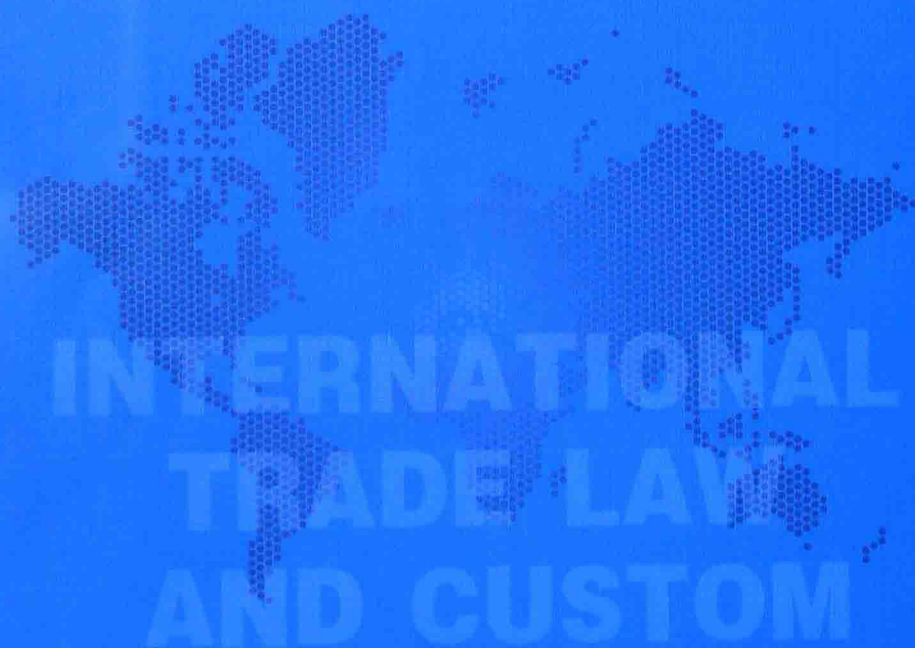




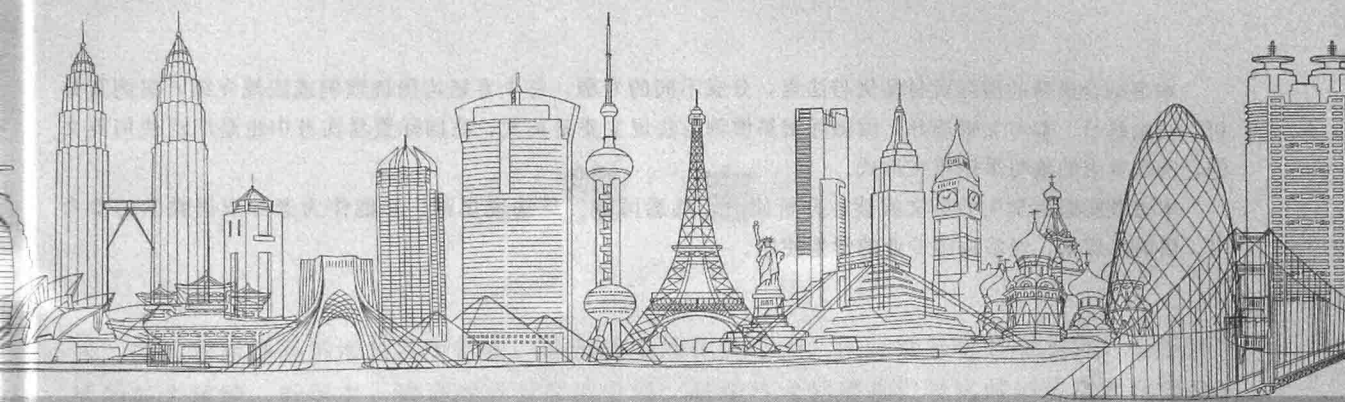
国际贸易法规 与惯例教程

(全英文读本)

贾彩彦 主 编 唐晓云 副主编



化学工业出版社



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INTERNATIONAL
TRADE LAW
AND CUSTOM



化学工业出版社

· 北 京 ·

本书结合最新的国际贸易惯例与法规，分成不同的专题，每个专题均围绕惯例或法规介绍、案例及分析、讨论题目、参考文献展开。因国际贸易惯例与法规主要是英文，在国际贸易实务中也是广泛使用英文的，所以本书的编写采用英文形式。

本书既能锻炼学生的英文阅读、分析能力，熟悉国际贸易法规规则，又能作为老师双语教学的参考书，供国际贸易、经济法等专业的学生使用。

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前言

国际贸易是经济增长的发动机，在经济全球化的今天，国际贸易更是渗透到社会经济生活的各个领域。近年来，随着国际贸易的发展，科学技术的进步以及区域经济集团化趋势的加强，国际贸易的交易方式、结算方式、贸易规则等发生了很大变化，为了适应这些新变化，一些国际贸易法规出现了相应的调整，一些国际惯例也进行了修订。为了使学生了解新的法律和规则，并从国际贸易案例中去熟悉这些法律和规则的运用，华东政法大学商学院国际贸易研究室特组织长期从事国际贸易实务、国际贸易法规教学和研究的老师编写了此书。

在实务中，我们大量接触到的国际贸易法规、惯例及解释均为英文，客观上需要同学们有阅读英文条例的能力及通过对英文条款的阅读去更好地把握它的涵义，因此本书采用了英文的形式，择取国际贸易中较常用的法规与惯例，分为几个既有一定联系又相互独立的专题。每个专题并不是简单全文罗列出法规和惯例的条文，而是从法规、惯例的产生、演变，主要的条款及解释、主要条款在案例中的应用、思考题目几个方面介绍，使学生能把握法规惯例的基本发展脉络，并从案例分析中去了解应用，进而思考相关问题。采用英文编写和贯彻案例分析及思考的编排，既能锻炼学生的英文阅读、分析能力，熟悉国际贸易法规规则，又能作为老师双语教学的参考书，供国际贸易、经济法等专业的学生使用。

本书的体例编排采用专题的形式，根据国际贸易法规与惯例的常用性选取了五个专题，分别是国际贸易术语解释通则、国际货物销售合同公约、国际结算惯例、反倾销规则和国际商事仲裁规则，这五部分对应地分别由刘杨、陈婵婷、贾彩彦、唐晓云和晏玲菊负责编写，由贾彩彦统一负责体例的编排和最后的统稿。

本书在编写过程中参考了一些已有的文献，在这里一并向文献的作者表示感谢。同时由于本书的作者主要是从事教学科研的，实务方面的经验欠缺，难免有遗漏，敬请读者批评指正。

编者

2014 年 12 月

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Chapter 1 International Trade Terms

1. Definition and Purpose of the International Trade Terms

Exporter and importer of an international transaction located in different countries are far away from each other. During the negotiation, they should bargain over allocations of obligations such as import and export clearance, chartering a ship or booking shipping space, obtaining insurance contract, etc.. They also should bargain over the allocations of cost such as freight, premium, loading and unloading charges, etc.. And they should explicit allocation of risks.

The purpose of international trade terms is to provide a set of international rules for the interpretation of the most commonly used trade terms in foreign trade. Thus, the uncertainties of different interpretations of such terms in different countries can be avoided or at least reduced to a considerable degree. Frequently, parties to a contract are unaware of the different trading practices in their respective countries. This can give rise to misunderstandings, disputes and litigation with all the waste of time and money that this entails.

Trade terms, also called price terms, are shorthand expressions or three-letter abbreviations, which are used to explicit the price structure and allocations of costs, risks, and obligations between seller and buyer.

2. Three Main Sets of Rules

2.1 Warsaw-Oxford Rules 1932

In 1928, international law association's convention in Warsaw, the Uniform Rules for CIF Sales Contracts was made, which was called **Warsaw Rules 1928** and renamed **Warsaw-Oxford Rules 1932** after the Oxford convention in 1932 including 21 provisions. It stipulates the nature of CIF contract and the allocation of cost, obligations and risks between seller and buyer on CIF term.

2.2 Revised American Foreign Trade Definitions 1941

In 1919, nine American commercial groups drew up *The U. S. Export Quotations and Abbreviations*. With changes of international trade customs, it was revised at the 27th National Foreign Trade Conference in 1940. It was adopted by American Chamber of

Commerce, National Importers Association and American foreign Trade Association on July 31th and renamed ***Revised American Foreign Trade Definitions 1941***. It defined six trade terms, i. e. Ex-point (point of origin), FOB, FAS, CFR, CIF and Ex-dock.

2.3 International Rules for the Interpretation of Trade Terms 2010

2.3.1 History of Incoterms

In 1936, the International Chamber of Commerce first published a set of international rules for the interpretation of trade terms. These rules were known as “Incoterms 1936”. Amendments and additions were later made in 1953, 1967, 1976, 1980, 1990, 2000 and presently in 2010 in order to bring the rules in line with current international trade practices.

It should be stressed that the scope of Incoterms is limited to matters relating to the rights and obligations of the parties to the contract of sale with respect to the delivery of goods sold (in the sense of “tangibles”, not including “intangibles” such as computer software).

Since the creation of the Incoterms[®] rules by ICC in 1936, this globally accepted contractual standard has been regularly updated to keep pace with the development of international trade. The Incoterms[®] 2010 rules take account of the continued spread of customs-free zones, the increased use of electronic communications in business transactions, heightened concern about security in the movement of goods and consolidate in transport practices. Incoterms[®] 2010 updates and consolidates the “delivered” rules, reducing the total number of rules from 13 to 11, and offers a simpler and clearer presentation of all the rules. Incoterms[®] 2010 is also the first version of the Incoterms rules to make all references to buyers and sellers gender-neutral.

2.3.2 Main Features of the Incoterm[®] 2010 Rules

2.3.2.1 Two New Incoterms Rules—DAT and DAP—Have Replaced the Incoterms 2000 Rules DAF, DES, DEQ and DDU

The number of Incoterms rules has been reduced from 13 to 11. This has been achieved by substituting two rules that may be used irrespective of the agreed mode of transport—DAT, Delivered at Terminal, and DAP, Delivered at Place—for the incoterms 2000 rules DAF, DES, DEQ and DDU.

Under both new rules, delivery occurs at a named destination: in DAT, at the buyer’s disposal unloaded from the arriving vehicle (as under the former DEQ rule); in DAP, likewise at the buyer’s disposal, but ready for unloading (as under the former DAF, DES and DDU rules).

The new rules make the Incoterms 2000 rules DES and DEQ superfluous. The named terminal in DAT may well be in a port, and DAT can therefore safely be used in cases where the Incoterms 2000 rule DEQ once was. Likewise, the arriving “vehicle” under DAP

may well be a ship and the named place of destination may well be a port; consequently, DAP can safely be used in cases where the Incoterms 2000 rule DES once was. These new rules, like their predecessors, are “delivered”, with the seller bearing all the costs (other than those related to import clearance, where applicable) and risks involved in bringing the goods to the named place of destination.

2. 3. 2. 2 Classification of the 11 Incoterms® 2010 Rules

The 11 Incoterms® 2010 rules are presented in two distinct classes:

RULES FOR ANY MODE OR MODES OF TRANSPORT	
EXW	EX WORKS
FCA	FREE CARRIER
CPT	CARRIAGE PAID TO
CIP	CARRIAGE AND INSURANCE PAID TO
DAT	DELIVERED AT TERMINAL
DAP	DELIVERED AT PLACE
DDP	DELIVERED DUTY PAID
RULES FOR SEA AND INLAND WATERWAY TRANSPORT	
FAS	FREE ALONGSIDE SHIP
FOB	FREE ON BOARD
CFR	COST AND FREIGHT
CIF	COST INSURANCE AND FREIGHT

The first class includes the seven Incoterms® 2010 rules that can be used irrespective of the mode of transport selected and irrespective of whether one or more than one mode of transport is employed. They can be used even when there is no maritime transport at all. It is important to remember, however, that these rules can be used in cases where a ship is used for part of the carriage.

In the second class of Incoterms® 2010 rules, the point of delivery and the place to which the goods are carried to the buyer are both ports, hence the label “sea and inland waterway” rules. FAS, FOB, CFR and CIF belong to this class. Under the last three Incoterms rules, all mention of the ship’s rail as the point of delivery has been omitted in preference for the goods being delivered when they are “on board” the vessel. This more closely reflects modern commercial reality and avoids the rather dated image of the risk swinging to and fro across an imaginary perpendicular line.

2. 3. 2. 3 Rules for Domestic and International Trade

Incoterms rules have traditionally been used in international sale contracts where goods pass across national borders. In various areas of the world, however, trade blocs, like the European Union, have made border formalities between different countries less significant. Consequently, the subtitle of the Incoterms® 2010 rules formally recognize that they are available for application to both international and domestic sale contracts. As

a result, the Incoterms® 2010 rules clearly state in a number of places that the obligation to comply with export/import formalities exists only where applicable.

2.3.2.4 Guidance Notes

Before each Incoterms® 2010 rule there is a Guidance Note. The Guidance Notes explain the fundamentals of each Incoterm rule, such as when it should be used, when risk passes, and how costs are allocated between seller and buyer. The Guidance Notes are not part of the actual Incoterms® 2010 rules, but are intended to help us accurately and efficiently steer towards the appropriate Incoterms rule for a particular transaction.

2.3.2.5 Electronic Communication

Previous versions of Incoterms rules have specified those documents that could be replaced by EDI messages. Articles A1/B1 of the Incoterms® 2010 rules, however, give electronic means of communication the same effect as paper communication, as long as the parties so agree or where customary, just as: “Any document referred to in A1-A10 may be an equivalent electronic record or procedure if agreed between the parties or customary.” This formulation facilitates the evolution of new electronic procedures throughout the lifetime of the Incoterms® 2010 rules.

2.3.2.6 Insurance Cover

The Incoterms® 2010 rules are the first version of the Incoterms rules since the version of the Institute Cargo Clauses and take account of alterations made to those clauses. The Incoterms® 2010 rules place information duties relating to insurance in articles A3/B3, which deal with contracts of carriage and insurance. These provisions have been moved from the more generic found in article A10/B10 of the Incoterms® 2000 rules. The language in articles A3/B3 relating to insurance has also been altered with a view to clarifying the parties’ obligations in this regard.

2.3.2.7 Security-Related Clearances and Information Required for Such Clearances

There is heightened concern nowadays about security in the movement of goods, requiring verification that the goods do not pose a threat to life or property for reasons other than their inherent nature.

Therefore, the Incoterms® 2010 rules have allocated obligations between the buyer and seller to obtain or to render assistance in obtaining security-related clearances, such as chain-of-custody information, in articles A2/B2 and A10/B10 of various Incoterms rules.

2.3.2.8 Terminal Handling Charges

Under Incoterms rules CPT, CIP, CFR, CIF, DAT, DAP, and DDP, the seller must make arrangements for the carriage of the goods to the agreed destination. While the freight is paid by the seller, it is actually paid for by the buyer as freight costs are normally included by the seller in the total selling price. The carriage costs will sometimes include the costs of handling and moving the goods within port or container terminal facilities and the carrier or terminal operator may well charge these costs to the buyer who receives the

goods. In these circumstances, the buyer will want to avoid paying for the same service twice: once to the seller as part of the total selling price and once independently to the carrier or the terminal operator. The Incoterms® 2010 rules seek to avoid this happening by clearly allocating such costs in articles A6/B6 of the relevant Incoterms® rules.

2.3.2.9 String Sales

In the sale of commodities, as opposed to the sale of manufactured goods, cargo is frequently sold several times during transit “down a string” when this happens, a seller in the middle of the string don’t have to ship the goods because these have already been shipped by the first seller in the string. The seller in the middle of the string therefore performs its obligations towards its buyer not by shipping the goods, but by “procuring” goods that have been shipped. For clarification purposes, Incoterms® 2010 rules include the obligation to “procure goods shipped” as an alternative to the obligation to ship goods in the relevant Incoterms rules.

3. Incoterms® 2010: Detailed Description

3.1 Any Mode of Transport

This class of rules includes the seven Incoterms® 2010 terms that can be used irrespective of the mode of transport selected and irrespective of whether one or more than one mode of transport is employed. EXW, FCA, CPT, CIP, DAT, DAP and DDP belong to this class. They can be used even when there is no maritime transport at all. It is important to remember, however, that these rules can be used in cases where a ship is used for part of the carriage.

3.1.1 EXW-Ex Works (Insert Named Place of Delivery)

3.1.1.1 Meaning of EXW

“Ex works” means that the seller delivers when it places the goods at the disposal of the buyer at the seller’s premises or another named place (i. e. works factory, warehouse, etc.). The seller does not need to load the goods on any collecting vehicle, nor does it need to clear the goods for export, where such clearance is applicable.

3.1.1.2 Obligations of Seller and Buyer

A THE SELLER’S OBLIGATIONS

A1 General Provision of the Seller

The seller must provide the goods and the commercial invoice in conformity with the contract of sale and any other evidence of conformity that may be required by the contract.

Any document referred to in A1—A10 may be an equivalent electronic record or procedure if agreed between the parties or customary.

A2 Licences, Authorizations, Security Clearance and Other Formalities

Where applicable, the seller must provide the buyer, at the buyer's request, risk and expense, assistance in obtaining any export licence, or other official authorization necessary for the export of the goods.

Where applicable, the seller must provide the buyer, at the buyer's request, risk and expense, any information in the possession of the seller that is required for the security clearance of the goods.

A3 Contracts of Carriage and Insurance

a) Contract of carriage

The seller has no obligation to the buyer to make a contract of carriage.

b) Contract of insurance

The seller has no obligation to the buyer to make a contract of insurance. However, the seller must provide the buyer, at the buyer's request, risk and expense (if any), with information that the buyer needs for obtaining insurance.

A4 Delivery

The seller must deliver the goods by placing them at the disposal of the buyer at the agreed point, if any, at the named place of delivery, not loaded on any collecting vehicle. If no specific point has been agreed within the named place of delivery, and if there are several points available, the seller must select the point that best suits its purpose. The seller must deliver the goods on the agreed date or within the agreed period.

A5 Transfer of Risks

The seller bear all risks of loss of or damage to the goods until they have been delivered in accordance with A4 with the exception of loss or damage in the circumstances described in B5.

A6 Allocation of Costs

The seller must pay all costs relating to the goods until they have been delivered in accordance with A4, other than those payable by buyer as envisaged in B6.

A7 Notices to the Buyer

The seller must give the buyer any notice needed to enable the buyer to take delivery of the goods.

A8 Delivery Document

The seller has no obligation to the buyer.

A9 Checking-Packing-Marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) that are necessary for the purpose of delivering the goods in accordance with A4.

The seller must, at its own expense, package the goods, unless it is usual for the particular trade to transport the type of goods of sold unpackaged. The seller must package the goods in the manner appropriate for their transport, unless the buyer has notified the seller of specific packaging requirements before the contract of sale is concluded. Packaging

is to be marked appropriately.

A10 Assistance with Information and Related Costs

The seller must, where applicable, in a timely manner, provide to or render assistance in obtaining for the buyer, at the buyer's request, risk and expense, any documents and information, including security-related information, that the buyer needs for the export and/or import of the goods and/or for their transport to the final destination.

B THE BUYER'S OBLIGATIONS

B1 General Provision of the Buyer

The buyer must pay the price of the goods as provided in the contract of sale.

Any document referred to in B1-B10 may be an equivalent electronic record or procedure if agreed between the parties or customary.

B2 Licences, Authorizations, Security Clearance and Other Formalities

Where applicable, it is up to buyer to obtain, at its own risk and expense, any export licence or other official authorization and carry out all customs formalities for the export of the goods.

B3 Contracts of Carriage and Insurance

a) Contract of carriage

The buyer has no obligation to the seller to make a contract of carriage.

b) Contract of insurance

The buyer has no obligation to the seller to make a contract of insurance.

B4 Taking Delivery

The buyer must take delivery of the goods when A4 and A7 have been complied with.

B5 Transfer of Risks

The buyer bear all risks of loss of or damage to the goods from the time they have been delivered as envisaged in A4.

If the buyer fails to give notice in accordance with B7, then the buyer bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the agreed period for delivery, provided that the goods have been clearly identified as the contract goods.

B6 Allocation of Costs

The buyer must:

a) pay all costs relating to the goods from the time they have been delivered as envisaged in A4;

b) pay any additional costs incurred by failing either to take delivery of the goods when they have been placed at its disposal or to give appropriate notice in accordance with B7, provided that the goods have been clearly identified as contract goods;

c) pay, where applicable, all duties, taxes and other charges, as well as the costs of carrying out customs formalities payable upon export;

d) reimburse all costs and charges, incurred by the seller in providing assistance as envisaged in A2.

B7 Notice to the Seller

The buyer must, whenever it is entitled to determine the time within an agreed period and/or the point of taking delivery within the named place, give the seller sufficient notice thereof.

B8 Proof of Delivery

The buyer must provide the seller with appropriate evidence of having taken delivery.

B9 Inspection of Goods

The buyer must pay the costs of any mandatory pre-shipment inspection, including inspection mandated by the authorities of the country of export.

B10 Assistance with Information and Related Costs

The buyer must, in a timely manner, advise the seller of any security information requirements so that the seller may comply with A10.

The buyer must reimburse the seller for all costs and charges incurred by the seller in providing or rendering assistance in obtaining documents and information as envisaged in A10.

3. 1. 1. 3 EXW in the Price Term of a Contract

US \$ 120 per doz. EXW LONGYUAN factory, Suzhou.

3. 1. 1. 4 Some points to Exw

1) The parties are well advised to specify as clearly as possible the point within the named place of delivery, as the costs and risks to that point are for the account of the seller. The buyer bears all costs and risks involved in taking the goods from the agreed point, if any, at the named place of delivery.

2) EXW is often used when making an initial quotation for the sale of goods, because it represents the cost without any other additional cost. It is suitable for domestic trade other than international transactions, while FCA is usually more appropriate for international trade.

3) EXW represents the minimum obligation for the seller and maximum obligation for the buyer. The rule should be used with care as: a) The seller has no obligation to the buyer to load the goods, even though in practice the seller may be in a better position to do so. If the seller does load the goods, it does so at the buyer's risks and expense. In cases where the seller is in a better position to load the goods, FCA, which obliges the seller to do so at its own risk and expense, is usually more appropriate. b) A buyer who buys from a seller on an EXW basis for export needs to be aware that the seller has an obligation to provide only such assistance as the buyer may require to effect that export: the seller is not bound to organize the export clearance. Buyers are therefore well advised not to use EXW if they cannot directly or indirectly obtain export clearance.

3. 1. 2 FCA-Free Carrier (Insert Named Place of Delivery)

3. 1. 2. 1 Meaning of FCA

“Free Carrier” means that the seller delivers the goods to the carrier or another person

nominated by the buyer at the seller's premises or another named place. The parties are well advised to specify as clearly as possible the point within the named place of delivery, as the risk passes to the buyer at that point.

"Carrier" means 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.

3. 1. 2. 2 Obligations of Seller and Buyer

A THE SELLER'S OBLIGATIONS

A1 General Provision of the Seller

The seller must provide the goods and the commercial invoice in conformity with the contract of sale and any other evidence of conformity that may be required by the contract.

Any document referred to in A1-A10 may be an equivalent electronic record or procedure if agreed between the parties or customary.

A2 Licences, Authorizations, Security Clearance and Other Formalities

Where applicable, the seller must obtain, at its own risk and expense, any export licence or other official authorization and carry out all customs formalities necessary for the export of the goods.

A3 Contracts of Carriage and Insurance

a) Contract of carriage

The seller has no obligation to the buyer to make a contract of carriage. However, if requested by the buyer or if it is commercial practice and the buyer does not give an instruction to the contrary in due time, the seller may contract for carriage on usual terms at the buyer's risk and expense. In either case, the seller may decline to make the contract of carriage and, if it does, shall promptly notify the buyer.

b) Contract of insurance

The seller has no obligation to the buyer to make a contract of insurance. However, the seller must provide the buyer, at the buyer's request, risk and expense (if any), with information that the buyer needs for obtaining insurance.

A4 Delivery

The seller must deliver the goods to the carrier or another person nominated by the buyer at the agreed point, if any, at the named place on the agreed date or within the agreed period. Delivery is completed:

a) If the named place is the seller's premises, when the goods have been loaded on the means of transport provided by the buyer.

b) In any other case, when the goods are placed at the disposal of the carrier or another person nominated by the buyer on the seller's means of transport ready for unloading.

If no specific point has been notified by the buyer under B7 d) within the named place of delivery, and if there are several points available, the seller may select the point that

best suits its purpose.

Unless the buyer notifies the seller otherwise, the seller may deliver the goods for carriage in such a manner as the quantity and/or nature of the goods may require.

A5 Transfer of Risks

The seller bears all risks of loss of or damage to the goods until they have been delivered in accordance with A4, with the exception of loss or damage in the circumstances described in B5.

A6 Allocation of Costs

The seller must pay

a) all costs relating to the goods until they have been delivered in accordance with A4, other than those payable by the buyer as envisaged in B6;

b) where applicable, the costs of customs formalities necessary for export, as well as all duties, taxes, and other charges payable upon export.

A7 Notices to the Buyer

The seller must, at the buyer's risk and expense, give the buyer sufficient notice either that the goods have been delivered in accordance with A4 or that the carrier or another person nominated by the buyer has failed to take the goods within the time agreed.

A8 Delivery Document

The seller must provide the buyer, at the seller's expense, with the usual proof that the goods have been delivered in accordance with A4.

The seller must provide assistance to the buyer, at the buyer's request, risk and expense, in obtaining a transport document.

A9 Checking-Packing-Marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) that are necessary for the purpose of delivering the goods in accordance with A4, as well as the costs of any pre-shipment inspection mandated by the authority of the country of export.

The seller must, at its own expense, package the goods, unless it is usual for the particular trade to transport the type of goods sold unpackaged. The seller may package the goods in the manner appropriate for their transport, unless the buyer has notified the seller of specific packaging requirements before the contract of sale is concluded. Packaging is to be marked appropriately.

A10 Assistance with Information and Related Costs

The seller must, where applicable, in a timely manner, provide to or render assistance in obtaining for the buyer, at the buyer's request, risk and expense, any documents and information, including security-related information, that the buyer needs for the import of the goods and/or for their transport to the final destination.

The seller must reimburse the buyer for all costs and charges incurred by the buyer in providing or rendering assistance in obtaining documents and information as envisaged in B10.