

The logic of the Incoterms 2010 rules

The eleven rules are divided into two main groups

Rules for any transport mode• Ex Works EXW

- Free Carrier FCA
- Carriage Paid To CPT
- Carriage & Insurance Paid to CIP
- Delivered At Terminal DAT
- Delivered At Place DAP
- Delivered Duty Paid DDP

Rules for sea & inland waterway only• Free Alongside Ship FAS

- Free On Board FOB
- Cost and Freight CFR
- Cost Insurance and Freight CIF

In general the “transport by sea or inland waterway only” rules should only be used for bulk cargoes (e.g. oil, coal etc) and non-containerised goods, where the exporter can load the goods directly onto the vessel. Where the goods are containerised, the “any transport mode” rules are more appropriate.

A critical difference between the rules in these two groups is the point at which risk transfers from seller to buyer. For example, the “Free on Board” (FOB) rule specifies that risk transfers when the goods have been loaded on board the vessel. However the “Free Carrier” (FCA) rule specifies that risk transfers when the goods have been taken in charge by the carrier.

Another useful way of classifying the rules is by considering:

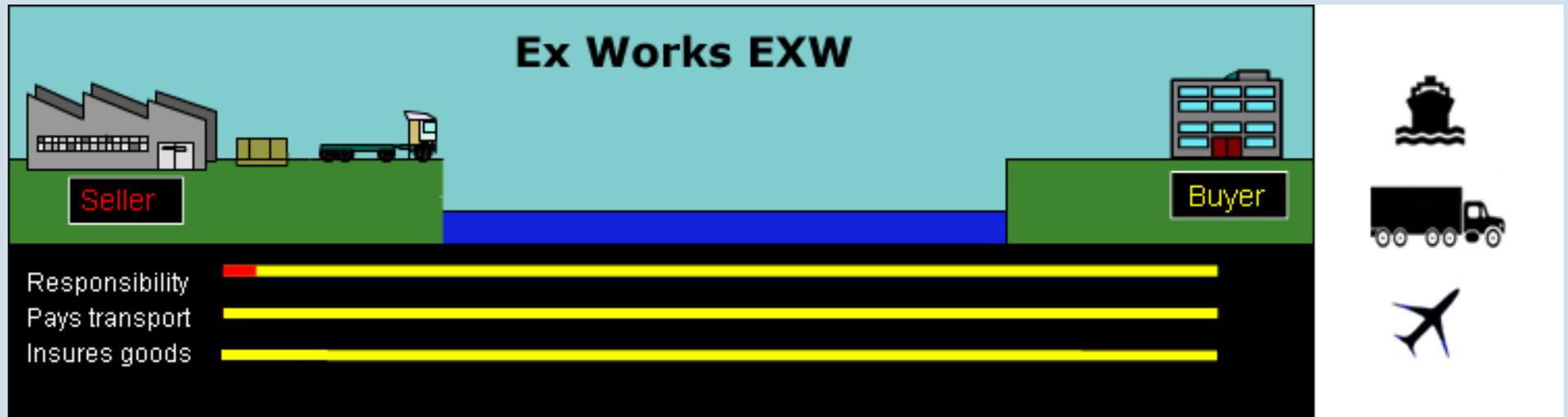
- *Who is responsible for the main carriage – the buyer or the seller?*
- *If the seller is responsible for the main carriage, where does the risk pass from the seller to the buyer – before the main carriage, or after it?*

This gives us these four groups:

- *Buyer responsible for all carriage – EXW*
- *Buyer arranges main carriage – FAS; FOB; FCA*
- *Seller arranges main carriage, risk passes after main carriage – DAT; DAP; DDP*
- *Seller arranges main carriage, but risk passes before main carriage – CFR; CIF; CPT; CIP*

Ex Works (EXW)

Can be used for any transport mode, or where there is more than one transport mode



This rule places minimum responsibility on the seller, who merely has to make the goods available, suitably packaged, at the specified place, usually the seller's factory or depot.

The buyer is responsible for loading the goods onto a vehicle (even though the seller may be better placed to do this); for all export procedures; for onward transport and for all costs arising after collection of the goods.

In many cross-border transactions, this rule can present practical difficulties.

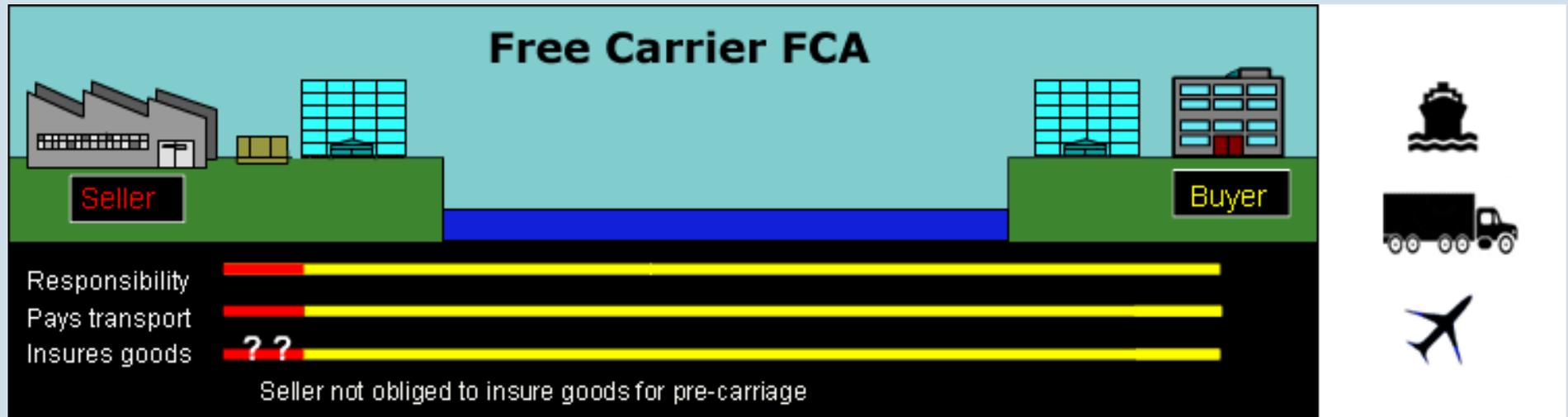
Specifically, the exporter may still need to be involved in export reporting and clearance processes, and cannot realistically leave these to the buyer. Consider Free Carrier (seller's premises) instead.

Other things to watch for. Although the seller is not obliged to load the goods, if the seller does so, this is at the buyer's risk!

Free Carrier (FCA)

Can be used for any transport mode, or where there is more than one transport mode.

A very flexible rule that is suitable for all situations where the buyer arranges the main carriage



For example:

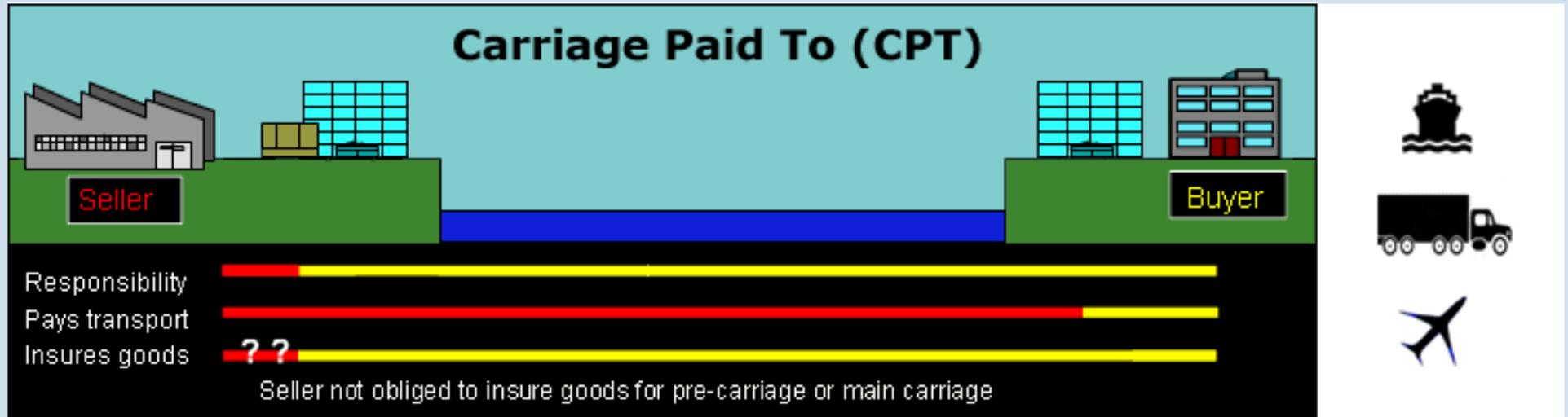
- Seller arranges pre-carriage from seller's depot to the named place, which can be a terminal or transport hub, forwarder's warehouse etc. Delivery and transfer of risk takes place when the truck or other vehicle arrives at this place, ready for unloading – in other words, the carrier is responsible for unloading the goods. (If there is more than one carrier, then risk transfers on delivery to the first carrier.)
- Where the named place is the seller's premises, then the seller is responsible for loading the goods onto the truck etc. NB this is an important difference from Ex Works EXW

In all cases, the seller is responsible for export clearance; the buyer assumes all risks and costs after the goods have been delivered at the named place.

FCA is the rule of choice for containerised goods where the buyer arranges for the main carriage.

Carriage Paid To (CPT)

Can be used for any transport mode, or where there is more than one transport mode.



The seller is responsible for arranging carriage to the named place, but not for insuring the goods to the named place. However delivery of the goods takes place, and risk transfers from seller to buyer, at the point where the goods are taken in charge by a carrier – see **delivery**.

Things to watch for.

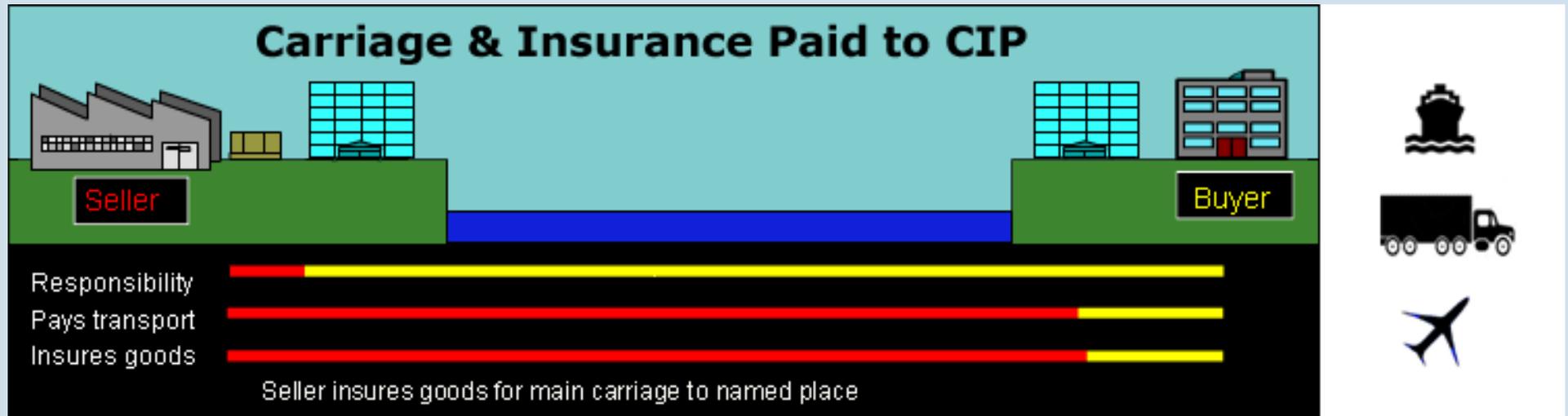
Terminal Handling Charges (THC) are charges made by the terminal operator. These charges may or may not be included by the carrier in their freight rates – the buyer should enquire whether the CPT price includes THC, so as to avoid surprises.

The buyer may wish to arrange insurance cover for the main carriage, starting from the point where the goods are taken in charge by the carrier – NB this will not be the place referred to in the Incoterms rule, but will be specified elsewhere within the commercial agreement

See also "Carriage and Insurance Paid To CIP"

Carriage and Insurance Paid To (CIP)

Can be used for any transport mode, or where there is more than one transport mode. The seller is responsible for arranging carriage to the named place, and also for insuring the goods.



As with CPT, delivery of the goods takes place, and risk transfers from seller to buyer, at the point where the goods are taken in charge by a carrier – see **delivery**.

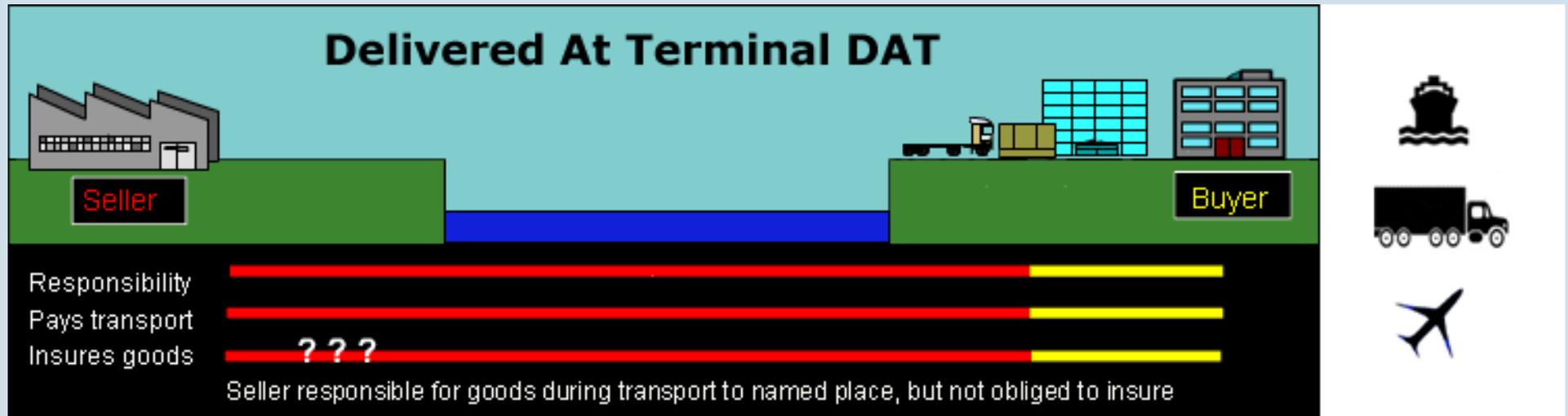
Things to watch for. Terminal Handling Charges (THC) are charges made by the terminal operator. These charges may or may not be included by the carrier in their freight rates – the buyer should enquire whether the CPT price includes THC, so as to avoid surprises.

Although the seller is obliged to arrange for insurance for the journey, the rule only requires a minimum level of cover, which may be commercially unrealistic. Therefore the level of cover may need to be addressed elsewhere in the commercial agreement

See also "Carriage Paid To CPT"

Delivered at Terminal (DAT)

Can be used for any transport mode, or where there is more than one transport mode. The seller is responsible for arranging carriage and for delivering the goods, unloaded from the arriving conveyance, at the named place.



Risk transfers from seller to buyer when the goods have been unloaded.

'Terminal' can be any place – a quay, container yard, warehouse or transport hub.

The buyer is responsible for import clearance and any applicable local taxes or import duties.

Things to watch for:

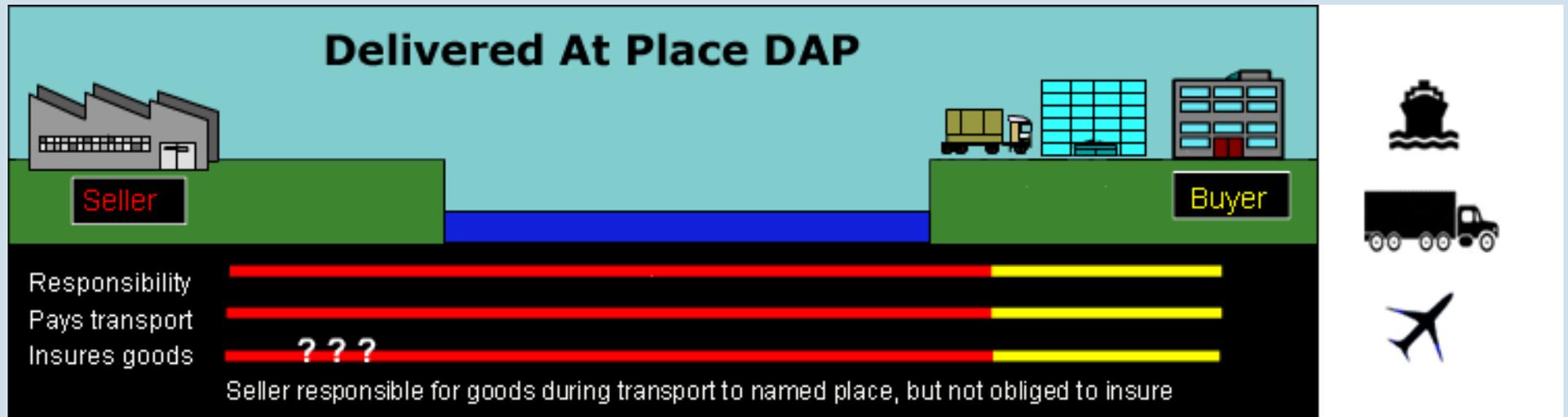
The place for delivery should be specified as precisely as possible, as many ports and transport hubs are very large.

A useful rule, well suited to container operations where the seller bears responsibility for the main carriage.

Delivered at Place (DAP)

Can be used for any transport mode, or where there is more than one transport mode.

The seller is responsible for arranging carriage and for delivering the goods, ready for unloading from the arriving conveyance, at the named place. (An important difference from Delivered At Terminal DAT, where the seller is responsible for unloading.)



Risk transfers from seller to buyer when the goods are available for unloading; so unloading is at the buyer's risk.

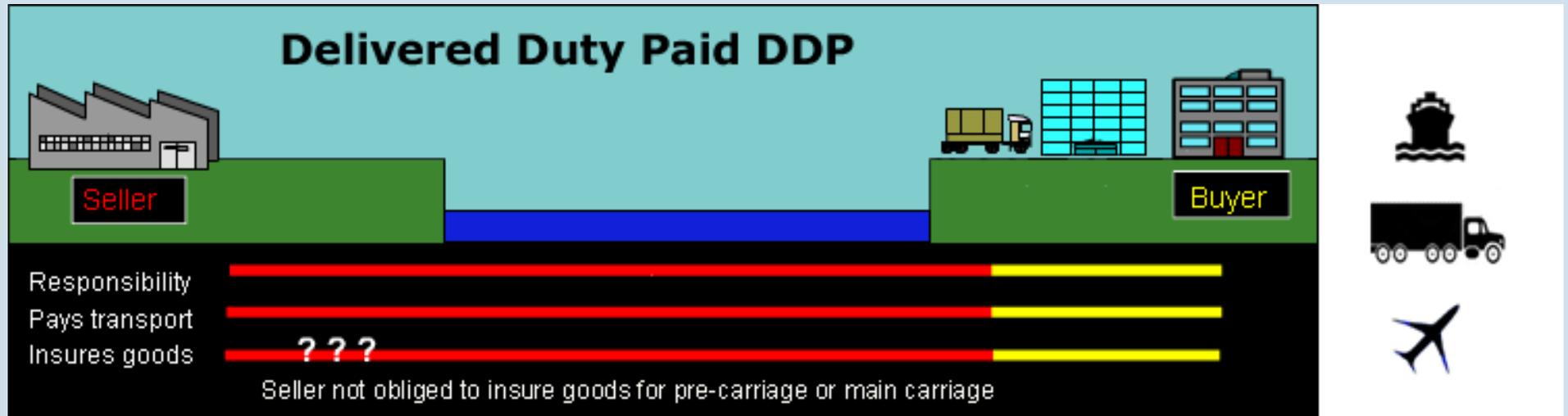
The buyer is responsible for import clearance and any applicable local taxes or import duties.

This rule can often be used to replace the Incoterms 2000 rules Delivered At Frontier (DAF), Delivered Ex Ship (DES) and Delivered Duty Unpaid (DDU)

Delivered Duty Paid (DDP)

Can be used for any transport mode, or where there is more than one transport mode.

The seller is responsible for arranging carriage and delivering the goods at the named place, cleared for import and all applicable taxes and duties paid (e.g. VAT, GST)



Risk transfers from seller to buyer when the goods are made available to the buyer, ready for unloading from the arriving conveyance

This rule places the maximum obligation on the seller, and is the only rule that requires the seller to take responsibility for import clearance and payment of taxes and/or import duty.

These last requirements can be **highly problematical for the seller**. In some countries, import clearance procedures are complex and bureaucratic, and so best left to the buyer who has local knowledge

Free Alongside Ship (FAS)

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

In practice it should be used for situations where the seller has direct access to the vessel for loading, e.g. bulk cargos or non-containerised goods.

For containerised goods, consider "Free Carrier FCA" instead.



Seller delivers goods, cleared for export, alongside the vessel at a named port, at which point risk transfers to the buyer.

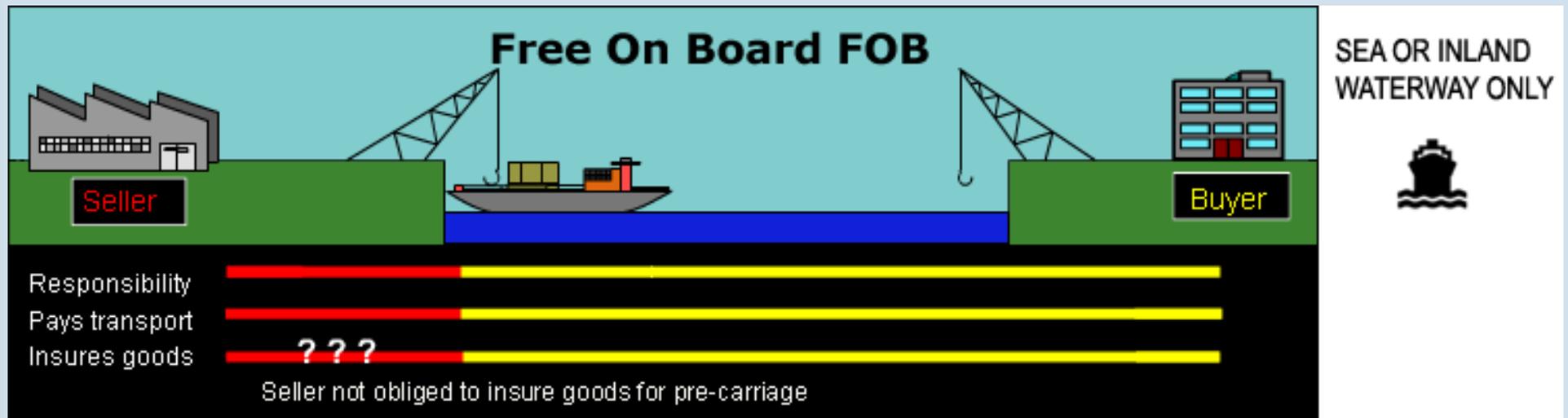
The buyer is responsible for loading the goods and all costs thereafter.

Free On Board (FOB)

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

In practice it should be used for situations where the seller has direct access to the vessel for loading, e.g. bulk cargos or non-containerised goods.

For containerised goods, consider "Free Carrier FCA" instead.



Seller delivers goods, cleared for export, loaded on board the vessel at the named port.

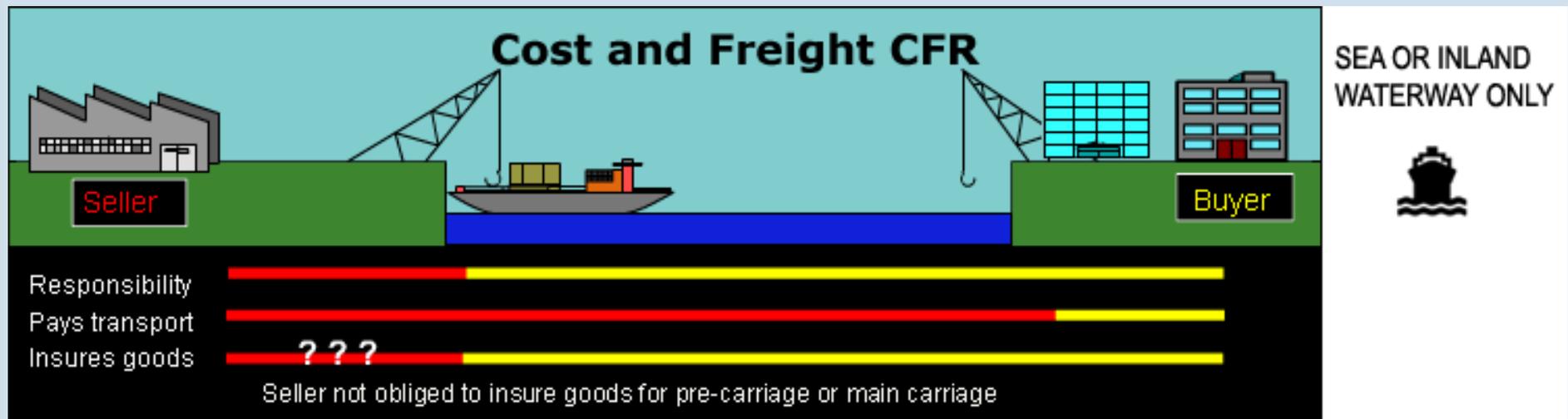
Once the goods have been loaded on board, risk transfers to the buyer, who bears all costs thereafter.

Cost and Freight (CFR)

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

In practice it should be used for situations where the seller has direct access to the vessel for loading, e.g. bulk cargos or non-containerised goods.

For containerised goods, consider 'Carriage Paid To CPT' instead.



Seller arranges and pays for transport to named port. Seller delivers goods, cleared for export, loaded on board the vessel. However risk transfers from seller to buyer once the goods have been loaded on board, i.e. before the main carriage takes place.

NB seller is not responsible for insuring the goods for the main carriage.

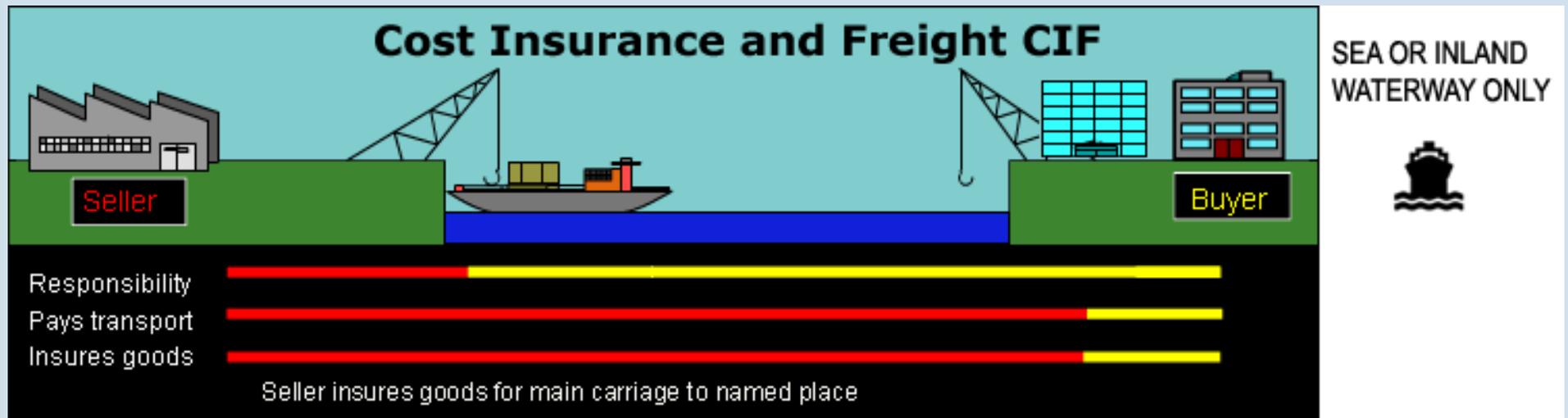
See also "Cost Insurance and Freight CIF"

Cost Insurance and Freight (CIF)

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

In practice it should be used for situations where the seller has direct access to the vessel for loading, e.g. bulk cargos or non-containerised goods.

For containerised goods, consider 'Carriage and Insurance Paid CIP' instead.



Seller arranges and pays for transport to named port. Seller delivers goods, cleared for export, loaded on board the vessel. However risk transfers from seller to buyer once the goods have been loaded on board, i.e. before the main carriage takes place.

Seller also arranges and pays for insurance for the goods for carriage to the named port.

However as with "Carriage and Insurance Paid To", the rule only require a minimum level of cover, which may be commercially unrealistic. Therefore the level of cover may need to be addressed elsewhere in the commercial agreement.

Ten common mistakes in using the Incoterms rules

Here are some of the most common mistakes made by importers and exporters:

- *Use of a traditional “sea and inland waterway only” rule such as FOB or CIF for containerised goods, instead of the “all transport modes” rule e.g. FCA or CIP. This exposes the exporter to unnecessary risks. A dramatic recent example was the Japanese tsunami in March 2011, which wrecked the Sendai container terminal. Many hundreds of consignments awaiting despatch were damaged. Exporters who were using the wrong rule found themselves responsible for losses that could have been avoided!*
- *Making assumptions about passing of title to the goods, based on the Incoterms rule in use. The Incoterms rules are silent on when title passes from seller to buyer; this needs to be defined separately in the sales contract*
- *Failure to specify the port/place with sufficient precision, e.g. “FCA Chicago”, which could refer to many places within a wide area*
- *Attempting to use DDP without thinking through whether the seller can undertake all the necessary formalities in the buyer’s country, e.g. paying GST or VAT*
- *Attempting to use EXW without thinking through the implications of the buyer being required to complete export procedures – in many countries it will be necessary for the exporter to communicate with the authorities in a number of different ways*
- *Use of CIP or CIF without checking whether the level of insurance in force matches the requirements of the commercial contract – these Incoterms rules only require a minimal level of cover, which may be inadequate.*
- *Where there is more than one carrier, failure to think through the implications of the risk transferring on taking in charge by the first carrier – from the buyer’s perspective, this may turn out to be a small haulage company in another country, so redress may be difficult in the event of loss or damage*
- *Failure to establish how terminal handling charges (THC) are going to be treated at the point of arrival. Carriers’ practices vary a good deal here. Some carriers absorb THC’s and include them in their freight charges; however others do not.*
- *Where payment is with a letter of credit or a documentary collection, failure to align the Incoterms rule with the security requirements or the requirements of the banks.*
- *When DAT or DAP is used with a “post-clearance” delivery point, failure to think through the liaison required between the carrier and the customs authorities – can lead to delays and extra costs*