



**SILESIA
UNIVERSITY**

SCHOOL OF BUSINESS
ADMINISTRATION IN KARVINA

International Business Law

Commercial terms INCOTERMS
International Transport Contracts

Doc. Mgr. Tomáš Gongol, Ph.D.
International Business Law PEM/NPPMO

INCOTERMS Origin :in practice of the trade (a part of lex mercatoria)

Application is possible only by using a reference in the contract!

Made by International Chamber of Commerce in Paris (ICC)

- First version of INCOTERMS was published in 1936 (then in 1953, 1967, 1976, 1980, 1990, 2000, 2010)
- The newest: **INCOTERMS 2015**

INCOTERMS connects a purchase contract with a transportation contract

- it regulates obligations of the parties about transportation of goods or its insurance

Content of INCOTERMS

Rights and obligations of parties in relation to supply of goods

- If it's used then it **replaced Vienna convention** (and sometimes even goes beyond it) in the following issues:
 - Place of delivery
 - Packaging
 - Goods checking
 - Obligations related to import and export
 - Moment of transition of danger
 - Moment of transition of costs
 - Insurance (only CIF and CIP clauses)
 - CIF: Cost, Insurance and Freight; CIP: Carriage and Insurance Paid*

Types of clauses

INCOTERMS contains **11 clauses** (previously 13) which can be further divided into several groups:

According to rights and obligations of the parties

- Minimum seller's obligations: E clauses
- Split responsibilities: F and C clauses
- Minimum buyer's obligations: D clauses

Structure of particular INCOTERMS 2000 clauses

The seller's obligations

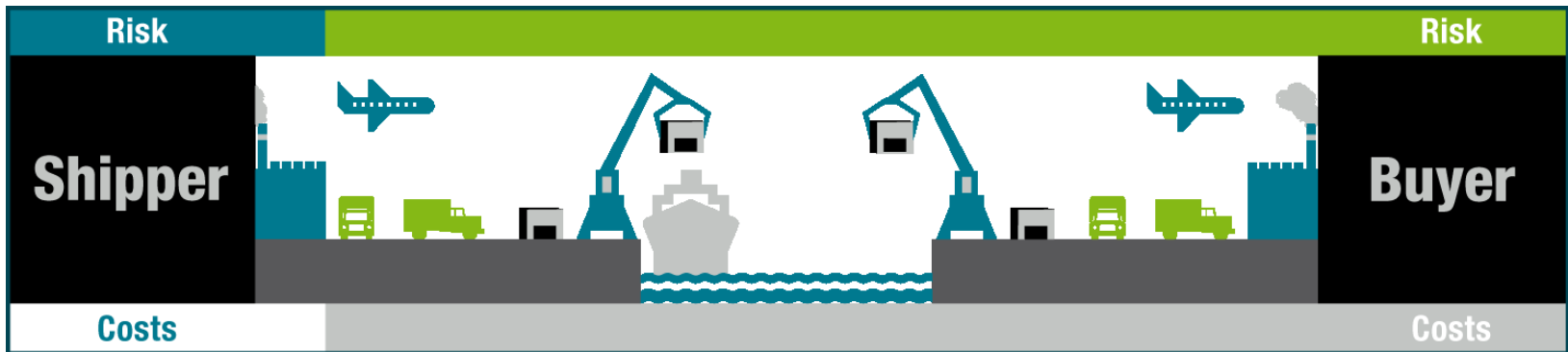
- A1 Provision of goods in conformity with the contract
- A2 Licences, authorisations and formalities
- A3 Contracts of
 - a) carriage and
 - b) insurance
- A4 Delivery
- A5 Transfer of risks
- A6 Division of costs
- A7 Notice to the buyer
- A8 Proof of delivery, transport document or equivalent electronic message
- A9 Checking – packaging – marking
- A10 Other obligations

The buyer's obligations

- B1 Payment of the price
- B2 See A2
- B3 See A3
- B4 Taking delivery
- B5 See A5
- B6 See A6
- B7 Notice to the seller (determine the time within an agreed period + place of taking delivery)
- B8 Proof of delivery, transport document or equivalent electronic message
- B9 Inspection of goods
- B10 See A10

Ex works (EXW)

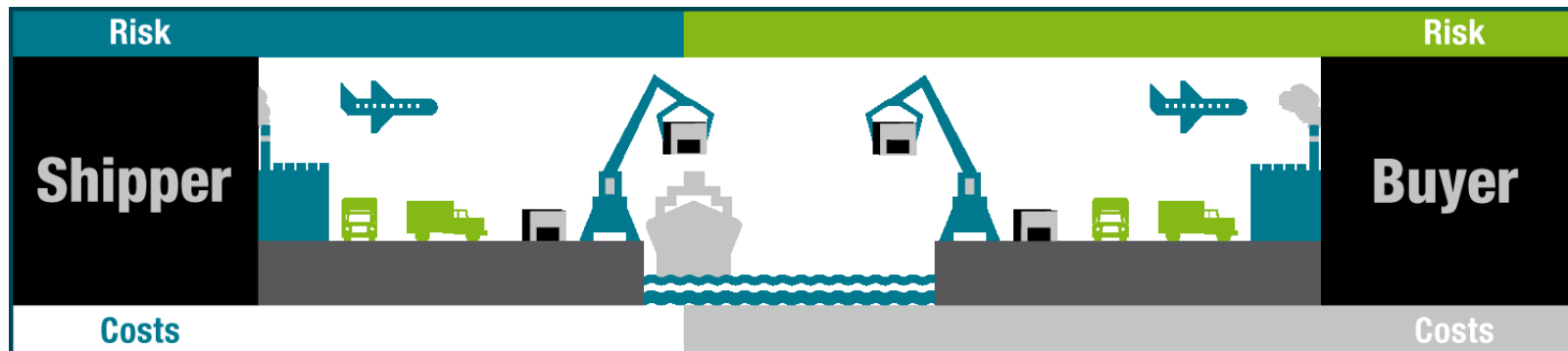
Used for all modes of transportation. Transfer of risks takes place when the seller places the goods at the disposal of the buyer at the named place (e.g. factory, warehouse, etc.)



FREE ON BOARD (FOB)

Used **ONLY** for vessels.

Transfer of risks takes place successively once the goods have been placed on board the vessel nominated by the buyer at the named port of shipment.



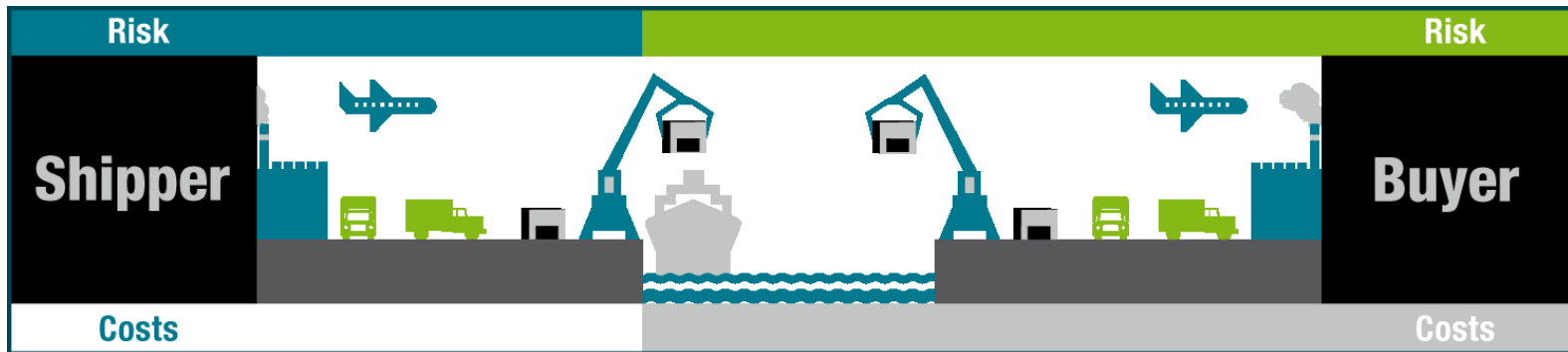
CASE

- In the agreement between the Ethiopian company (seller) and czech joint-stock company (buyer) for the supply of flax seed worth 15,500 EURO, Incoterms FOB Assab – Djibouti, had not been agreed the crucial (applicable) law. To solve eventual disputes arising from this agreement the parties have chosen, as arbitration body, Arbitration Court of the Economic Chamber and Agricultural Chamber of the Czech Republic in Prague.
-
- QUESTIONS:
- 1. What law will be applicable?
- 2. Who is responsible for loss or damage of goods during transport across the Germany?
- 3. What is most comfortable INCOTERMS condition to use for the seller?

FREE ALONGSIDE SHIP (FAS)

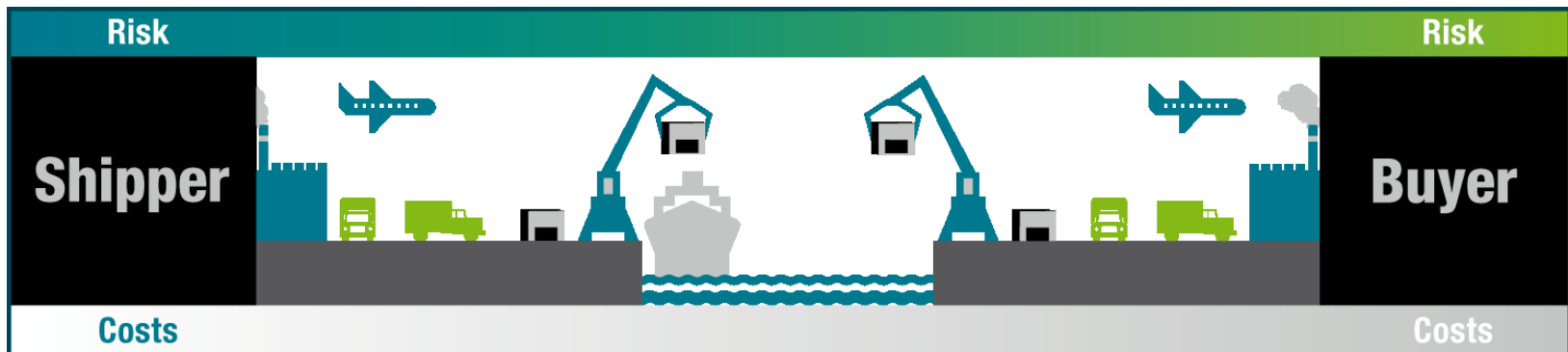
Used **ONLY** for vessels.

Transfer of risks takes place when the seller places the goods alongside the vessel on the quay nominated by the buyer at the named port of shipment.



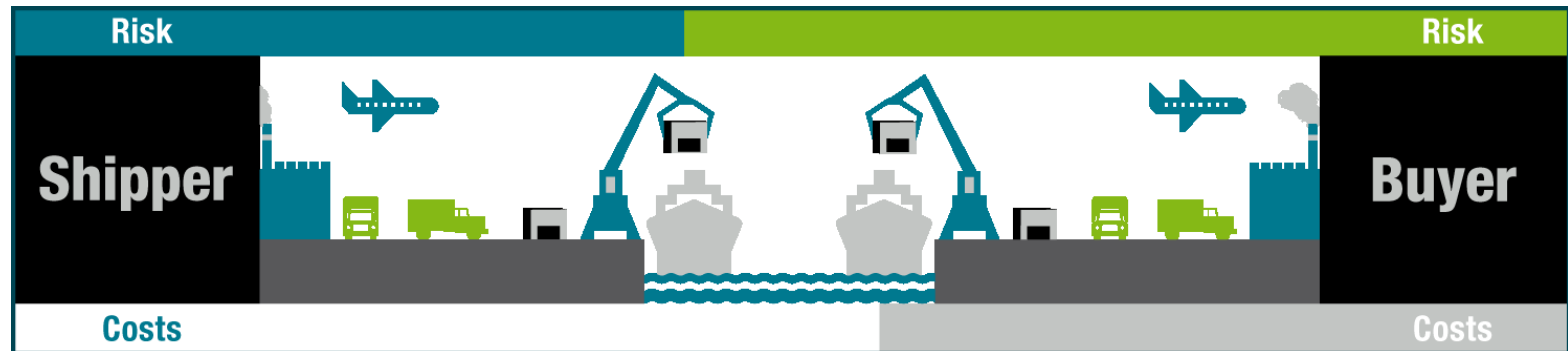
FREE CARRIER (FCA)

Used for all modes of transportation.
Transfer of risks takes place when the seller delivers the goods to the carrier nominated by the buyer at the named place.



COST AND FREIGHT (CFR)

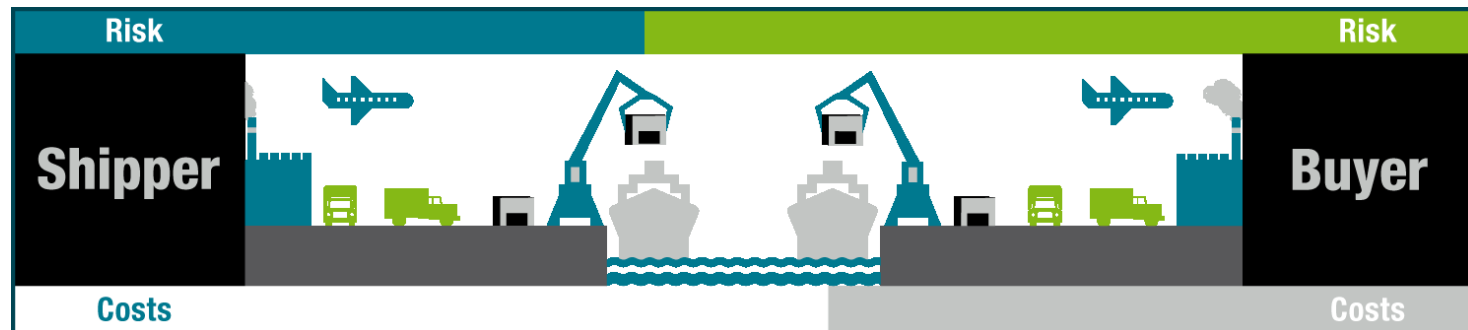
Used **ONLY** for vessels.
Transfer of risks is similar to FOB.



COST, INSURANCE AND FREIGHT (CIF)

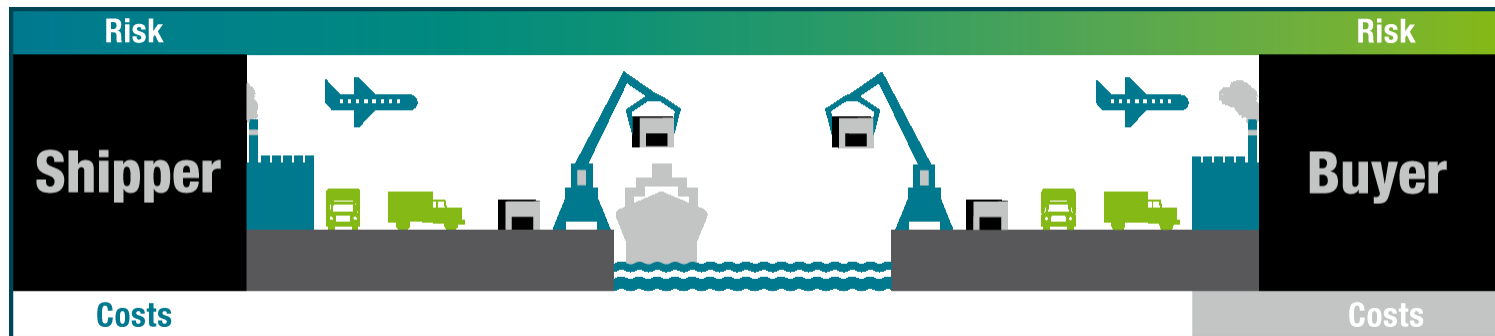
Used **ONLY** for vessels.

Transfer of risks is similar to FOB. Marine and transport insurance shall be taken out by the seller for coverage of the buyer's risks from the place of transfer of risks to unloading at the port of destination on conditions that minimum match Institute Cargo Clauses C or similar.



CARRIAGE PAID TO (CPT)

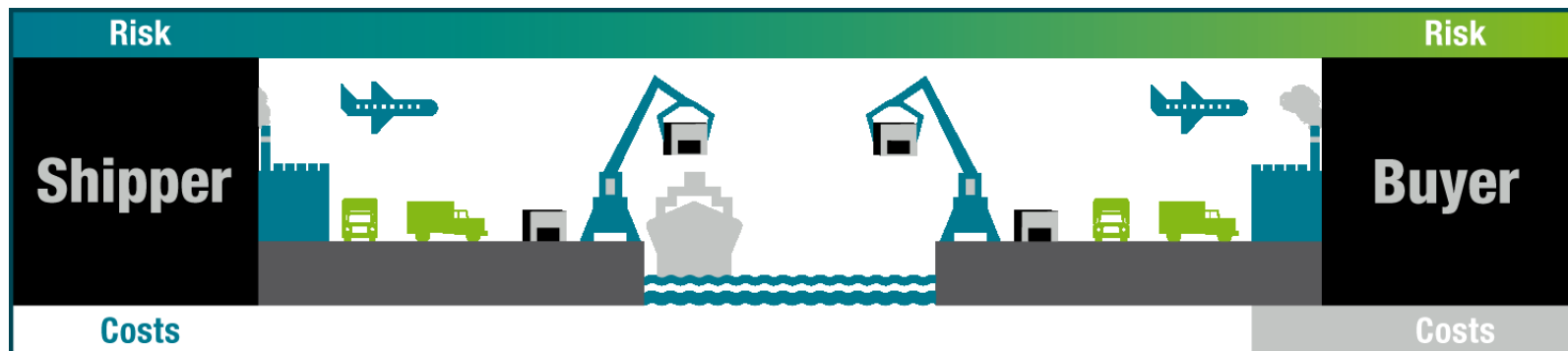
Used for all modes of transportation.
Transfer of risks takes place when the seller delivers the goods to the first carrier.



CARRIAGE AND INSURANCE PAID TO (CIP)

Used for all modes of transportation.

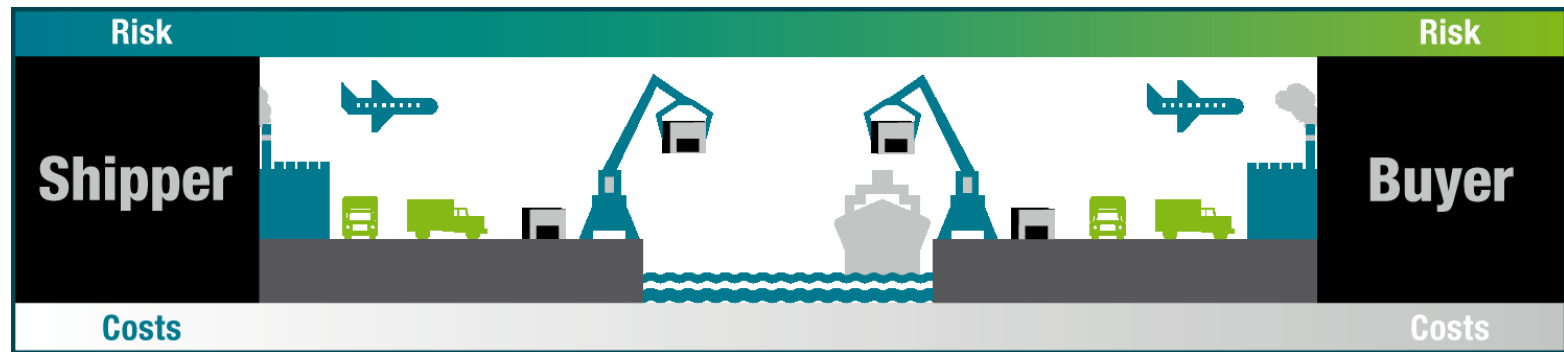
Transfer of risks is similar to CPT, i.e. when the seller delivers the goods to the first carrier. Marine and transport insurance shall be taken out by the seller for coverage of the buyer's risks from the place of transfer of risks to the point of destination on conditions that minimum match Institute Cargo Clauses C or similar.



DELIVERED AT TERMINAL (DAT)

Used for all modes of transportation.

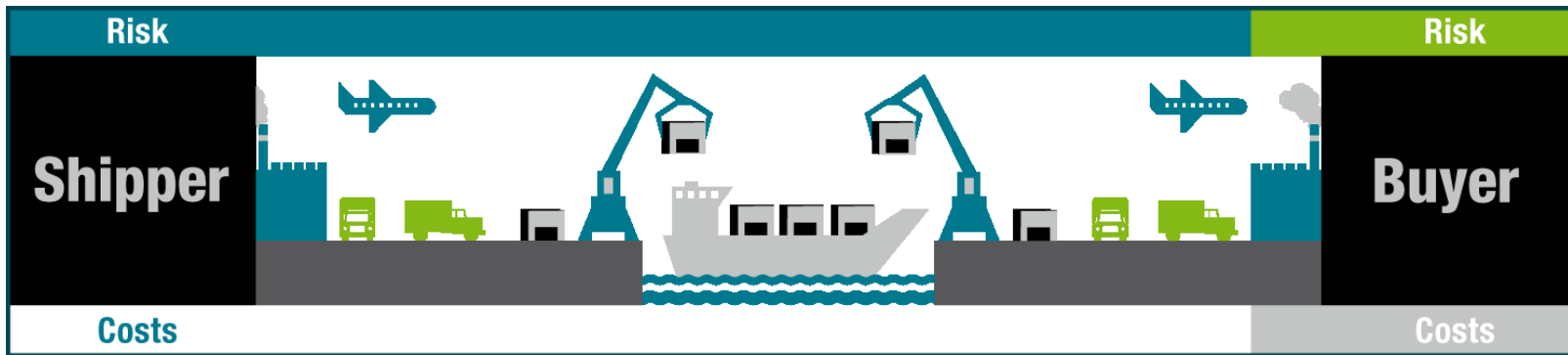
Transfer of risks takes place when the goods have been unloaded from the arriving means of transport and placed at the disposal of the buyer at a named terminal at the named port of destination/point of destination, not cleared for import.



DELIVERED AT PLACE (DAP)

Used for all modes of transportation.

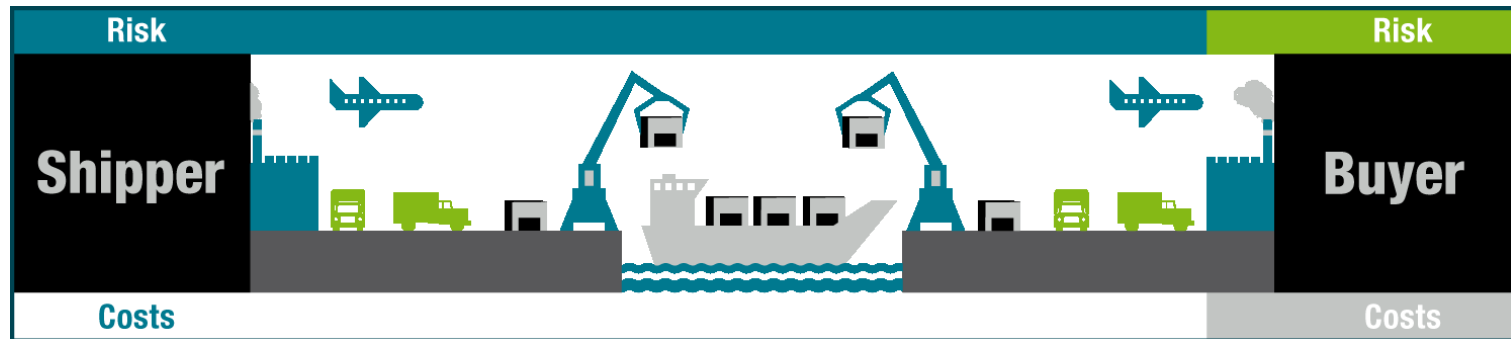
Transfer of risks takes place when the goods have been placed at the disposal of the buyer at the named point of destination, cleared for import.

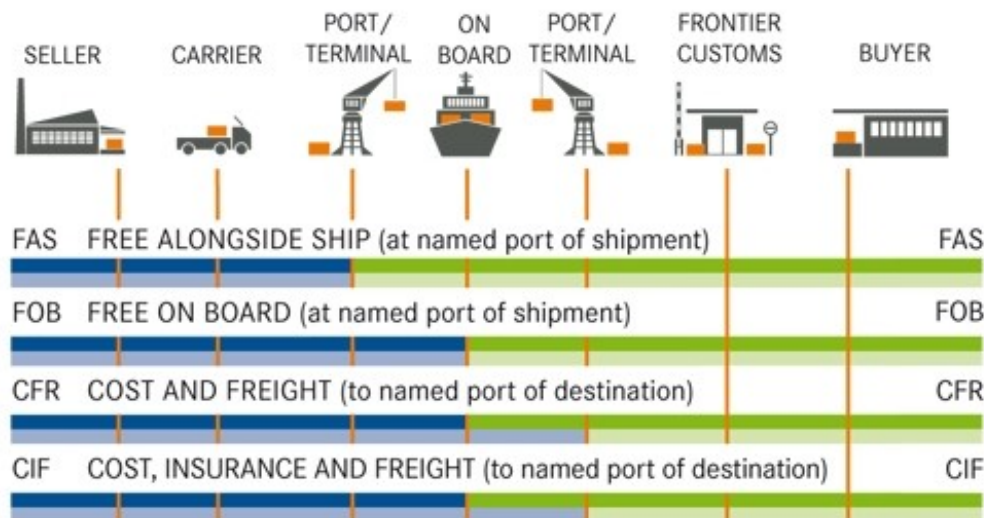
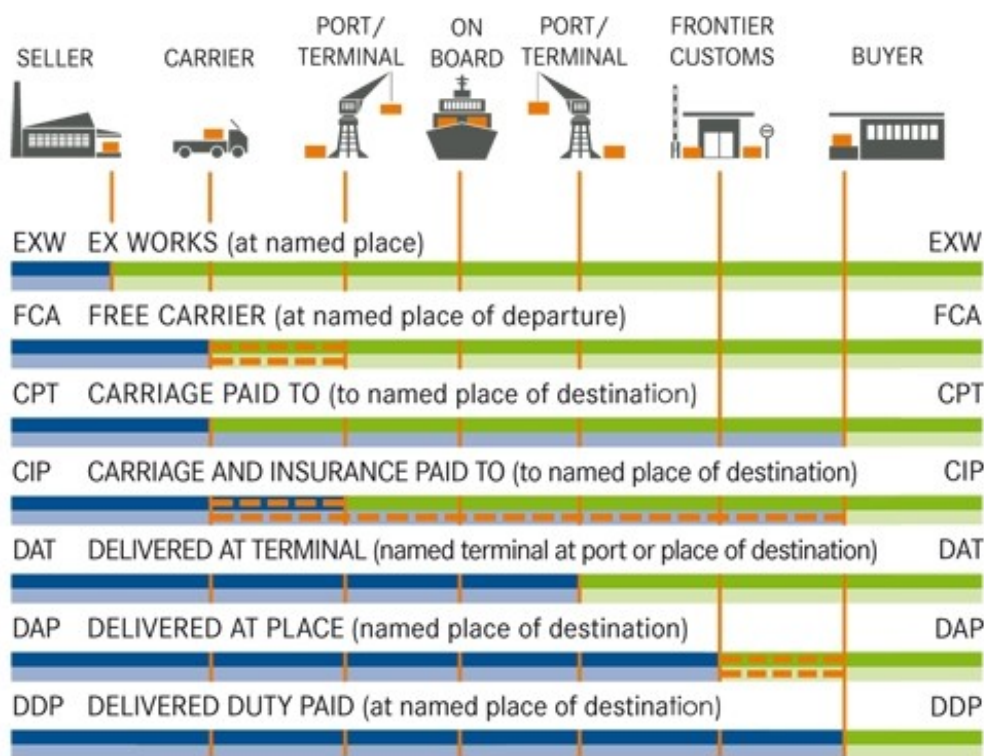


DELIVERED DUTY PAID (DDP)

Used for all modes of transportation.

Transfer of risks takes place when the goods have been placed at the disposal of the buyer at the named point of destination, cleared for import





Seller's Risks
Seller's Costs

Buyer's Risks
Buyer's Costs



The critical point regarding named place or insurance to be defined separately in the contract.

International Transport Contract

- **Importance for international business**
 - Transport of goods – seems as complementary service to the purchase contract
 - Covering the transport by contractual party is not very common
- **Definition of international transport**
 - Transportation is international when the place of departure (sending) and the destination place are in different countries
 - Sometimes those places are in the same country but part of the transport is take place someplace else.

Legislation

Unified

- Esp.. Transportation contracts (contained in international contracts)
 - Key point: shipping document, liability of the carrier, dispute solving

Conflict

- When unified type doesn't exist
- E.g. forward contract
- Applicable law: legislation of the place (country) where the carrier or shipper is established in

Form contracts

- In practise: the carrier presents it to custom



International contracts in international transportation of goods

- **CMR: Convention on the Contractor the International Carriage of Goods by Road – Reg. No. 11/1975 Coll.**
- **COTIF: Convention Concerning International Carriage by Rail – Reg. No. 8/1985 Coll. as amended**
- **United Nations Convention on the Carriage of Goods by Sea (The Hamburg Rules) 1978, Ministry of Foreign Affairs No. 193/1996 Coll.**
- **Convention for the Unification of Certain Rules for International Carriage by Air (The Montreal Convention) 1999 – Ministry of Foreign Affairs, No. 123/2003 Coll.**

International sources of technical issues

- Convention on International Regime of Maritime Ports – Reg. No. 64/1932 Coll.
- Convention on International Civil Aviation – Reg. No. 147/1947 Coll. as amended of Reg. No. 29/1957 Coll.
- European Convention on Road Signs – Reg. No. 175/1960 Coll.
- Agreement on adopting particular homologation conditions (verification of conformity) and mutual recognition of equipment homologation and other parts of motor vehicles – Reg. No. 176/1960 Coll.
- Custom Convention on International Agreement on Safe Containers – Reg. No. 62/1986 Coll.

International railway transport

9 May 1980 – Convention concerning International Carriage by Rail (COTIF)

3 parts

1. Text of Convention = statute

**Intergovernmental Organisation
for International Carriage by
Rail (OTIF)**

- Purpose: to create **uniform legal order** for international carriage of passengers, luggage and goods



1. Appendix A – Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV)

- Transport document = **ticket** and **luggage ticket** (must contain the abbr. “CIV“)

- **Railroad liability**
 - For death, injury during operation or entering or exiting (statute of limitations: 3 years)
 - For damages caused by losing or damaging things that passengers having on themselves and for damage of hand luggage (statute of limitations: 1 year)
 - For damages on luggage which was transported (statute of limitations: 1 year)

1. Appendix B – Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM)

- **Uniform legislation CIM** is complemented by 4 Annexes which regulate more specific issues:
 - International Carriage of Dangerous Goods by Rail (RID)
 - International Haulage of Private Owners' Wagons by Rail (RIP)
 - International Carriage of Containers by Rail (RiCo)
 - International Carriage of Express Parcels by Rail (RIEx)

CIM

CIM applies to: all shipments of goods transported with consignment note issued for the route:

1. On territory of at least two countries
 2. On railway lines registered in the list administered by Central office for international carriage by rail.
- CIM regulations are binding for countries which agreed with COTIF Convention as well as for transportation contract countries
 - It is possible to deviate but only if CIM regulations itself allow it!
 - If CIM regulations or international tariffs don't regulate some issues then the applicable law shall be the national law of the country in which the party make a claim

- Transport document = **consignment note**

Transportation contract shall be entered into consignment note

- **Carrier is responsible for:**

- Total or partial loss of goods
- Damage of goods to the moment of delivery
- Damage caused by delay

- *Carrier is **relieved** of this liability:*

- *If the loss, damage or delay was authorised person's fault or an order by authorised person which was not caused by the carrier, specific defects (such as inherent one, draining away, etc) or*
- *Circumstances which the carrier couldn't stop and its consequences couldn't avoid.*



International Road Freight Transport

- 19 May 1956 – Convention on the Contract for the International Carriage of Goods by Road (**CMR**)
- Conditions of application
 1. Applies to every contract for the carriage of goods by road in vehicles (motor vehicles, trailers, semi-trailers)
 2. When the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a contracting country
 3. It is done for reward

Mandatory nature of the Convention

- Variance can be done but only if the contract allows it.

Other (consignment note, liability, atd.) see COTIF

International Air Transport

- 28th May 1999 – Convention for the Unification of Certain Rules for International Carriage by Air (**Montreal Convention**)
 - Replaces so-called Vienna Convention (1929)
- Application
 - Applies to international carriage of passengers, baggage and cargo performed by aircraft for reward
 - The place of departure and the place of destination are situated within the territories of two State Parties

It has a mandatory nature.



- Transport of goods— **air waybill**
- Liability of Carrier
 - Exceptions: inherent defect, quality or vice of that cargo; defective packing; an act of war; an act of public authority

In practice: Airlines provide higher compensations than is required by the Convention

Complaints:

- Damaged cargo: within 14 days, baggage: 7 days from the date of receipt
- Delay: within 21 days from the date on which the baggage or cargo have been placed at disposal
- **If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.**

Maritime transport

30th March 1978 United Nations Convention on the Carriage of Goods by Sea (The Hamburg Rules)

- **Convention is applicable to all contracts of carriage by sea between two different Countries if:**
 - The port of loading as provided for in the contract of carriage by sea is located in a Contracting Country or
 - The bill of lading or other document evidencing the contract of carriage by sea is issued in a Contracting Country
- **It has a mandatory nature.**



Joint contractual type : Carriage of goods contract

- Despite minor differences in the contracts of good carriage there are common rules in contracts.
- **International nature of transport**
 - Is not given by the place of business or seat of contractual parties but by the fact that the transport path goes across a border as least one country.
 - Due to that the carriage of goods agreed between two domestic entrepreneurs shall follow the international convention if the goods is transported to another country or from abroad.

Transport document

- Transportation contract is created by an agreement between the consignor and the carrier.
- Along with handing over the goods there have to be also transport documents - bill of lading, consignment note, air waybill
 - It's a proof of existence of contract and
 - Security that gives the right to dispose with the consignment

Requirements are specified in certain conventions

The essential elements of a transportation contract

The essential elements:

- Contractual parties (carrier, consignor)
- Recipient
- Type of goods (items), including data on weight, number of pieces, etc.
- Destination of goods

Other:

- Reward (e.g. setting fares)
- Value of the goods
- List of documents necessary for performing the transport
 - e.g. required by customs or other public authorities and handed to the carrier

Rights and Responsibilities

Consignor's responsibilities

- Hand over the shipment
- Inform about its character
- Hand over all documents
- Pay a fee (freight)

Consignor's R&R

- Consignor's rights
 - To get the goods for submitted transport documents
- Consignor's responsibilities
 - Cover those costs which weren't pay by the carrier

Carrier's Responsibilities

- Transport the goods on time and properly

Carrier's responsibilities

- Responsibility for delay and damages
- It's limited kind of responsibility
 - Liberisation reasons (e.g. defective goods, defected packing, etc.)
 - Limits the compensation for actual damages (e.g. price of the package) and don't acknowledge the right for compensation for loss profit

Freight Forwarding contract in international business

Definition:

- The seller (=forwarder) agrees to arrange storage and shipping from one place to another of merchandise on behalf of its shippers. It usually provides a full range of services including: tracking inland transportation, preparation of documents, warehousing, booking cargo spaces, negotiation, etc. The buyer agrees to pay a reward to a seller.

- Specialised type brokerage contract

- The seller covers also so-called **forwarding activities**

- Forwarder** is liable for damages caused during transport unless he couldn't avoid damaging it by performing professional care.

- If the contracts says so, the forwarder is obliged to insure the goods.

- Forwarder can perform the transport unless it contradicts the contract

- Forwarder has a lien on the consignment to ensure claims

- Legal regime:**

- If there's no choice of law then the applicable one is the law of the country where the forwarder has a seat or domicile
- Influence has been made by NGO FIATA