Chapter 6

Shipping Terms
FAS, FOB, C&F, CIF

Many of the key terms of trade used in international grain contracts are standardized to communicate clearly and help ensure transactions proceed smoothly. These terms provide consistency, minimize confusion, and clarify the obligations of buyers and sellers. A small misunderstanding of contract or shipping terms can easily lead to a dispute including, the allocation of risk, or which party is responsible for certain costs, such as freight, insurance or other expenses involved in the delivery of goods.

In order to facilitate international trade, the International Chamber of Commerce (ICC) publishes and regularly updates a set of globally recognized terms that help to create a standard for trade terms commonly used in the sale of goods.[i] These terms are commonly referred to as **"Incoterms®,"** which is the abbreviation for International Commercial Terms. [ii]

Incoterms® rules are a globally recognized set of standards, used worldwide in international and domestic contracts. These rules have been developed and maintained by experts and practitioners brought together by ICC. The trade terms help traders avoid costly misunderstandings by clarifying the tasks, costs and risks involved in the delivery of goods from sellers to buyers.

The latest Incoterms® are referred to as Incoterms® 2020. They were launched in September 2019 and came into effect on the 1st of January 2020.

Please note that all contracts made under Incoterms® 2010 and any other previous editions remain valid and parties to a contract for the sale of goods can agree to choose any version of the Incoterms® rules. However, we recommend using the most current version of the rules, which today is Incoterms® 2020. It is important to clearly specify the chosen version.

For more information on the International Chamber of Commerce and Incoterms, please see: https://iccwbo.org/about-us/who-we-are/

For bulk commodities transported internationally over inland waterways or by sea, there are four other Incoterms that are closely related to cost and freight and that are frequently used in contracts for the bulk grain trade. Each of the following terms must also state a place of delivery. These are:

- **Free Alongside Ship (FAS)** requires the seller to deliver grain, cleared for export, alongside the buyer's vessel at a named port, at which point risk of loss or damage to the grain transfers to the buyer.

- **Free On Board (FOB)** requires the seller to deliver grain, cleared for export, loaded on board the buyer's vessel at a named port, at which point risk of loss or damage to the grain transfers to the buyer.

- **Cost and Freight (CFR)** requires the seller to load grain onto a vessel and to arrange and pay for transport of the grain to a named port; however, the risk of loss or damage to the grain passes to the buyer as the grain is loaded onto the vessel, and the buyer can decide whether or not to insure against this risk.

  Note –The term C&F is frequently used in the bulk grain trade, although it is not a recognized Incoterm®. It has the same meaning as CFR.

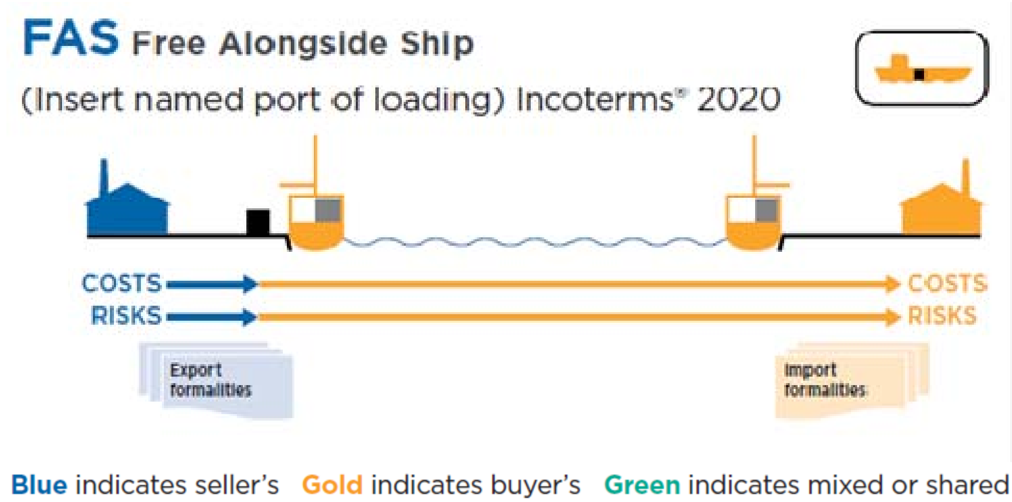
- **Cost, Insurance and Freight (CIF)** is the same as C&F, but requires the seller to obtain and pay for cargo insurance meeting certain minimum standards. The buyer can claim under the cargo insurance if the grain is lost or damaged during the voyage.

Incoterms®

These four terms as defined by Incoterms® are primarily used in contracts for international trade in bulk commodities where transportation is entirely conducted by water. They are generally not suitable for shipments in shipping containers. Other Incoterms® are better suited to the sale of goods in containers, such as FCA (Free Carrier), CPT (Carriage Paid To) or CIP (Carriage Insurance Paid To).

Note that buyer and sellers are not required to use Incoterms ® in the contracts for the sale of goods. Some standard contract forms, such as those developed by the Grain and Feed Trade Association (GAFTA) or the North American Export Grain Association (NAEGA), refer to their contracts as being "cost and freight" or "free on board" contracts. Their contract forms, however, spell out the obligations of the buyer and seller and when the risk of loss or damage to the goods passes in detail so that they do not need to refer to or incorporate the Incoterms®. Buyers and sellers are free to use these form contracts, or to incorporate the appropriate Incoterm, as they see fit and as they may agree.

Let's take a more detailed look at these four Incoterms ® that are intended to cover the sale of goods by sea or inland waterway.



Source: ICC International Chamber of Commerce, Incoterms® 2020 Resources, "Chart - Transportation Obligations, Costs and Risks", This chart is not intended to be used alone, and should always be used in conjunction with the Incoterms® 2020 rule book. [iii]

"Free Along Side" (FAS): This contract term states the seller only has to deliver the cargo alongside the vessel nominated by the buyer at the stated port, at which point the risk in and responsibility for the goods shifts to the buyer.

This term is not as commonly used for sales of goods exported from the United States as it may be in some other countries.

Cost of Transportation: Under FAS terms, the seller bears the costs of transporting the grain to the port for loading. The buyer then bears the cost of loading the vessel, marine freight transportation, cargo insurance, and finally the unloading and transportation costs from the discharge port to ultimate destination of the goods.

If an importer buys grain FAS, the importer must bear the cost of chartering a vessel, loading the goods onto the vessel at the loading port, appointing agents to oversee loading of the vessel and securing related documentation, monitoring the vessel's progress as it sails, arranging and paying for discharge of the goods at the discharge port, and settling any claims related to the carriage of the goods with the vessel owner. As you can see, in an FAS sale the buyer bears significantly more responsibilities and costs than the seller.

Risk of Loss or Damage to the Goods: Under a FAS sale, the liability for risk of loss or damage to the goods is transferred from the seller to the buyer as the grain is delivered by the seller alongside the vessel at the agreed load port. It is at that point that the seller's responsibility and risk ends.

The FAS terms do require the seller to clear the goods for export, which is a change from previous Incoterms. If the parties, however, wish the buyer or its agent to clear the goods for export, this should be clearly stated in the contract. [iv, v]

Cost of Insurance: Under FAS terms the buyer may, at its own cost, purchase cargo insurance covering the goods against the risk of loss or damage from the moment the seller delivers the goods alongside the buyer's vessel. The seller has no obligation to arrange or pay for this cargo insurance. The buyer can elect to not insure the goods against the risks of the voyage, though that decision could end up being penny wise and pound foolish.

FAS

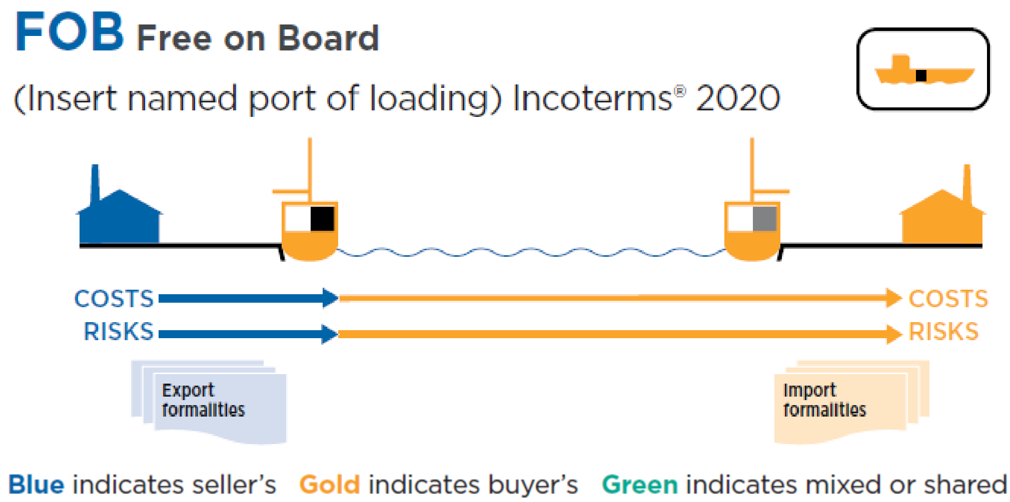
In practice FAS terms are used only for sea transport, and, only for certain commodities and materials that are not packed and cannot be individualized, such as grain, feed, meal, timber, minerals, steel products, etc.

Export Clearance: The seller is responsible for clearing the goods for export, including paying any export fees, duties or taxes. Usually the buyer will clear the goods for export before placing them alongside the ship.

Other Considerations: In addition, in nearly all FAS (and FOB, CFR and CIF) sales in the grain and oilseeds trade, the seller must obtain a quality grade certificate. This is normally generated by the Federal Grain Inspection Service, satisfying one of the seller's contractual obligations of quality delivered to the buyer.

FAS should be used for situations where the buyer has direct access to the vessel for loading, e.g. bulk cargos or non-containerized goods. When using FAS, the buyer is responsible for arranging and paying for the cost of loading the goods on the ship. For this reason, the buyer or their load port agent must know the practices in the port of shipment.

Finally, FAS is a term generally used only for sea and inland waterway transport and usually for general cargo. When the goods are transported in containers, Incoterms 2020 rules recommends the use "Free Carrier", FCA.[vi]



Source: ICC International Chamber of Commerce, Incoterms® 2020 Resources, "Chart - Transportation Obligations, Costs and Risks", This chart is not intended to be used alone, and should always be used in conjunction with the Incoterms® 2020 rule book. [vii]

"Free on Board" (FOB): This Incoterm ® states the seller deliverers the commodity to the buyer "at the discharge end of the loading spout, into the buyer's presented vessel in condition of readiness to load" (Incoterms ® 2010). The seller must also arrange for export clearance and/or any export permits and pay any export taxes. The primary difference between a FOB sale and a FAS sale is that in a FOB sale the seller must not only bring the goods alongside the buyer's vessel, but also arrange for and pay the cost of loading the goods onto the vessel. These loading costs are referred to in the grain trade as "elevation" costs, or "fobbing" costs. The seller's risk of loss or damage to the goods also carries through the loading process until the goods exit the loading spout in the vessel.

Cost of Transportation: The buyer is responsible for arranging and paying all costs of the marine freight transportation, any cargo insurance, and the costs for unloading from the goods at the arrival port.

In the case of a cargo moving by sea, this means the buyer charters the vessel. The buyer then presents (or nominates) the vessel to the seller as the vessel to load the cargo and may appoint agents at the load port to monitor the loading and the creation of the load documents.

Risk of Loss or Damage to the Goods: The risk of loss or damage to the goods is transferred from a seller to a buyer as the grain is loaded into the vessel's holds. This is why it is sometimes said that the risk of loss or damage to the goods passes from the seller to the buyer as the goods pass from the shore over the vessel's "rail," i.e. the side of the vessel. It is at that point that the seller's responsibility for the goods, and risk of loss or damage to the goods, ends. The risk of loss or damage to the goods then shifts to the buyer.

Cost of Insurance: A FOB seller has no obligation to obtain or pay for cargo insurance covering the goods. As mentioned above, the risk of loss or damage to the goods passes from seller to buyer as the goods are loaded onto the vessel. It is up to the buyer then to obtain cargo insurance coverage for the risks of the voyage.

Export Clearance: As with FCA sales, the seller is responsible for clearing the goods for export, including paying any export fees, duties or taxes.

Other Considerations: Historically, FOB sale terms were used primarily on the sale of goods transported by ship. However, in the U.S., the term has expanded to include all types of transportation, including barges, rail and road. Incoterms®, however, recommends that for non-water borne transport the parties use instead the free carrier (FCA) term.

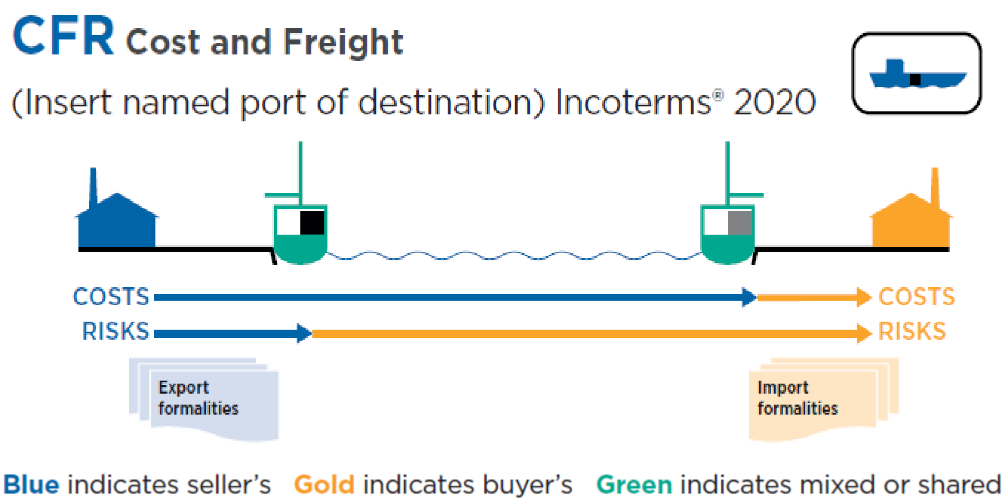
FOB

In a typical FOB sale of grain, the buyer will present at the load port an appropriate vessel of a type typically used for the carriage of the goods sold, which is inspected and cleared for readiness to load the grain. This presentation must occur within the contracted delivery period, at a port or ports stated in the contract. The seller and buyer may even agree in the contract to a specified loading facility or berth.

The seller then must deliver onto the vessel the quality and quantity of grain required by the contract. For grain exports from the USA the Federal Grain Inspection Service (FGIS) normally issues these certificates to the exporter..

The Seller may also be required to deliver to the buyer a number of other documents as agreed to in the contract, for example a phytosanitary certificate, non-gmo certificate, or a certificate of origin, etc.

In a typical FOB sale, once the seller has loaded contractual goods on the buyer's vessel within the agreed delivery period, and has presented to the buyer the documents required by the contract to evidence this delivery, the seller has completed its obligations and is entitled to be paid for the goods.



Source: ICC International Chamber of Commerce, Incoterms® 2020 Resources, "Chart - Transportation Obligations, Costs and Risks", This chart is not intended to be used alone, and should always be used in conjunction with the Incoterms® 2020 rule book. [viii]

Cost and Freight (CFR) (though sometimes shortened as **C&F** or **CNF)**: Deciding whether to buy or sell on an "F" term (e.g. FAS or FOB) or a "C" term (e.g. CFR or CIF) is significant. This is because "C" terms shift all the responsibility and cost of obtaining and paying for the ocean freight from the buyer to the seller. As a result, the seller must not just arrange and pay for transporting the cargo to a specified load port, cleared for export, and the loading of the goods onto an appropriate vessel (as required of an FOB seller). In addition, the seller must also arrange and pay for the vessel which will carry the goods to their contractual destination. The term cost and freight means that the seller must provide to the buyer two things;

(1) the goods themselves, loaded on the vessel (the "cost"), and

(2) the transportation of the goods to the discharge port (the "freight").

An important element of a CFR sale contract is the shipment period, sometimes referred to as the delivery period. Remember that in a CFR sale the seller is responsible not only for getting contractual goods onto the vessel, but also charter in the vessel to take the goods to the discharge port. The buyer therefore often has very little insight into the arrival of the goods at the load port or progress of loading, or when the vessel sails from the load port. The buyer can, though, agree on a shipment period. The shipment period is the range of days during which the seller must complete loading the vessel with the contractual cargo. The bill of lading will show the date on which loading was complete (or if the vessel issues several bills of lading for the goods, the latest date shows the day on which loading was complete). The buyer can therefore easily determine if the vessel was loaded within the agreed shipment period.

Use of this term is generally restricted to goods transported by sea or inland waterway.

Cost of Transportation: As stated above, CFR terms state that, in addition to loading the vessel with the cargo, the Seller is responsible for the cost of marine transportation from the load port to the discharge port. This cost is therefore included in the sales price for the goods.

Risk of Loss or Damage to the Goods: Just as with grain that is sold on FOB terms, the risk of loss or damage to the goods transfers from the seller to the buyer when the goods are loaded onto the vessel at the load port. The seller is responsible for finding and paying for the vessel to carry the goods to the discharge port, but the buyer still has all of the risk of loss or damage to the goods during the voyage.

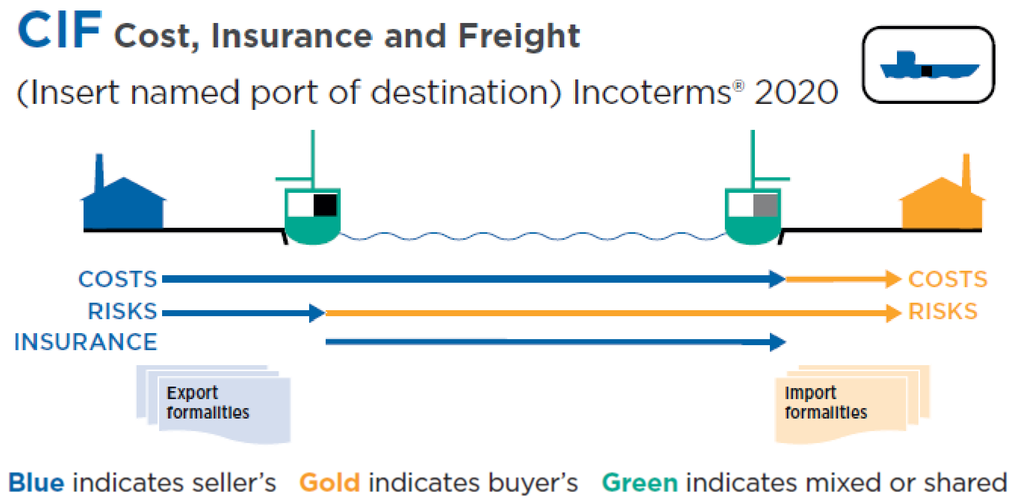
Cost of Insurance: Under CFR terms the buyer not only has the risk of loss or damage to the goods from the moment the goods are loaded onto the vessel, but the buyer also must decide whether to purchase cargo insurance to cover these risks, and if so how much insurance.

CFR

Other Considerations: In a CFR sale the seller's obligations are complete when they have loaded contractual goods on a contractual vessel within the agreed shipment period. The seller is then entitled to be paid for the goods. Payment typically occurs when the seller presents the buyer with a set of documents showing that goods meeting the contract requirements were loaded on a vessel destined for the discharge port. Typical documents include a bill of lading, the seller's invoice, and certificates of quality and quantity. English courts are fond of saying that CFR (and CIF) sales are not sales of goods, but sales of documents. Once the seller presents the documents required by the contract the buyer must pay.

Though the seller has the direct contract (known as a charter party) with the vessel for the carriage of the goods, once the bill of lading has been transferred from the seller to the buyer the buyer has rights against the vessel under the bill of lading and has the right to take possession of the goods at the discharge port.

CFR is a sea transport Incoterm used mainly for general cargo and large volumes of goods, including grain and oilseeds. When the goods are transported in containers and the seller is arranging and paying for the ocean transportation, Incoterms® 2020 rules advise to use CPT instead of CFR, as containers are usually delivered at the terminals of the load port, before being placed on board ships.[ix]



Source: ICC International Chamber of Commerce, Incoterms® 2020 Resources, "Chart - Transportation Obligations, Costs and Risks", This chart is not intended to be used alone, and should always be used in conjunction with the Incoterms® 2020 rule book. [x]

Cost, Insurance, and Freight (CIF): This contract term used when freight is shipped via sea or waterway. Under CIF terms, the seller is responsible for everything a seller is responsible under a CFR sale (including arranging and paying for the vessel carrying the goods), <u>plus</u> the responsibility for obtaining and the cost of paying for the cargo insurance covering the risk of loss or damage to the goods during the voyage. As with a CFR sale, the buyer is responsible for all costs of unloading the goods at the destination port.

CIF is similar to carriage and insurance paid to (CIP), but CIF is used for goods transported by sea or inland waterway shipments, while CIP can be used for any mode of transport, such as by truck.

Cost of Transportation: This is the same as in a CFR sale. The Seller is responsible for the cost of the marine transportation from the load port to the discharge port. The seller therefore includes this cost in the sales price for the goods.

Risk of Loss of Damage to the Goods: This is also the same as in a CFR (and FOB) sale. The risk of loss or damage to the goods transfers from the seller to the buyer when the goods are loaded onto the vessel at the load port. The seller is responsible for finding and paying for the vessel to carry the goods to the discharge port, but the buyer still has all of the risk of loss or damage to the goods during the voyage.

Cost of Insurance: This is the difference between a CFR and CIF sale. Under both terms the risk of loss transfers to the buyer as the goods are loaded into the vessel. In a CFR sale the seller has no responsibility for obtaining or paying for cargo insurance to cover the risks of the voyage. Under a CIF sale, however, the seller must obtain and pay for marine cargo insurance to cover the goods against loss or damage during the voyage. This cost, like the cost of the vessel, is included in the CIF sales price.

The CIF sale contract should state the minimum marine cargo insurance coverage that the seller must buy, and the minimum qualifications of the insurer or underwriter. The sale contract will also normally require that the seller, in order to be paid, must provide the buyer with a certificate of insurance showing that these requirements are met. Often the cargo must be insured for the value of the commercial invoice, including the value of the cargo plus freight costs from the port of shipping to the port of destination, plus 10%; (i.e., 110% of CIF value). The policy should be in the same currency as the contract. The beneficiary of this insurance and, therefore, the one that must apply to the insurer for compensation in case of loss or damage to the goods, is the buyer.

Incoterms 2020® made changes to the insurance coverage requirements under CIF agreements. Sellers are now required to obtain a higher level or more comprehensive insurance than what was required under Incoterms 2010. [xi, xii]

CIF

Other Considerations: In practice, CFR and CIF terms should be used for situations where the seller has direct access to the vessel for loading, e.g. bulk cargos or non-containerized goods. The goods are shipped to the buyer's port nominated in the contract. Further, if the product requires additional customs duties levied by the country to export, export paperwork, or inspections, the seller must cover these expenses.

Once the cargo has arrived at the CFR or CIF destination port, the buyer assumes responsibility for the port conditions (draft, available berth, and so forth), discharging the vessel, and all costs of importing the goods.

As with CFR sale, an important element within CIF sale terms is the shipment period. This is the range of dates during which the goods must be fully loaded on the vessel. The date of loading stated on the bill of lading for the goods clearly shows if the seller has completed loading within the shipment period.

CIF is a widely used term. In addition to delivering the goods to the destination port of the buyer's country, the CIF value on the commercial invoice is most likely used by customs to apply tariffs and import taxes, facilitating the clearance of for import.

Occasionally, an exporter may load a cargo unsure of which sale the shipment may be applied to or without a sale, hoping to find a buyer once the grain is afloat. On these occasions, the seller will be self-insuring the cargo value and deliver it CIF once a sale has been arranged.

CIF

CIF is a term generally used only for sea and inland waterway transport and usually for general cargo of high value. When the goods are transported in containers, Incoterms 2020 rules recommends the use 'Carriage and Insurance Paid', CIP instead.[xiii]

As you can see, small changes in these incoterms can have significant implications for the responsivities, risks and costs of the seller and buyer. Every buyer and seller therefore should have a solid working understanding of contract terms and conditions. They should consult a lawyer well versed in international trade and maritime law, as well as local statutes, and have the proposed contracts reviewed before agreeing to the purchase or sale of grain or oilseeds.

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[i] International Chamber of Commerce. "Incoterms® Rules." https://iccwbo.org/resources-for-business/incoterms-rules/ Accessed 5 November 2021

[ii] International Chamber of Commerce. "Incoterms® Rules." https://iccwbo.org/resources-for-business/incoterms-rules/ Accessed 5 November 2021

[iii] ICC International Chamber of Commerce, Incoterms® 2020 Resources, Chart – "Transportation Obligations, Costs and Risks" , This chart is not intended to be used alone, and should always be used in conjunction with the Incoterms® 2020 rule book. https://iccwbo.org/publication/incoterms-2020-practical-free-wallchart/ Accessed 25 February 2022

[iv] Trade Finance Global. "Incoterms® 2020 – 7 key changes you need to know [update]." https://www.tradefinanceglobal.com/posts/incoterms-2020-7-key-changes-you-need-to-know/ Accessed 9 November 2021

[v] ICC. "Incoterms 2020." https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020/ Accessed 9 November 2021

[vi] International Chamber of Commerce. "Incoterms® Rules." https://iccwbo.org/resources-for-business/incoterms-rules/ Accessed 5 November 2021

[vii] ICC International Chamber of Commerce, Incoterms® 2020 Resources, Chart – "Transportation Obligations, Costs and Risks" , This chart is not intended to be used alone, and should always be used in conjunction with the Incoterms® 2020 rule book. https://iccwbo.org/publication/incoterms-2020-practical-free-wallchart/ Accessed 25 February 2022

[viii] ICC International Chamber of Commerce, Incoterms® 2020 Resources, Chart – "Transportation Obligations, Costs and Risks" , This chart is not intended to be used alone, and should always be used in conjunction with the Incoterms® 2020 rule book. https://iccwbo.org/publication/incoterms-2020-practical-free-wallchart/ Accessed 25 February 2022

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[xi] Trade Finance Global. "Incoterms® 2020 – 7 key changes you need to know [update]." https://www.tradefinanceglobal.com/posts/incoterms-2020-7-key-changes-you-need-to-know/ Accessed 9 November 2021

[xii] ICC. "Incoterms 2020." https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020/ Accessed 9 November 2021

[xiii] International Chamber of Commerce. "Incoterms® Rules." https://iccwbo.org/resources-for-business/incoterms-rules/ Accessed 5 November 2021