.iccitalia.org/regole-incoterms-2020/

only one pass occurs to pass the risk. Furthermore, there is no obligation for insurance, and since it is a C term, the buyer is obligated to physically take delivery of the goods. The documents, certificates, and licenses required for export (and to allow the buyer's means of transport to collect the goods from the seller's means of transport), in original copies, are not the seller's responsibility by default, including the related costs. If the buyer requires information from the seller to arrange insurance and/or to produce export and import documents, the seller must provide it; if this involves any costs, they must be reimbursed to the seller. Conversely, the buyer must assist the seller if the seller needs information to produce export documentation; if the buyer incurs any costs, these must be reimbursed by the seller.



Table 7: Carriage Paid To, retrieved from https://www.international-arbitration-attorney.com/it/icc-incoterms-in-international-trade/

Carriage and Insurance Paid to: CIP

The ICC website states that: "The seller fulfills the delivery obligation by handing over the goods to the carrier or another person designated by the seller at an agreed location (if such a location has been agreed upon by the parties). [...] The buyer should note that, under the CIP rule, the seller is required to obtain insurance coverage against "all risks", except for those explicitly excluded. However, the parties are free to agree on a different, and thus less extensive, level of insurance coverage. CIP requires the seller, where applicable, to clear the goods for export but not for import into the country of destination. The latter obligation falls on the buyer, who is also responsible for paying any import duties or fulfilling any customs formalities upon importation.
As for the operation of the CIP term, it is identical to CPT (Carriage Paid To), with the difference that the seller is required to insure the goods (whether packaged or unpackaged) against the risks of loss and damage throughout the entire leg of the journey under their control. By default, the

maximum possible coverage of the Institute Cargo Clauses, the “all risks” coverage, corresponding to Level A, is specified. However, with prior consent, a lower level can be chosen.
Since all risks insurance does not actually cover terrorism, war, and strike damage (these are risks explicitly excluded in the description of the risks covered), the seller is obliged to give information to the buyer so that the buyer will consider whether to take out an additional policy of his own that covers risks and vice versa, if the seller should take out additional insurance along his leg and needs information from the buyer, the buyer must provide it.
With reference to the obtaining of export licenses, it is the responsibility of the seller, along with the payment of any duties and fees. On the other hand, the buyer is obliged to obtain at his own risk and expenses any import license or any other official authorization.

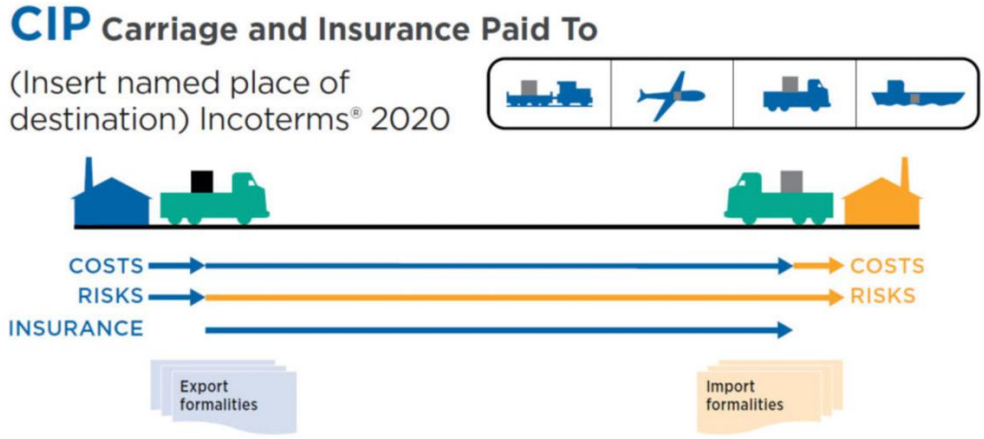


Table 8: Carriage and Insurance Paid to, retrieved from https://www.international-arbitration-attorney.com/it/icc-incoterms-in-international-trade/

Delivered At Place: DAP

DAP was the new name given in the Incoterms® 2010 rules for the previous DDU (Delivered Duty Unpaid) which first appeared in the 1990 rules. That was a misleading name because transactions under the other rules other than DDP (Delivered Duty Paid) were duty unpaid at the time of delivery, yet DDU itself meant that delivery occurred after the buyer had imported, cleared the goods and paid the duty[7]. The seller delivers the goods by placing them at the buyer's disposal on the arriving means of transport, ready for unloading at the agreed destination. The seller bears all

[7] Source taken from: DAP | Delivered at Place (named place of destination) Incoterms® 2020 [UPDATED] - Trade Finance Global

risks associated with transporting the goods to the agreed destination. If the seller incurs expenses under their transport contract related to unloading at the destination, they are not entitled to recover such costs from the buyer unless otherwise agreed between the parties. The seller is not obliged to clear the goods for import, pay any import duties, or fulfill any import customs formalities.
So the seller, by his own or a third party's means (this information should be specified in the contract), gets the goods to the precise agreed place of destination and on/by the agreed date; the first difference from CPT and which is crucial is the fact that the risk is passed when the goods arrive at their destination and are ready for unloading and not when they are loaded onto the vehicle or first carrier (first carrier) in the route arranged by the seller: the point of delivery and the place/port of destination coincide, so delivery and arrival at destination (arrival at destination) match. The seller, who controls the entire leg, bears the costs and obligations of producing export documentation, as must occur a priori. The second difference is the absence of compulsory insurance for the seller, while the third is the absence of obligation for the buyer to collect the goods. In addition, there is no insurance obligation, and the buyer is not required to physically collect the goods. If the buyer wishes to take out insurance and needs information from the seller, the seller must provide it; if this involves any costs, the buyer must reimburse them. The seller is responsible for all transportation costs up to the agreed point, as well as the expenses for obtaining licenses and documentation for export from the country of origin and for export customs clearance procedures.

It is important to underline that there are some key exclusions under DAP:

- Import Formalities and Duties: The seller is not responsible for clearing the goods for import, paying any import duties, or handling any import-related customs procedures. These responsibilities fall entirely on the buyer.

- Unloading Costs: While the goods are delivered ready for unloading, the actual cost and process of unloading are, by default, the buyer’s responsibility, unless there is a clear agreement to the contrary in the sales contract. If, for instance, the seller’s transport contract includes unloading costs at the destination, these cannot be passed on to the buyer unless both parties explicitly agree otherwise.

- Insurance: Unlike CIP (Carriage and Insurance Paid to) or CIF (Cost, Insurance and Freight), there is no obligation for the seller to provide insurance coverage under DAP. The

buyer may choose to insure the goods during transport, but this is entirely optional. If the buyer requests assistance from the seller to obtain insurance information, such as transport details or packaging specifications, the seller must provide it. Any associated costs, however, must be reimbursed by the buyer.

- Buyer's Obligation to Collect: Under DAP, the buyer is not under a legal obligation to physically collect the goods from the place of delivery. This provision provides flexibility, especially in complex supply chains where the buyer might designate another party (such as a warehouse operator or freight forwarder) to receive the goods on their behalf.

In summary, DAP offers a buyer-friendly delivery term where the seller assumes significant responsibility for the transport of goods right up to the agreed place of destination, while leaving the buyer responsible for import-related formalities. This Incoterm strikes a balance between seller responsibility and buyer flexibility, making it a popular choice in international trade transactions where the buyer prefers to control the import process but not the logistics of international delivery.

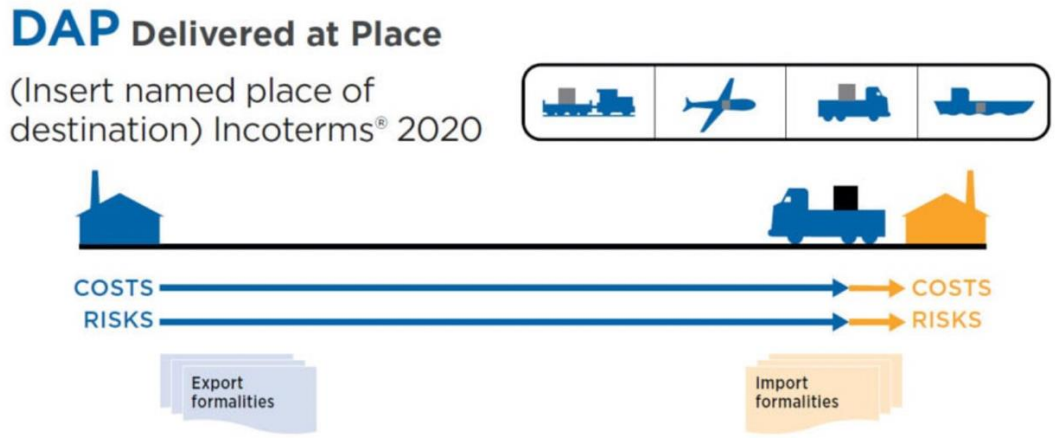


Table 9: Delivered at Place, retrieved from https://www.international-arbitration-attorney.com/it/icc-incoterms-in-international-trade/

Delivery at Place Unloaded: DPU

Delivered at Place Unloaded (DPU) is an Incoterm that defines the seller's responsibility in delivering goods to a specified destination, ensuring they are unloaded and ready for the buyer's inspection. This term places the obligation on the seller to handle all costs and risks associated with

transporting and unloading the goods at the agreed-upon location[8]. It is important to note that DPU replaced the previous Incoterm Delivered at Terminal (DAT) in the 2020 revision to eliminate confusion regarding the term “terminal”.
When using DPU, it is essential to define a clear communication between the buyer and seller, ensuring a smooth transaction and minimizing potential disputes.

The Seller is required to:

- Deliver the goods to the designated place and bear the costs and risks associated with unloading them.
- Bear all transportation expenses, including both international and local charges, up to the agreed destination.
- To handle all export procedures, including obtaining necessary licenses and paying export duties and taxes.

The Buyer is then required to:

- Take responsibility for import customs clearance, including payment of import duties and taxes.
- Cover any cost incurred after the goods have been delivered and unloaded, such as storage or further transportation[9].

The key point is that risk is transferred from the seller to the buyer once the goods are unloaded at the agreed destination. Furthermore, DPU is unique among Incoterms in that it requires the seller to unload the goods at the destination, ensuring they are ready for the buyer's inspection and further handling[10].

[8] Source taken from https://www.cargoflip.com, Delivered at Place Unloaded (DPU) Incoterm Explained, March 3, 2023.

[9] Source taken from www.incodocs.com, DAP, DPU and DDP Incoterms®: Difference & Tips for these Incoterms® May 29, 2024.
[10] www.scmana.com, DPU: Understanding the Basics of Incoterms “Delivered at Place Unloaded”.

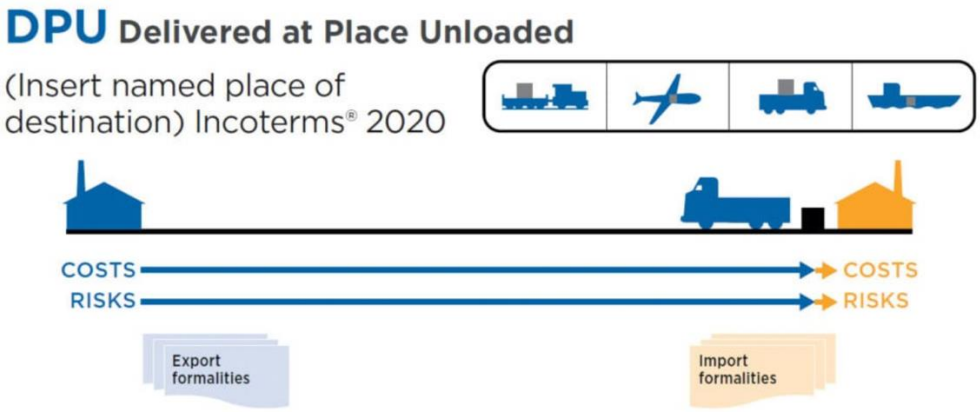


Table 10: Delivered at Place Unloaded, retrieved from https://www.international-arbitration-attorney.com/it/icc-incoterms-in-international-trade/

To summarize, understanding Incoterms is essential for businesses involved in international trade, as they define the roles, responsibilities, and risks of buyers and sellers. By clearly outlining delivery obligations, payment terms, and risk management, Incoterms help to reduce misunderstandings between parties. Their legal implications also emphasize the importance of precise contract formulation, ensuring that both parties are aware of their obligations and liabilities. As global trade continues to evolve, a comprehensive knowledge of Incoterms remains a crucial component for navigating the complexities of international transactions efficiently and securely.

Chapter 2: Competence of Courts in International Commercial Matters: The EU Approach under the Brussels I bis Regulation

2.1. The importance of Jurisdiction in international Commercial Disputes

Jurisdiction is a key factor in settling international commercial disputes because it determines which court has the authority to hear a case and enforce the outcome. In today's global economy, where cross-border transactions are common, businesses need clear rules on jurisdiction to manage legal risks and know what to expect if a dispute arises. Without a dependable framework, parties can face confusion, higher legal costs, and the risk of dealing with the same issue in multiple courts at once—something that can seriously slow down international business. Within the European Union, this issue is addressed by Regulation (EU) No. 1215/2012, often referred to as the Brussels I bis

Regulation. It sets out a unified approach to deciding which court has jurisdiction in civil and commercial cases involving parties based in different Member States. The general rule, found in Article 4(1), is that a person should be sued in the courts of the Member State where they are domiciled. However, the Regulation also includes special rules for certain types of disputes. For instance, Article 7(1) allows a party to be sued over contractual matters in the court where the relevant obligation was to be performed, and Article 7(2) covers tort claims, giving jurisdiction to the courts where the harmful event occurred or might occur. Furthermore, Article 5 of the Brussels I bis Regulation outlines the scope of its application and specifically excludes certain areas such as taxation, customs, administrative matters, and arbitration. These exclusions help define the boundaries of the Regulation, but they've also sparked considerable legal debate—particularly when it comes to arbitration. The relationship between Brussels I bis and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards continues to raise difficult questions about how jurisdiction is handled in cross-border arbitration cases[11].

These rules reflect the EU's effort to strike a balance: on one hand, promoting efficient dispute resolution, and on the other, respecting the judicial independence of its Member States. The Regulation sets up a framework that's both predictable and adaptable. It aims to reduce jurisdictional disputes, discourage forum shopping, and support the recognition and enforcement of judgments across EU borders. As Kramer (2015) observed, Brussels I bis marks a significant step forward in cross-border litigation by trying to balance efficiency, legal certainty, and the protection of procedural rights.

Jurisdiction in international commercial disputes isn't just a technical issue, it can have major consequences for the rights and responsibilities of the parties involved. The Regulation offers a clear and reliable framework that not only improves legal certainty but also minimizes the risk of conflicting court decisions within the EU. By combining general rules with more specific ones and clearly defining what falls within its scope, Brussels I bis manages to support efficient legal processes while still respecting the diversity of national legal systems. In a time of increasing cross-border business, having a harmonized approach to jurisdiction is more important than ever for fair and effective dispute resolution in the EU.

[11] Dickinson, Andrew & Lein, Eva (eds.), The Brussels I Regulation Recast, Oxford University Press, 2015.

2.2. Overview of Regulation (EU) 1215/2012 (Brussel I bis)

Regulation (EU) 1215/2012, commonly called Brussels I bis, plays an important role in the EU's legal framework for deciding which courts have jurisdiction in civil and commercial cases. It also deals with how judgments are recognized and enforced across Member States. This regulation, which took over from the original Brussels I Regulation (44/2001), has been in force since 10 January 2015. Its main aim is to make cross-border legal matters within the EU more straightforward, helping both individuals and businesses by improving access to justice, boosting legal clarity, and streamlining the enforcement of court decisions.

The Regulation sets out a single set of rules to determine which courts have jurisdiction in cross-border disputes, and it ensures that a judgment given in one Member State can be recognized and enforced in another without the need for a formal declaration of enforceability, known as exequatur, which was abolished under Article 39. It lays out different types of jurisdiction: general jurisdiction (Article 4), special jurisdiction for certain types of disputes (Article 7), and exclusive jurisdiction for specific subject matters (Article 24). It also includes provisions on related proceedings and choice-of-court agreements (Articles 29–31 and 25).

All of these changes were aimed at building stronger mutual trust between national court systems and supporting the smooth operation of the EU's Area of Freedom, Security and Justice[12]. Despite the progress it brings, the Regulation still excludes certain areas from its scope such as arbitration, insolvency, and disputes involving public law (as outlined in Article 1(2)). The exclusion of arbitration, in particular, has been the subject of ongoing academic and practical debate, especially when it comes to how it interacts with the New York Convention and the use of anti-suit injunctions in arbitration cases[13].

Overall, Regulation 1215/2012 marks a major step forward in aligning civil procedure across the EU. By making cross-border enforcement simpler and jurisdictional rules clearer, it boosts legal

[12] Kramer, Xandra E., Cross-Border Enforcement and the Brussels Ibis Regulation: Towards a New Balance between Mutual Trust and Procedural Safeguards, Netherlands International Law Review, Vol. 62, Issue 3, 2015

[13] The New York Convention, formally known as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), is an international treaty that requires courts of contracting states to recognize and enforce arbitration agreements and foreign arbitral awards. Its primary purpose is to facilitate international trade and investment by ensuring that arbitral awards can be enforced across borders with minimal judicial interference. See UNCITRAL, United Nations Commission on International Trade Law https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards

certainty, lowers obstacles to litigation, and reflects the changing landscape of cross-border dispute resolution within the Union[14].

However, while Regulation 1215/2012 represents a significant improvement over its predecessor, its application in practice has not been without challenges. One of the most debated issues concerns the interpretation of special jurisdiction rules, particularly under Article 7(2) in tort cases. The Court of Justice of the European Union (CJEU) has clarified the meaning of "the place where the harmful event occurred" in several landmark decisions, such as *Case C-21/76, Bier v Mines de Potasse d'Alsace*[15], and more recently *Case C-45/13, Kainz v Pantherwerke AG*[16], where the Court emphasized the need for a close connection between the dispute and the forum. These judgments highlight the evolving nature of EU jurisdictional rules and the important role of the CJEU in ensuring their uniform interpretation.

In addition, the effectiveness of choice-of-court agreements under Article 25 has been reinforced in Brussels I bis, notably through the prioritization of the chosen court's jurisdiction even in cases where proceedings are first initiated elsewhere (Articles 29–31). This development aims to reduce abusive procedural tactics such as forum shopping and the so-called Italian torpedo. Yet, practical enforcement remains complex, especially where questions arise about the formal validity of jurisdiction clauses or the scope of such agreements.

Another area of continuing legal complexity lies in the interface between Brussels I bis and other international instruments, such as the Lugano Convention (2007) and the Hague Convention on Choice of Court Agreements (2005). While Brussels I bis applies primarily within the EU, its coordination with these external frameworks is essential for maintaining coherence in transnational litigation. The post-Brexit legal landscape, in particular, has revived attention to these instruments, as the United Kingdom is no longer a party to Brussels I bis and now relies on alternative regimes, including the Hague Convention (entered into by the UK in its own right in 2021).

Finally, while the Regulation advances mutual trust and judicial cooperation, some critics argue that it insufficiently addresses asymmetries in access to justice among Member States. Procedural disparities, differences in judicial capacity, and language barriers still pose obstacles to the effective functioning of the Regulation's objectives.

[14] Briggs, Adrian, Civil Jurisdiction and Judgments, 6th ed., Informa Law, 2012.
[15] Case C-21/76, *Bier v Mines de Potasse d'Alsace*, ECLI:EU:C:1976:166.
[16] Case C-45/13, *Kainz v Pantherwerke AG*, ECLI:EU:C:2014:7.

2.3. The Rules on Special Jurisdiction in the Brussels I bis Regulation

In addition to the general rule of jurisdiction based on the defendant's domicile (Article 4), the Brussels I bis Regulation introduces a set of special jurisdiction rules, primarily found in Article 7. These provisions allow, in specific cases, for a party to be sued in a court other than that of the defendant's domicile, based on the objective connection between the dispute and a particular jurisdiction. These exceptions are grounded in the notion that, in certain categories of cases, such as contractual obligations or torts, there exists a forum more closely connected to the dispute and better suited to ensure efficient and predictable justice.

2.3.1. Jurisdiction in Contractual Matters – Article 7(1)

Article 7(1) provides that, in matters relating to a contract, a person domiciled in a Member State may also be sued "in the courts for the place of performance of the obligation in question." For contracts for the sale of goods and the provision of services, the Regulation further clarifies that:

- in the case of sale of goods, jurisdiction lies with the courts of the place where the goods were delivered or should have been delivered.
- in the case of provision of services, jurisdiction lies with the courts of the place where the services were provided or should have been provided (Brussels I bis, Article 7(1)(b)).

This provision has been clarified by the Court of Justice of the European Union (CJEU) in several cases, including Color Drack (C-386/05), where the Court held that in cases involving multiple places of delivery, the court with the closest connection to the dispute must be identified. The rule aims to enhance legal predictability and support economic activity by identifying a natural forum for resolving international contractual disputes[17].

2.3.2. Jurisdiction in Tort Matters – Article 7(2)

Article 7(2) provides that a person may be sued in matters relating to tort, delict, or quasi-delict "in the courts for the place where the harmful event occurred or may occur." The CJEU has interpreted this provision as referring to both the place of the event giving rise to the damage and the place where the damage occurred, thereby granting the claimant a choice between two potential fora.

[17] Color Drack GmbH v. Lexx International Vertriebs GmbH, Case C-386/05, ECLI:EU:C:2007:262.

In the landmark case Bier v. Mines de Potasse d'Alsace (C-21/76), the Court introduced the so-called "double forum rule," allowing jurisdiction to lie either in the place of the act or in the place of the damage.
The rules under Article 7(2) are particularly relevant in commercial contexts, especially in cases involving unfair competition, intellectual property infringement, product liability, or harm resulting from cross-border wrongful acts.

2.3.3. Objectives and Challenges of the Special Jurisdiction Rules

The special jurisdiction rules under Article 7 aim to reconcile flexibility with predictability, ensuring that litigation takes place in a forum genuinely connected to the underlying dispute. They enhance access to justice and the efficient resolution of cross-border cases, especially where performance or damage is localized outside the defendant's domicile.

However, ambiguities in determining the "place of performance" or the "place of damage" have led to practical difficulties and interpretive uncertainty. Some scholars argue that this complexity undermines the Regulation's goal of legal clarity and increases litigation costs[18]. Others point out that the CJEU's interpretive efforts, while helpful, have not fully eliminated the risk of abusive litigation tactics or forum shopping[19].

The evolving case law continues to play a crucial role in clarifying these provisions and maintaining the balance between litigants' procedural rights and the principles of judicial efficiency and fairness within the EU.

2.4. Exclusive Jurisdiction and Its Application – Article 24

Certain legal disputes are so intrinsically linked to a particular Member State that only its courts have jurisdiction to hear them, regardless of the parties' domicile. This principle is enshrined in Article 24 of Regulation (EU) No. 1215/2012, which sets out rules of exclusive jurisdiction. These

[18] Hess, B. (2017). Europäisches Zivilprozessrecht. C.H. Beck.
[19] Kramer, X.E. (2015). Cross-Border Enforcement and the Brussels I-bis Regulation: Towards a New Balance Between Mutual Trust and Procedural Protection. Netherlands International Law Review, 62(3), 343–373

provisions take precedence over both the general jurisdiction rule based on domicile (Article 4) and the special jurisdiction rules (Articles 7–9).

Examples of exclusive jurisdiction include:

- Rights in immovable property: Under Article 24(1), only the courts of the Member State where the property is situated have jurisdiction.[20]
- Company law matters: Article 24(2) grants jurisdiction to the courts of the Member State where a company has its seat concerning the validity of its constitution, the decisions of its organs, and entries in public registers[21].
- Validity of registered rights: Article 24(4) covers disputes about the registration or validity of patents, trademarks, designs, and similar rights requiring registration. Jurisdiction lies with the courts of the Member State where registration has been applied for or carried out[22].

These exclusive jurisdiction rules aim to ensure legal certainty and coherence in matters where national legal systems play a decisive role.
However, such exclusivity can pose practical difficulties, especially when a dispute involves multiple issues, some falling within exclusive jurisdiction and others not. In those situations, national courts must assess whether the claims are severable and identify the main subject matter of the proceedings to determine the appropriate forum.

2.5. Jurisdiction Based on Choice of Court Agreements – Article 25

The Brussels I bis Regulation has significantly strengthened the enforceability of choice of court agreements, granting parties greater autonomy in determining where their disputes will be resolved. Article 25 provides that:

“If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction.”.

[20] (see Case C-292/05 Lechouritou [2007] ECR I-1519).
[21] (see Case C-594/14 Simona Costea [2016] ECLI:EU:C:2016:186).
[22] (see Case C-288/82 Duijnstee [1983] ECR 3663).

This provision applies irrespective of the domicile of the parties and takes precedence over the general and special jurisdiction rules. It reflects the principle of party autonomy, especially relevant in international commercial contracts, where predictability and control over dispute resolution mechanisms are highly valued. For such an agreement to be valid under Article 25, it must satisfy certain formal requirements:

- It must be in writing or evidenced in writing.
- Or, in a form which accords with practices established between the parties.
- Or, in a form which accords with international trade or commerce practices that the parties ought to have known.

So, the main goal is to ensure the parties' actual consent to confer jurisdiction.

One of the key innovations of the Brussels I bis Regulation in this area is found in Articles 29–31, which adjust the rules on lis pendens and related actions. These provisions prioritize the court designated in a valid jurisdiction clause, giving it the right to decide on its jurisdiction first—even if proceedings are brought earlier before another Member State's court. This represents a shift from the "first-seized" rule in the original Brussels I Regulation and is a response to misuse of procedural rules to undermine jurisdiction agreements.
However, challenges remain. In practice, disputes often arise over:

- Whether the clause was validly incorporated into the contract (e.g., via general conditions);
- Whether it applies to the specific dispute.
- How to resolve conflicts between choice-of-court agreements and arbitration clauses, especially given arbitration's exclusion under Article 1(2)(d).

Accordingly, while Article 25 enhances legal certainty, its successful application often depends on careful drafting of jurisdiction clauses and consistent interpretation by national courts.

2.6. Coordination with Related Proceedings – Articles 29–34

An essential component of the Brussels I bis Regulation lies in its mechanisms for coordinating related proceedings initiated in different Member States. These provisions, set out in Articles 29 to 34, are designed to prevent parallel litigation and the risk of irreconcilable judgments, thereby upholding legal certainty and promoting judicial efficiency across the EU. In cross-border

commercial disputes, such coordination is particularly significant, as parties may attempt to initiate proceedings in multiple jurisdictions to gain procedural advantage or delay enforcement.

2.6.1. Lis Pendens – Article 29

Article 29 addresses situations where the same dispute is brought before the courts of more than one Member State, reflecting the principle of lis pendens. Its primary objective is to avoid parallel proceedings and conflicting judgments, thereby promoting judicial efficiency and legal certainty within the EU. Specifically, it requires that if proceedings involving the same cause of action and between the same parties are pending before two courts, the court second seized must stay its proceedings until the court first seized determines whether it has jurisdiction. If the first court confirms its jurisdiction, the second must decline jurisdiction entirely. The CJEU has clarified the conditions for the application of Article 29 in several cases. In *Gubisch Maschinenfabrik v Palumbo* (Case 144/86)[23] and later in *The Tatry* (Case C-406/92)[24], the Court emphasized the need for both identity of parties and cause of action. The "cause of action" is understood to mean the combination of the legal basis and the facts giving rise to the proceedings. This interpretation helps prevent overly broad applications of the lis pendens rule while preserving its core function. Before the Brussels I bis Regulation, the system was easily open to abuse: one party could quickly file a lawsuit in a court not chosen by the parties, merely to block or delay proceedings in the court that had actually been chosen (often based on a jurisdiction agreement). This phenomenon was known as *forum shopping*.

2.6.2. Related Actions – Article 30

Article 30 deals with situations where the proceedings are not identical but are closely connected in such a way that separate proceedings may result in conflicting or irreconcilable judgments. In these cases, the second court may stay proceedings, and may eventually decline jurisdiction if the court first seized has jurisdiction over both matters.
This provision provides greater flexibility than Article 29, allowing courts to consider the practical implications of simultaneous proceedings without requiring identity of cause or parties. Indeed,

[23] Case C-144/86, Gubisch Maschinenfabrik v Palumbo [1987] ECR 4861
[24] Case C-406/92, The Tatry [1994] ECR I-5439

unlike Article 29, which applies strictly to cases involving the same cause of action and the same parties, Article 30 introduces a more flexible mechanism for managing related actions.

2.6.3. Priority of the Chosen Court – Article 31(2)

One of the most important innovations introduced by the Brussels I bis Regulation is the protection of jurisdiction agreements through Article 31(2). Where the parties have designated a specific court in a valid agreement under Article 25, Article 31(2) provides that the chosen court shall have priority in determining whether it has jurisdiction, even if it is not the first court seized. This marks a clear departure from the rule under the original Brussels I Regulation (Regulation 44/2001), which adhered strictly to the principle of lis pendens: jurisdiction was determined solely on a "first come, first served" basis, giving priority to the court first seized of the matter. The purpose of this rule is to strengthen party autonomy and to address the abuses associated with forum shopping[25] and procedural delay[26]. Under the previous regime (Brussels I), the first court seized had priority, even if a jurisdiction agreement existed. This created opportunities for strategic litigation. Article 31(2) now ensures that courts respect the parties' agreement and allows the chosen court to assess the validity and scope of the jurisdiction clause without interference from parallel proceedings. However, Article 31's effectiveness depends on the national court's interpretation of what constitutes a valid jurisdiction agreement.

2.6.4. Implications for Legal Certainty and Judicial Economy

The coordination mechanisms under Articles 29 to 34 are fundamental to the functioning of the Brussels I bis Regulation. They aim to prevent jurisdictional conflicts, reduce the risk of inconsistent judgments, and ensure that legal proceedings proceed in an efficient and orderly manner across Member States. By clarifying which court should hear a case and when proceedings should be stayed or declined, these rules promote mutual trust and support the smooth operation of the internal market. From a broader perspective, these mechanisms contribute significantly to legal certainty. Parties can reasonably predict which court will hear their case and avoid unnecessary

[25] Forum shopping is a practice of choosing the court in which to bring an action from among those courts that could properly exercise jurisdiction based on a determination of which court is likely to provide the most favorable outcome. Source: https://www.merriam-webster.com/legal/forum%20shopping

[26] Briggs, Adrian, Private International Law in the UK, Oxford University Press, 2016

duplication of proceedings. Similarly, the emphasis on judicial economy helps prevent the waste of judicial resources.
Nevertheless, challenges remain. Inconsistent interpretation by national courts, particularly regarding the concepts of "related actions," the validity of jurisdiction agreements, or the proper application of lis pendens rules, may undermine the Regulation objectives. Moreover, although Article 31(2) strengthens the enforceability of jurisdiction agreements, it does not eliminate the potential for procedural abuse, especially in disputes involving complex jurisdictional issues. It is important however to state that these provisions represent a step toward the harmonization of procedural law in cross-border civil and commercial matters. They reflect a concerted effort to strike a balance between efficiency, fairness, and respect for party autonomy in cross-border disputes.

2.7. Provisional and Protective Measures – Article 35

An important feature of the Brussels I bis Regulation is its treatment of provisional and protective measures, which are regulated under Article 35. These measures play a critical role in international commercial litigation, where urgent action is often needed to preserve rights or prevent harm. Essentially, Article 35 allows parties to seek such measures in a Member State even if the courts of that Member State do not have jurisdiction over the substance of the case. Moreover, it acknowledges the need for flexibility in urgent situations, especially when assets or parties may be located in different jurisdictions.

2.7.1. Scope and Requirements of Article 35

Article 35 provides that:

"Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if the courts of another Member State have jurisdiction as to the substance of the matter".

This article thus grants subsidiary jurisdiction for interim relief, allowing courts to act quickly when local enforcement or protection is needed. However, it does not create a uniform EU standard for

such measures. Instead, the nature, scope, and availability of provisional measures are determined exclusively by the national law of the Member State where the request is made.

2.7.2. Practical Application and Limitations

While Article 35 offers valuable procedural flexibility, its use is not without limitations. One key constraint is that the measure must be compatible with national procedural law, which may vary significantly across Member States. This creates a level of legal uncertainty.
In addition, it is important to notice that the application of Article 35 can raise coordination issues with non-EU jurisdictions or international arbitration. Where the dispute is subject to arbitration, national courts must determine whether they retain the power to grant interim relief under their domestic arbitration laws, even though the Brussels I bis Regulation excludes arbitration from its material scope (Article 1(2)(d)).
Another limitation lies in the requirement of a connecting link between the subject matter of the measure and the territorial jurisdiction of the court. Without such a connection, such as the presence of assets or the risk of damage within the jurisdiction, the request may be dismissed for lack of jurisdiction.

2.7.3. Strategic Importance in Commercial Litigation

Despite its limitations, Article 35 remains a vital resource for commercial parties, especially in high-stakes situations where urgent action is needed, such as cases involving perishable goods, fast-paced financial transactions, or a genuine risk of imminent harm. Moreover, the provision reflects the principle of mutual trust among EU Member States. In fact, Article 35 introduces flexibility by allowing local courts to take action when necessary, even in support of proceedings pending in another Member State. However, the lack of harmonization in the types of measures available across Member States can undermine the goal of legal certainty. For instance, Kramer (2015) argues that adopting a more uniform approach would enhance the effectiveness of cross-border

enforcement and ease the procedural burden on litigants operating within different national systems[27].

2.7.4. Conclusion

Article 35 of the Brussels I bis Regulation acts as a complementary safeguard within the broader jurisdictional framework. By allowing courts to grant urgent and protective relief regardless of whether they have jurisdiction over the main proceedings, it reinforces the Regulation's practical effectiveness in cross-border litigation. Although divergences in national laws and procedural requirements can create obstacles, the availability of such measures remains essential for safeguarding commercial interests in urgent situations. In this sense, the provisional and protective measures permitted under Article 35 reflect the Regulation's balance between uniform jurisdictional rules and the preservation of national procedural autonomy.

2.8. Jurisdiction and Third States: Article 6 and the Limits of the Regulation's Scope

While the Brussels I bis Regulation provides a highly developed framework for determining jurisdiction within the European Union, its reach is fundamentally limited to disputes involving defendants domiciled in a Member State. This territorial limitation, rooted in Article 6, creates a jurisdictional gap when one or more parties are domiciled outside the EU. In such cases, the Regulation's direct jurisdictional rules generally do not apply, leaving Member States free to rely on their national rules of private international law. This scope represents a significant limitation, particularly in international commercial litigation where third-country actors are frequently involved. The lack of a harmonized approach at the EU level in these scenarios means that a party's access to justice can vary depending on which Member State's courts are seized.

[27] Kramer, X.E., 'Cross-Border Interim Measures: The Brussels I Recast and Beyond' in P. Beaumont et al. (eds.), Cross-Border Litigation in Europe, Hart Publishing, 2017

Article 6 of the Regulation provides that:

"If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall be determined by the laws of that Member State, subject to Articles 18, 21 and 24."

This provision acknowledges that, absent an EU-domiciled defendant, the Regulation defers to the national law of the forum court, while still applying three exceptions:

- **Article 18** (jurisdiction in consumer contracts),
- **Article 21** (jurisdiction in employment contracts),
- **Article 24** (exclusive jurisdiction provisions).

However, outside those exceptions, the Regulation refrains from harmonizing jurisdictional criteria in cases involving third states.
These exceptions are retained even when the defendant resides in a third state. For instance, a dispute involving immovable property located in a Member State remains under the exclusive jurisdiction of the courts of that Member State, regardless of the defendant's domicile (Article 24(1)). Outside of these limited areas, however, Member States retain significant autonomy.

2.8.1. Challenges Arising from the Regulation's Limited Scope

This gap poses several practical and legal problems:

1. **Forum shopping risks:** In the absence of harmonized rules, litigants may strategically choose Member States whose national jurisdictional rules are more permissive, thus reintroducing uncertainty and undermining the Regulation's goals of predictability and legal certainty.

2. **Unequal access to justice**: The lack of an EU-wide standard may lead to divergent access to justice depending on the Member State seized, particularly in situations where the third-state defendant lacks assets or presence in the EU.

3. **Incompatibility with global litigation trends:** As commercial transactions become increasingly international, disputes involving parties from non-EU (third) states have

become more frequent. In this context, the Regulation's limited territorial scope appears outdated and less suited to the realities of modern cross-border commerce.

2.8.2. CJEU Case Law: Owusu v Jackson and Its Implications

The Court of Justice of the European Union (CJEU) has addressed this issue in *Owusu v Jackson* (Case C-281/02)[28], a case that remains highly relevant. In *Owusu*, the Court ruled that where the Regulation applies (i.e., when the defendant is domiciled in a Member State), the court cannot decline jurisdiction in favor of a more appropriate non-EU forum. This decision underscores the exclusive and mandatory nature of the Regulation's jurisdictional rules where applicable, but also highlights the asymmetry: if the defendant is domiciled outside the EU, then Owusu does not apply, and Member States are free to use discretion under their own domestic laws.

2.8.3. The Role of International Instruments: Hague and Lugano

In cases involving third states, the Regulation's limitations may be partly mitigated through international conventions, particularly the Hague Convention on Choice of Court Agreements (2005). The EU is a contracting party to the Convention, which upholds exclusive jurisdiction clauses and provides a mechanism for recognition and enforcement of judgments in civil and commercial matters. This instrument applies even when one of the parties is domiciled in a third state, making it a valuable tool in bridging jurisdictional gaps.
However, the Hague Convention is limited in both scope and practical application: it does not cover non-exclusive jurisdiction clauses, and its ratification remains limited. In fact, only a few major trading states such as the EU, UK, Mexico, and Singapore are parties. Its utility is therefore constrained to cases that fall strictly within its parameters.

The Lugano Convention, by contrast, extends Brussels-like rules to EFTA states (notably Switzerland, Norway, and Iceland). But following Brexit, the United Kingdom is no longer a party to either Brussels I bis or Lugano, and its 2020 application to re-join the Lugano Convention was rejected by the European Commission, further fragmenting the jurisdictional landscape.

[28] Case C-281/02, Andrew Owusu v N.B. Jackson and Others [2005] ECR I-1383.

2.8.4. The Need for Further Harmonization

Considering these complexities, there is growing consensus among academics and practitioners that reform is necessary. Scholars such as Dickinson (2015) and Kramer (2017) have advocated for either an extension of Brussels I bis to cover disputes involving third-country defendants or the adoption of a supplementary EU regulation that would harmonize national jurisdiction rules in these cases. Such reform would enhance legal certainty, promote judicial cooperation with third states, and reduce inconsistencies across the EU. Nevertheless, political agreement on this issue remains difficult to achieve, as it would require limiting Member States' jurisdictional sovereignty in favor of a unified EU-wide approach.
Until such a reform is achieved, parties involved in cross-border disputes involving third-country actors will need to carefully evaluate each Member State's national jurisdictional rules, the availability of international instruments such as the Hague Convention, and the overall enforceability of cross-border judgments.

2.9. Recognition and Enforcement of Judgments under the Brussels I bis Regulation

A fundamental objective of the Brussels I bis Regulation is to ensure that civil and commercial judgments issued by the courts of one EU Member State are recognized and enforced across the Union. In an internal market where goods, services, and capital flow freely, the ability to rely on judicial decisions rendered in one country throughout the EU is essential to maintaining legal certainty and facilitating cross-border transactions. Chapter III of the Regulation, covering Articles 36 to 57, lays down a simplified and efficient system for the recognition and enforcement of judgments.

2.9.1. Abolition of Exequatur: Article 39

As already mentioned, one of the most significant innovations introduced by Brussels I bis is the abolition of exequatur, the formal procedure previously required to declare a foreign judgment enforceable. Article 39 of the Regulation states that:

“A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required”.

This reform was intended to streamline cross-border enforcement, reduce litigation costs, and eliminate delays associated with intermediate recognition proceedings. In practice, it allows a party holding a judgment from one Member State to proceed directly to enforcement in another.
The abolition of exequatur is seen as a reflection of mutual trust among the judicial systems of the EU and provide judicial protection.

2.9.2. Grounds for Non-Recognition or Refusal of Enforcement

Despite the streamlined procedure, the Regulation still allows a limited number of exceptions to the automatic recognition and enforcement of judgments. These exceptions are listed under Article 45 and are designed to safeguard fundamental procedural rights and the coherence of the legal order.

A judgment may not be recognized or enforced if:

- Recognition would be manifestly contrary to public policy in the Member State addressed (Article 45(1)(a));
- The defendant was not properly served with the initiating documents, and this failure prevented them from defending themselves (Article 45(1)(b));
- The judgment is irreconcilable with a prior decision given between the same parties in the Member State addressed (Article 45(1)(c)) or in another Member State or third state, provided the earlier judgment meets the conditions for recognition (Article 45(1)(d)).

These exceptions are interpreted narrowly by the Court of Justice of the European Union (CJEU), which has repeatedly stressed the principle of mutual trust in its case law. For example, in Trade Agency Ltd v Seramico Investments Ltd (Case C-619/10), the CJEU confirmed that procedural defects must be serious and demonstrable for recognition to be refused.[29]

2.9.3. Procedure for Enforcement – Articles 42 to 57

Once a party seeks to enforce a foreign judgment, Article 42 provides that the applicant must present:

[29] Case C-619/10, Trade Agency Ltd v Seramico Investments Ltd [2012]

- A copy of the judgment that satisfies the conditions necessary to establish its authenticity;
- A standard certificate issued by the court of origin (using the form set out in Annex I of the Regulation).

This documentation simplifies the administrative steps required to initiate enforcement. Enforcement is then carried out in accordance with the procedural rules of the Member State addressed, as specified under Article 41. This means that while substantive recognition is governed by EU law, the methods of execution (e.g., asset seizure or garnishment) are determined by the national law of the enforcing country. In the event of opposition, the party against whom enforcement is sought may apply for refusal of enforcement under Article 46, invoking any of the grounds listed in Article 45. However, the burden of proof rests on the party resisting enforcement.

2.9.4. The Role of Mutual Trust and Uniform Interpretation

The success of the Brussels I bis framework for recognition and enforcement depends heavily on the principle of mutual trust among Member States. This principle implies that the legal systems of all EU countries offer comparable guarantees of fairness, and therefore that judgments can circulate without further scrutiny.

Nonetheless, uniform interpretation of the grounds for refusal remains crucial. The CJEU plays a central role in ensuring consistency, particularly where national courts differ in their understanding of concepts like “public policy” or “service of process”. For example, in Diageo Brands BV v Simiramida-04 EOOD (Case C-681/13), the Court emphasized that public policy exceptions must be interpreted strictly to avoid undermining the Regulation's objectives[30].

2.9.5. Residual Issues and Continuing Debates

Although the abolition of exequatur has generally improved the efficiency of cross-border enforcement, practical challenges remain. Some Member States have raised concerns about the enforcement of default judgments, particularly where defendants were allegedly unaware of the proceedings due to insufficient service.

[30] Case C-681/13, Diageo Brands BV v Simiramida-04 EOOD [2015]

Additionally, the interplay between Brussels I bis and arbitration remains unresolved in some contexts. For instance, if a judgment purports to rule on the validity of an arbitration agreement, questions arise as to whether that judgment can be enforced, despite arbitration being excluded under Article 1(2)(d).

The recognition and enforcement regime under the Brussels I bis Regulation represents a cornerstone of the EU's civil justice cooperation framework. By abolishing exequatur and establishing streamlined procedures grounded in mutual trust, the Regulation has significantly improved the efficiency and predictability of cross-border litigation. However, challenges remain, particularly regarding divergent national interpretations, enforcement of default judgments, and the still-ambiguous relationship with international arbitration.

Looking forward, the continuing development of CJEU case law, together with potential reform or clarification in future EU instruments, will be essential to ensure that the Regulation remains a robust tool for effective civil and commercial justice.

However, the analysis conducted in this chapter reveals that, despite its strengths, the Regulation is not without challenges. The interaction between Brussels I bis and other legal instruments, particularly in areas excluded from its scope, such as arbitration, remains complex. Similarly, the treatment of disputes involving third-country parties under Article 6 underscores a persistent gap in achieving global jurisdictional consistency. The Regulation's effectiveness also depends heavily on the mutual trust and procedural coordination among Member States, which can vary in practice.

Ultimately, Brussels I bis strikes a delicate balance between harmonization and flexibility. It provides a stable procedural framework that enhances confidence in international commerce while allowing sufficient room for national legal diversity. For businesses and legal practitioners engaged in cross-border trade, understanding the Regulation's mechanisms, especially regarding choice of court agreements, provisional measures, and enforcement, is essential to mitigating jurisdictional risks and ensuring enforceable outcomes.

This legal coherence lays the groundwork for the subsequent chapter, which applies these principles to a concrete case study: the Ex-Works (EXW) Incoterm in Italy, and its interpretation by national courts within the broader EU legal environment.

Chapter 3: The Complexities of Ex-Works Incoterm in Italy: An Analysis in Light of the "Conelcom Engineering and Controllino Gmbh vs. Embit s.r.l." Judgement

3.1. Ex-Works term in an Italian legal context

As previously mentioned, the term "Ex-Works" (often abbreviated as EXW) refers to an Incoterm that outlines the responsibilities and obligations of the seller and the buyer in an international transaction. Under EXW, the seller's obligation is considered fulfilled once the goods are made available for collection at their premises or another agreed location. The buyer, on the other hand, assumes responsibility for all costs and risks associated with transportation, including export duties, shipping, insurance, and import procedures. In Italy, EXW is commonly used in commercial contracts to define the point at which the transfer of risk and responsibility occurs, with the buyer assuming all risks once the goods are ready for dispatch. Italian legal practice emphasizes the need for clarity in contract drafting to avoid misunderstandings, especially concerning customs and transportation responsibilities under the EXW term.

In addition to the general understanding of EXW under international trade law, the Italian legal context places particular emphasis on the implementation of the term within the framework of European Union regulations. As part of the EU, Italy is bound by common rules governing customs duties, VAT[31], and import/export procedures. Under EXW, the buyer assumes the risk for transport from the seller's premises and is responsible for any customs formalities when goods cross borders. In Italy, this means that the buyer would need to handle all issues related to Italian customs clearance when importing goods, as well as ensuring compliance with EU regulations.

It is also important to note that under the EXW term, the seller has minimal obligations, which could lead to potential disputes if not carefully addressed in the contract. For example, while the seller is responsible for providing goods in a condition suitable for transport, the buyer must ensure that the seller has the appropriate export documents, if necessary. In practice, Italian courts may focus on the clarity of the contractual terms to prevent disputes over the seller's limited responsibility under EXW.

Italian companies, therefore, need to be aware of the legal implications of choosing the term EXW in international contracts, as a lack of clarity in defining the responsibilities of each party can lead to conflicts and difficulties in contract performance. As such, it is strongly recommended that

[31] Directive 2006/112/EC of the Council of the European Union on the common system of value added tax (VAT)

Italian companies seek the advice of legal experts specializing in international trade law to ensure that the terms of the contract are drafted accurately and unambiguously.

3.2. The Major Logistical and Operational Complexities of Ex-Works

The Ex-Works (EXW) term, while simple in theory, presents several logistical and operational complexities in practice, particularly for the buyer. Under EXW, the seller's responsibility ends when the goods are made available at their premises or another agreed location. This means the buyer must take on all the risks and costs associated with transportation, including inland transport, export clearance, shipping, and insurance. The primary logistical challenge for the buyer is the need to manage the entire supply chain from the seller's premises, which often involves coordinating multiple transport stages across different countries or regions.

To begin with, the seller is not obligated to assist with export procedures, meaning the buyer is fully responsible for ensuring that the goods are cleared for export in the seller's country. This can be a difficult task, particularly when dealing with international regulations, which vary across different countries. The buyer must ensure that the seller provides the necessary documentation, such as invoices, packing lists, and certificates of origin.

Furthermore, the buyer must arrange for the transportation of goods from the seller's premises to the port or airport, and this involves selecting and managing third-party logistics providers (such as freight forwarders and carriers). This adds complexity as the buyer must choose reliable transporters and ensure timely delivery. Coordination of different modes of transport further amplifies the complexity, as delays or damages in one stage of the journey can impact the entire logistics chain[32].

To continue, insurance is another operational consideration. Under EXW, the buyer assumes responsibility for the goods once they are made available at the seller's location, meaning the buyer must arrange for insurance coverage to protect the goods throughout the transport process. This can be especially challenging if the buyer is unfamiliar with international insurance policies or if the goods are being transported through regions with higher risk of damage or theft. [33]

To conclude, managing costs is a crucial concern. Since the buyer takes on full responsibility for transportation, customs, and insurance, these costs can quickly add up. Inaccurate estimation of expenses or mismanagement of logistics could lead to unforeseen financial burdens. The complexity increases when the buyer is unfamiliar with the seller's local regulations or lacks

[32] Fagetti, M. (2020), Il diritto commerciale internazionale e la gestione delle transazioni internazionali, Milano, Giuffrè Editore.

[33] Bowers, J. (2018), International Trade and Shipping Law: The Role of Incoterms, London, Routledge.

experience in managing international shipments, making EXW a term that demands careful planning, coordination, and expertise.
Overall, these challenges make EXW suitable for expert buyers with a solid understanding of international shipping procedures. If this expertise is lacking, negotiating more favorable Incoterms, such as FOB (Free on Board) or CIF (Cost, Insurance, and Freight), might be a more practical choice.

3.3. The Impact of the "Conelcom Engineering and Controllino Gmbh" Judgement on the application of Ex-Works

The judgment in the Conelcom Engineering and Controllino GmbH case has raised significant questions regarding the interpretation and practical application of the Ex-Works (EXW) delivery term under international commercial contracts. This case sheds light on how national courts may reinterpret or expand the obligations of parties, particularly when issues of transportation, risk allocation, and contractual intent come into play. This paragraph explores the legal and practical consequences of the judgment, analyzing its potential to reshape the understanding and usage of Ex-Works, especially in Italy.
Conelcom Engineering Gmbh and Controllino Gmbh is a company headquartered in Austria, while Embit s.r.l. is a company headquartered in Modena, Italy. The contract stipulated that deliveries would take place in several tranches and with the Ex-Works clause, i.e., at the seller's factory, with loading and transportation by the buyer. After the contract was signed, Conelcom split off, creating two separate companies: Controllino Gmbh and Conelcom Engineering Gmbh, both based in Austria.
In 2023 Embit s.r.l. obtained an injunction from the Modena court against the two companies, limiting the claim to payment of the price due for 40,000 of the electronic boards sold.
As the basis for the monitor appeal, Embit deduced that the buyer had paid only part of the agreed downpayment and had picked up and paid for only 1,000 of the 40,000 pieces delivered.
Controllino and Conelcom Engineering filed a timely opposition to the injunction order, primarily challenging the lack of jurisdiction of the Italian court. In the present case, the goods sold by Embit had been shipped by courier to Austria, where they were received by the buyer.
The Ex Works-clause included in the contract was not intended to identify the place of delivery, but solely to set a limit to the seller's liability, releasing them from responsibility for events occurring after the goods were made available. This aspect is of crucial importance, as it represents the core of the case and is the starting point of all the related legal and contractual disputes. Indeed, the fact that

the goods had been shipped to Austria and the successful delivery of it there were sufficient to render Ex Works clause irrelevant.
When an Incoterm EXW clause is inserted in a contract of sale, the place of delivery of the goods shall be deemed, for all purposes, to be that of the seller's plant or place of business.
However, even an Ex Works-clause could in theory be affixed to a contract of sale for improper purposes, such as limiting the seller's liability. As a matter of fact, it is irrelevant to determine whether that part of the goods delivered by means of the DHL carrier to the buyer's premises were shipped on the assignment of the seller or were entrusted by the seller to a carrier acting in the name and on behalf of the buyer. This happens for two main reasons:

- Firstly, the claim asserted by Embit in monitory proceedings had to do with both the payment of the price of goods already delivered, and payment of the price of goods sold but not collected by the buyer. The latter, (39,000 cards out of 40,000) always remained in Italy, and here they were to be collected.
- Secondly, in the presence of an EXW clause, determining whether it was the buyer or the seller who entrusted the goods to the carrier is legally irrelevant.
  As mentioned, the EXW Incoterm clause establishes that it is the buyer’s responsibility to collect the goods from the seller’s premises. In actual commercial practice, however, it is quite rare for the buyer to personally collect the goods under an Ex-Works arrangement. The collection of the goods and their transport to the final destination are usually carried out by a carrier or a freight forwarder acting as carrier. Indeed, it commonly occurs that the seller or their staff assist with the loading of the goods, or that the carrier takes charge of the shipment on behalf of the buyer. Consequently, these circumstances do not constitute a clear and unmistakable indication of an intention to derogate from the Ex Works-clause.

In the following paragraph, a more in-depth examination of the legal interpretations relevant to the case will be presented.

3.4 Legal interpretation of the Judgement: The New Directives

The Conelcom Engineering and Controllino GmbH vs. Embit s.r.l. judgment, delivered by the Modena Courrt, is not only significant for its resolution of the dispute at hand but also for the broader legal implications it introduces regarding the use and interpretation of the Ex-Works (EXW) Incoterm in international sales agreements governed by Italian law. The Court's reasoning offers interpretative clarity on a number of pivotal aspects, particularly surrounding the allocation of risk, the evidentiary value of documentation, and the practical limits of the EXW clause when applied in real-world commercial transactions.

3.4.1. Formal Structure of Incoterms and the Scope of EXW

One of the key takeaways from the judgment is the reaffirmation of the formal nature of Incoterms: EXW establishes that the seller's obligations end when the goods are made available at the designated location, typically the seller's premises. However, the Court acknowledged that commercial practice often diverges from this principle, particularly in cases where the seller appears to take an active role in shipping or loading, even if such actions are not explicitly agreed upon in the contract.

3.4.2. Contractual Intent vs. Practical Conduct: Distinguishing Assistance from Assumption of Obligation

Significantly, the Court distinguished between contractual intent and practical assistance, concluding that logistical support provided by the seller (such as coordinating with a carrier or handling loading operations) does not in itself constitute a deviation from EXW, unless there is clear and demonstrable evidence of a mutual intention to override the standard risk allocation embedded in the clause. In this case, despite the fact that the goods were shipped to Austria and DHL documents listed Embit as the sender, this was not sufficient evidence to establish that the seller had assumed delivery obligations.

3.4.3. The Limited Evidentiary Value of Documentation

Additionally, the Court emphasized that formal documentation alone, such as pro forma invoices or shipment records, does not override the express terms of an Incoterm without a clear and mutual modification of those terms. This interpretation underscores the importance of ensuring consistency and precision across all contract-related documents. Any ambiguity or inconsistency may lead courts to rely on interpretative principles that could neutralize the protective function of EXW.

3.4.4. Jurisdictional Implications of EXW: Delivery Does Not Equal Forum

From a jurisdictional standpoint, the Court also highlighted a crucial point: EXW does not in itself determine jurisdiction. While it identifies the place of delivery for the purpose of risk transfer, it does not automatically establish jurisdictional authority unless expressly stipulated. In the absence of a jurisdiction clause in the contract, the Italian court maintained competence, particularly as a substantial part of the performance—namely, the availability of the goods for collection—occurred within Italy.

3.4.5. Key Legal Takeaways and Practical Implications

The *Conelcom* judgment provides concrete guidance for international traders, lawyers, and contract drafters by reinforcing several principles that should be taken into account when negotiating and implementing EXW-based contracts:

- **Formal Terms Prevail, but Only Within a Clear Context**: Incoterms remain binding, but only if the parties' conduct is consistent with them. Behavior that contradicts the formal clause may open the door to judicial reinterpretation.

- **Strict Burden of Proof for Deviation**: Parties seeking to claim that the seller took on delivery obligations must prove this with more than circumstantial evidence or operational conduct. Clear contractual language is necessary.

- **EXW Is Not Immune to Contextual Interpretation**: While Incoterms are formal, courts may consider the factual matrix, especially when consistent patterns of behavior suggest a different contractual reality. However, this interpretative flexibility does not override explicit terms unless mutual intent is proven.

- **Documentation Must Be Consistent**: Supporting documents should be aligned with the main contract. Discrepancies between them may lead courts to reinterpret risk allocation, even against the presumed clarity of the Incoterm used.

- **Define Jurisdiction Separately**: Parties should never assume that the Incoterm selected will determine jurisdiction. A separate jurisdiction clause should always be included to avoid potential disputes.

Ultimately, this judgment invites a reconceptualization of Incoterms as dynamic legal instruments, requiring not only accurate drafting but ongoing management throughout the lifecycle of the commercial transaction.

3.5. Empirical Challenges for Italian Companies

Despite the theoretical simplicity of the Ex-Works (EXW) Incoterm, Italian companies frequently encounter substantial empirical difficulties when applying it in cross-border transactions. These challenges arise from a combination of logistical constraints, regulatory complexities, and discrepancies between formal contractual obligations and actual business practices. The Conelcom-Embit case exemplifies many of these issues, offering a valuable lens through which to examine the practical risks faced by exporters operating under the EXW framework.

3.5.1. Legal Formalism vs. Commercial Realities

One of the most pressing challenges stems from the misalignment between legal formalism and operational necessity. In theory, EXW limits the seller's role to merely making the goods available for collection; however, in practice, buyers often expect-or require-the seller to assist with loading, documentation, and occasionally even shipment coordination. In the Italian context, this often translates into unwritten expectations or informal agreements, which are later used in litigation to argue that the seller exceeded their formal obligations under EXW.

3.5.2. Language Barriers and Misaligned Expectations

Another source of conflict lies in cross-cultural and linguistic misunderstandings. Buyers unfamiliar with Italian or EU customs procedures may assume that the seller will handle export clearance-

despite EXW making this the buyer's responsibility. When sellers step in to facilitate these processes for practical reasons, they may inadvertently assume liabilities they had sought to avoid by choosing EXW.

3.5.3. Documentation Issues: Inconsistencies and Ambiguities

Another recurrent empirical problem is the lack of document standardization. In many cases, especially among SMEs, there is inconsistency between the contractual Incoterm and the details listed on invoices, transport documents, or shipping labels. For example, listing the seller as the shipper on a waybill may later be interpreted as evidence that the seller undertook transport obligations, even when EXW is clearly stated in the contract. This documentary inconsistency undermines legal certainty and increases the risk of unfavorable judicial interpretation.

3.5.4. Jurisdictional Confusion and International Litigation Risks

Disputes over jurisdiction are particularly common when EXW is misunderstood. Italian courts have reaffirmed that unless otherwise agreed, jurisdiction remains in Italy if the goods are made available there. However, many foreign counterparties mistakenly assume that shipment to their country implies legal jurisdiction in their own courts, leading to costly and avoidable legal disputes.

3.5.5. Best Practices for Italian Exporters Using EXW

To mitigate these empirical challenges, Italian companies should adopt a more structured and preventative legal strategy, incorporating the following best practices:

- Clearly specify the full Incoterm with location and version (e.g., "EXW Modena, Italy - Incoterms 2020") in every contractual and supporting document.
- Include explicit clauses on jurisdiction and applicable law, particularly if goods are exported beyond the EU.
- Ensure that invoices, delivery notes, and shipping documents consistently reflect the agreed Incoterm and do not inadvertently suggest seller involvement in transportation.
- Establish internal compliance protocols to limit staff engagement in logistics that could be construed as inconsistent with EXW.

- When deviations from EXW are practically necessary, formalize such modifications through written amendments or addenda to the contract to prevent misinterpretation.
- Conduct Cross-Cultural Risk Assessments: Where possible, clarify the meaning of EXW in the buyer's native language or legal system to avoid future misunderstanding.

In sum, the use of EXW in Italy is not merely a matter of contractual drafting but also of compliance management, legal foresight, and cross-cultural communication. As international trade becomes more complex and judicial scrutiny of standard clauses intensifies, Italian companies must navigate the empirical challenges of EXW with increased diligence and professional support. The lessons from the Conelcom-Embit judgment underscore the imperative of aligning contractual intention, operational behavior, and legal documentation to avoid unintended liabilities and ensure enforceability.

3.6. Conclusion and Further implications

The Conelcom Engineering and Controllino GmbH vs. Embit s.r.l. judgment serves as a pivotal reference point for the interpretation and application of the Ex-Works (EXW) Incoterm in Italy, highlighting the nuanced and often underappreciated complexity of what is conventionally viewed as a straightforward clause. While the EXW term is formally intended to minimize the seller’s obligations and risk exposure, this case illustrates how its real-world application often diverges from theoretical expectations, especially in jurisdictions where national legal interpretations intersect with EU regulations and cross-border business practices.

At the heart of the judgment lies a critical legal tension: the distinction between the formal allocation of obligations under EXW and the actual conduct of the parties. The Court’s approach demonstrates that Italian jurisprudence is willing to look beyond the literal terms of a contract to consider the broader factual matrix and commercial realities in which international trade agreements are executed. In doing so, the Court reaffirmed the principle that contractual terms cannot be interpreted in isolation, but must be examined in light of the conduct, expectations, and mutual understanding of the parties.

Italian SMEs and the Practical Tensions of Applying EXW

This case also exposes a broader systemic issue facing Italian exporters: the empirical disconnect between standardized Incoterms and the operational demands of international commerce. Italian companies, particularly small and medium-sized enterprises (SMEs), often find themselves under pressure to assist foreign buyers with logistics, customs clearance, or export documentation, despite having chosen EXW precisely to avoid these burdens. Indeed, even when EXW is chosen with the specific intent of minimizing risk and legal exposure, commercial pressures often lead to voluntary actions that contradict the strict interpretation of EXW, such as:

- Booking or coordinating international shipments.
- Printing customs declarations.
- Issuing transport documents that name the seller as consignor or shipper.
- Handling loading operations at their premises. As seen in *Conelcom*, this can create legal ambiguity, where informal practices or inconsistent documentation are later interpreted as a de facto assumption of additional obligations by the seller.

These well-intentioned but legally risky actions may be seen by courts as evidence of tacit contractual modifications or as behavior inconsistent with the formal risk allocation under EXW. The result is a blurring of legal boundaries, potentially leading to expanded liability for the seller, particularly in the event of damaged goods, delivery failures, or jurisdictional disputes.

Jurisdictional Complexity: The Place of Performance and Legal Venue

Furthermore, the judgment highlights the importance of jurisdictional clarity in cross-border sales contracts. While EXW determines the place of delivery for risk transfer, it does not automatically resolve jurisdictional questions, which must be addressed through explicit and unambiguous contractual clauses. In the absence of such clarity, disputes may default to the jurisdiction where performance began, typically the seller's location, reinforcing the importance of precise contract drafting and legal foresight.

Strategic and Operational Recommendations

The broader implications of this case can be summarized in the following key recommendations for Italian companies engaged in international trade under EXW:

- Avoid reliance on EXW as a blanket shield against liability. Even with a formally correct EXW clause, a seller's actions may expose them to claims if those actions are seen as inconsistent with the clause's intent.
- Ensure strict alignment between legal documentation and operational behavior. All transactional documents (quotes, purchase orders, invoices, delivery notes) must be harmonized to reflect the agreed Incoterm and its implications.
- Formalize all deviations from standard obligations. If a seller assists with loading, shipping, or export clearance, these should be documented through contractual amendments or clearly worded correspondence.
- Invest in training and compliance procedures. Staff involved in sales, logistics, and customer service should be fully aware of the legal consequences of actions that might appear routine but can have contractual implications under EXW.
- Seek specialized legal counsel. Especially when structuring sales agreements involving non-EU buyers, legal professionals with expertise in international trade law and Incoterms should be consulted to ensure compliance and risk mitigation.

Broader Commercial and Legal Implications

Ultimately, *Conelcom vs. Embit* underscores a shift in how courts, particularly in Italy, interpret standard clauses like EXW not as rigid terms, but as provisions whose meaning is shaped by context, behavior, and the realities of global commerce. This calls for a more pragmatic approach by Italian exporters, who must move beyond formal compliance toward integrated legal and operational strategies that reflect both the letter and the spirit of their international sales agreements. As global trade shifts in response to geopolitical tensions, digital transformation, and changing regulations, this case offers lessons that remain highly relevant, not just as a warning, but as a prompt to rethink how businesses apply Incoterms in today’s interconnected marketplace. This development carries significant implications for contract drafting, dispute resolution, and international trade strategy:

- **Legal Predictability is Decreasing** when informal practices diverge from written agreements. The need for detailed, customized, and consistent documentation is more critical than ever.
- **The Risk of Contractual Misalignment is Rising**, particularly for companies that treat Incoterms as boilerplate clauses instead of dynamic legal tools.
- **Incoterms Must Be Integrated into the Entire Commercial Workflow**, not simply inserted into the contract and forgotten. Their implications must be actively managed throughout the transaction lifecycle.

Final Reflections: Toward a More Contextual Use of Incoterms

The *Conelcom Engineering and Controllino GmbH vs. Embit s.r.l.* judgment reminds us that Incoterms are not legal absolutes. They are part of a contractual framework that operates within the broader context of party behavior, documentation, and performance. Courts are increasingly inclined to interpret these terms with a view to the totality of the commercial relationship, rather than treating them as rigid and self-contained provisions.
For Italian exporters this shift demands a more pragmatic, proactive, and integrated approach to contract management. Incoterms must be selected deliberately, applied consistently, and monitored closely throughout the commercial transaction. Only then can they fulfill their intended function: reducing ambiguity and facilitating predictable, fair, and efficient international trade.
As the international legal landscape continues to evolve, under the pressure of geopolitical tensions, regulatory fragmentation, and digital transformation, the lessons of *Conelcom* are likely to remain highly relevant. They represent both a cautionary tale and a call to action for exporters to elevate their legal and operational discipline in an increasingly complex global market.

Conclusions

This thesis set out to explore the evolving framework of international commercial law, focusing particularly on the dual dimensions of Incoterms and jurisdictional competence in cross-border disputes, and culminating in an in-depth analysis of the Ex-Works Incoterm within the Italian legal and commercial context. Through a multidisciplinary approach combining legal theory, regulatory

analysis, and case law interpretation, the study has aimed to clarify how international trade operations are governed, coordinated, and sometimes complicated by overlapping systems of rules and practices.

Summary of Key Findings

The first chapter laid the foundation by tracing the historical development of Incoterms, emphasizing their role in streamlining international trade through standardized definitions of seller and buyer responsibilities. It demonstrated that, while Incoterms reduce ambiguity in international transactions, their effective use requires not only familiarity with the terms themselves but also an understanding of how they intersect with other legal instruments and commercial realities.
Chapter two provided a legal deep dive into jurisdictional issues as governed by the Brussels I bis Regulation. This analysis revealed the Regulation's comprehensive framework for resolving jurisdictional conflicts within the EU, offering predictability and legal certainty in cross-border disputes. Special attention was given to the mechanisms of exclusive jurisdiction, choice of court agreements, and the enforceability of foreign judgments, elements that are crucial in contracts governed by international sales law.
The third chapter synthesized these themes through a focused case study on the Ex-Works Incoterm in Italy, specifically analyzing the “Conelcom Engineering and Controllino Gmbh vs. Embit s.r.l.” judgment. This case highlighted the operational and legal challenges faced by Italian exporters when applying Ex-Works, especially in terms of transfer of risk, logistics, and jurisdictional exposure. The judgment marked a pivotal point by redefining how courts might interpret Ex-Works obligations in complex transnational scenarios, prompting Italian companies to reassess their reliance on this Incoterm.

Limitations of the Study

This research was conducted primarily through doctrinal and case law analysis, and although it touches on empirical observations, it does not include comprehensive quantitative data or interviews with practitioners. Future research could incorporate industry-specific insights, comparative legal studies, or surveys to enrich the findings and broaden their applicability across different legal systems and commercial sectors.

Implications for Legal and Commercial Practice

The findings of this thesis suggest that legal professionals and businesses must approach the use of Incoterms, particularly Ex-Works, with a high degree of caution and contextual awareness. Misunderstandings can lead to unexpected jurisdictional entanglements, logistical complications, and disputes over risk allocation. Likewise, a nuanced understanding of Brussels I bis is essential when drafting international contracts to ensure proper jurisdictional planning and enforceability. In practical terms, the thesis underscores the need for:

- Clear drafting of choice of court clauses;
- Strategic selection of Incoterms based on logistics capacity and legal predictability;
- Greater legal education for SMEs engaged in cross-border trade.

Directions for Future Research

This research also points to future challenges and opportunities. The digitalization of trade, the increasing complexity of supply chains, and ongoing geopolitical uncertainties will continue to test the resilience of Incoterms and jurisdictional frameworks. Future reforms and academic inquiry should therefore explore how Incoterms interact with national transport laws, digital trade platforms, and non-EU jurisdictional systems.

Final Reflections

Ultimately, this thesis has attempted to bridge the often disconnected fields of contractual trade terms and jurisdictional law, demonstrating that both must be considered in tandem for effective risk management in international commerce. As globalization continues to test the limits of national legal systems, the harmonization and careful interpretation of rules like Incoterms and Brussels I bis will remain critical to fostering predictable and efficient trade relations.

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Appendices

Appendix A – Reference Legal Texts

Extracts from *Regulation* (*EU*) *No. 1215/2012* (*Brussels I bis*):

- Article 4 – General rule on jurisdiction.
- Article 7 – Special jurisdiction rules.
- Article 24 – Exclusive jurisdiction.
- Article 25 – Choice of court agreements.

Extracts from the *United Nations Convention on Contracts for the International Sale of Goods (CISG, 1980)*:

- Part II – Formation of the contract (Arts. 14-24).

- Part III – Rights and obligations of the seller and the buyer (Arts. 25-88).

Appendix B – Summary Table of Incoterms 2020

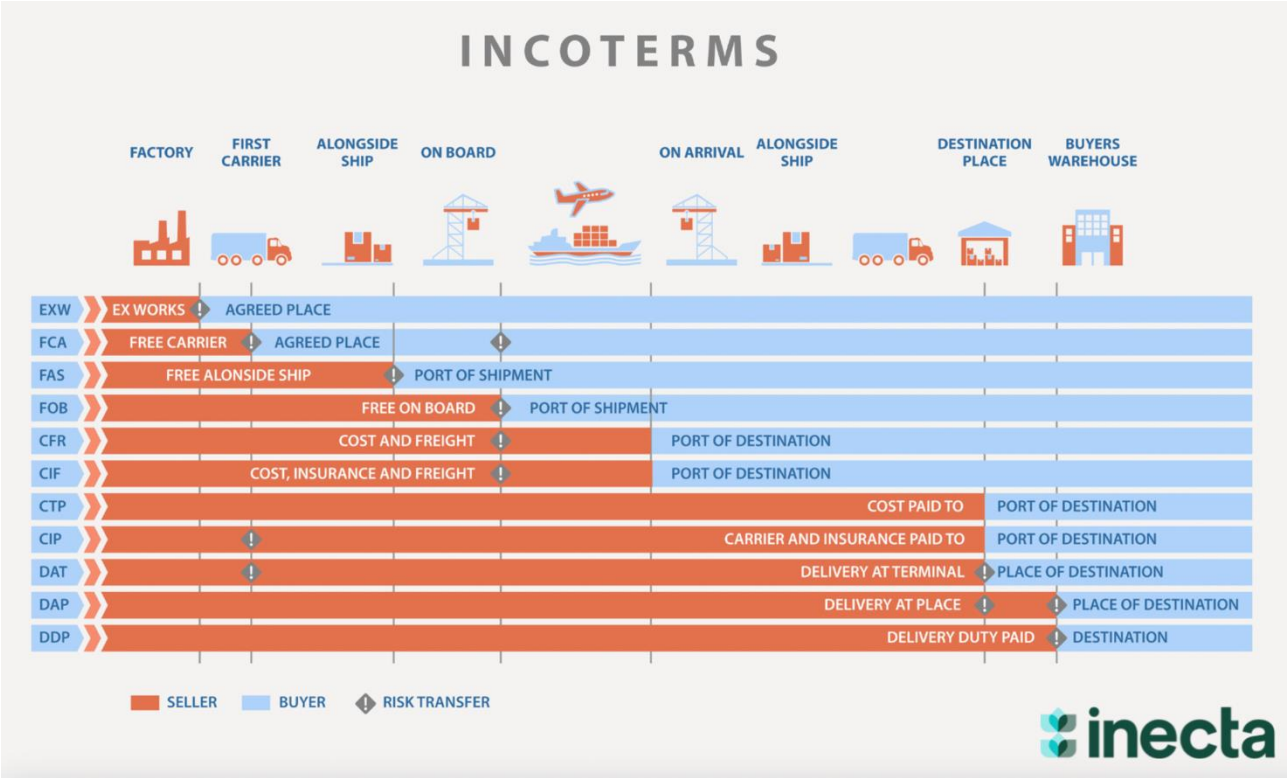


Table 11 Incoterms 2020, taken from https://www.inecta.com/blog/incoterms-2020-explained-complete-guide

Appendix C – Case "Conelcom Engineering and Controllino GmbH vs. Embit s.r.l."

- Extract from the judgement of the Tribunal of Modena (2024, case number 7987/24).

C.1. Summary of Key Incoterm Responsibilities under EXW

The Seller:

- Makes the goods available at specified premises.
- Provides necessary commercial documents (e.g., invoice)
- Packages goods appropriately for transport

The Buyer:

- Arranges and bear cost of transport from seller's premises
- Handles export and import customs formalities
- Pays duties, taxes, and insurance
- Bears all risk from point goods are made available

Note: Under Incoterms 2020, the seller is not even required to load the goods onto the buyer's vehicle unless explicitly agreed.

C.2. Extract from the ICC's Incoterms 2020 Rule for EXW

"The seller delivers when it places the goods at the disposal of the buyer at the named place (factory, warehouse, etc.), not loaded on any collecting vehicle. The seller does not need to load the goods on any vehicle or clear them for export."

C.3. Case Summary: Conelcom Engineering and Controllino GmbH vs. Embit s.r.l.

Court	Tribunale di Modena, Italy
Parties	Plaintiff: Embit s.r.l. (Italy) Defendants: Conelcom Engineering GmbH & Controllino GmbH (Austria)
Dispute	Payment for 40,000 electronic boards under EXW contract
Key Legal Questions	- Did EXW define the place of delivery? - Did the seller assume transport obligations by shipping goods? - Was Italian court competent?

	-	Italian court asserted jurisdiction
Outcome	-	Court found that seller actions did not override EXW clause
Highlights	-	Shipment to Austria by the seller did not equal assumption of transport obligations

C.3. Judicial Clarifications Arising from the Case

Role of Shipment Documents	Shipment documents listing seller as consignor are not sufficient alone to alter EXW responsibilities.
Practical Assistance ≠ Legal Obligation	Seller's help with loading or logistics does not constitute a formal assumption of transport duties.
Jurisdiction	EXW does not determine jurisdiction; courts may look to where key performance obligations took place.
Evidentiary Burden	The party claiming a deviation from EXW must prove it through explicit intent or written modifications, not assumptions or practices.

C.4. Recommended Contractual Clauses for EXW Use

To prevent disputes like those in *Conelcom v. Embit,* Italian companies should consider including the following clauses:

Sample Jurisdiction Clause:

"Any dispute arising out of or in connection with this contract shall be submitted to the exclusive jurisdiction of the Courts of Modena, Italy."

Sample Clarification of Responsibilities:

“The parties expressly agree that the seller shall have no obligation to load the goods onto any vehicle or assist in export formalities. Any logistical support provided by the seller shall be considered courtesy and shall not modify the EXW clause.”