

Incoterms 2020

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The International Chamber of Commerce (ICC) published Incoterms 2020, which apply to contracts that incorporate them from 1 January 2020. The eleven rules are divided into those for any mode of transport (EXW, FCA, CPT, CIP, DAP, DPU, DDP) and those for sea and inland waterway transport (FAS, FOB, CFR, CIF).¹ The main changes from Incoterms 2010 were the replacement of DAT (Delivered at Terminal) by DPU (Delivered at Place Unloaded), which is now the only rule that requires the seller to unload the goods at destination. Under FCA the parties may agree that the buyer will instruct its carrier to issue an on-board bill of lading to the seller, which helps the seller to present the documents that a letter of credit requires. CIP now requires insurance on the terms of the Institute Cargo Clauses (A), while CIF continues to require only the more limited Clauses (C). New provisions deal with security-related requirements and with transport by the parties' own means.²

Incoterms regulate the delivery of the goods, the passing of risk, the allocation of costs, export and import clearance and the documents to be provided. They do not regulate the transfer of title, the price and terms of payment, the consequences of breach or the governing law and dispute resolution.³ In commodity trading this limitation matters. The FOB and CIF terms used in grains, oilseeds, steel and oil are older than Incoterms and have their own meaning in English case law, which the GAFTA and FOSFA forms define in detail. A contract that refers to "CIF Ravenna Incoterms 2020" and to a GAFTA form at the same time may create inconsistencies, for example on the passing of risk or on the seller's obligations as to the vessel. The standard forms therefore usually provide that their own terms prevail over Incoterms, or they do not refer to Incoterms at all.⁴

1 GAFTA, FOSFA and the steel trade

The grain and feed trade is organized around the standard contracts of the Grain and Feed Trade Association (GAFTA), whose origins go back to the London Corn Trade Association of 1878. GAFTA has more than 1,900 members in about 100 countries and handles between 300 and 1,000 arbitration claims a year.⁵ Its contract forms cover shipments by origin and by terms of delivery (FOB, CIF, CFR) and set out detailed rules on quality, weighing, sampling, shipment periods, notices, default, force majeure, prohibition and insolvency. The edible oils and oilseeds trade uses the forms of FOSFA International, which follow the same model. Both associations require disputes to be referred to arbitration in London under their own rules, with arbitrators drawn from the trade, a two-tier procedure with an appeal board and English law as the law of the contract.⁶

The GAFTA Arbitration Rules No. 125, in the version applicable to contracts dated from 1 July 2026, designate England as the seat of the arbitration under section 3 of the Arbitration Act 1996. Claims must be brought within strict time limits that run from the end of the shipment or delivery period, generally one year for claims other than quality and condition. The first tier is decided by a sole arbitrator or a tribunal of three, and an appeal lies to a board of three or five members. Rule 22 allows GAFTA to post on its notice board and website the names of parties that fail to comply with an award, the so-called default list.⁷ For a Lugano trader in grains or oilseeds, being posted on the default list is commercially more damaging than enforcement proceedings, because it closes access to the trade. The sanction explains why GAFTA and FOSFA awards are usually paid voluntarily.

The steel trade has no standard form of comparable authority. Contracts for flat and long products, semi-finished products, ferroalloys and scrap are usually concluded on the trader's own general conditions or on conditions negotiated with the mill or the buyer. English or Swiss law with arbitration in London, Geneva or Zurich is common. They specify the product by reference to European (EN), American (ASTM) or other standards and require mill test certificates and inspection by an independent company. They also fix the tolerances on quantity, the shipment period and port and payment by letter of credit or documentary collection.⁸ Lugano's steel traders, whose history Chapter F.I describes, use contract terms that reflect the Mediterranean trade between mills in Italy, Turkey, Ukraine, Russia and North Africa and buyers in Europe and the Middle East. Since 2022 these contracts contain sanctions clauses whose drafting and application Chapter G.II examines.

2 Notes

1. Sabrina A. Bandali, Jessica B. Horwitz and Ethan M. Gordon (Bennett Jones), "Introducing Incoterms 2020", 21 January 2020, <https://bennettjones.com/Blogs-Section/Introducing-Incoterms-2020> (in force on 1 January 2020). ICC, "Incoterms 2020", <https://iccwbo.org/business-solutions/incoterms-rules/incoterms-2020/> ("eleven three-letter trade terms"); for the grouping into rules for any mode of transport (EXW, FCA, CPT, CIP, DAP, DPU, DDP) and for sea and inland waterway transport (FAS, FOB, CFR, CIF) see Wikipedia, "Incoterms", <https://en.wikipedia.org/wiki/Incoterms> (used as a last resort). ↩
2. Bandali, Horwitz and Gordon (above). ↩
3. Bandali, Horwitz and Gordon (above) (Incoterms do not cover transfer of title, terms of payment, remedies for breach, governing law and dispute resolution). ↩
4. Observation on drafting practice in the grain and oilseed trades. ↩
5. Jonathan Waters and Kateryna Honcharenko, "The essentials of commodities arbitration", Chartered Institute of Arbitrators, 23 July 2024, <https://ciarb.org/news-listing/the-essentials-of-commodities-arbitration>. The source gives 1878 as the date of establishment. On the London Corn Trade Association of 1878 and the formation of GAFTA as a joint association in 1971 see Wikipedia, "Grain and Feed Trade Association", https://en.wikipedia.org/wiki/Grain_and_Feed_Trade_Association (used as a last resort). ↩
6. Waters and Honcharenko (above) (two-tier arbitration in GAFTA and FOSFA; arbitrators with at least ten years of trade experience; English law). ↩
7. GAFTA, Arbitration Rules No. 125 , for contracts dated from 1 July 2026, https://www.gafta.com/media/3a0a4vep/125_july_2026.pdf (seat in England under s. 3 Arbitration Act 1996; time limits; composition of tribunals and appeal boards; Rule 22 on posting of defaulters). The general one-year period is given in summary. ↩
8. Description of contract practice in the steel trade. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/lugano-incoterms-2020