

Energy, Trade & Commodities

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INCOTERMS 2010 – What you need to know (Part 3)!

This third and final part of the INCOTERMS series of Client Alerts looks at the new “D-Terms” – DAP and DAT – created by INCOTERMS 2010.

DAF, DES and DDU replaced by **DAP: Delivered at Place**

DAP replaces what were DAF, DES and DDU and can be used in any situation where such terms were used previously. The rationale for this consolidation was that the INCOTERMS 2010 drafting committee felt that DAF, DES and DDU were all similar in scope and that there was often confusion about the appropriate D-term to use.

Of the legacy terms, DDU is most similar to the new DAP which is to be used when goods are delivered on the arriving means of transport, ready for unloading by the buyer, at the named place of destination, but not import cleared.

DEQ replaced by **DAT: Delivered at Terminal**

DAT replaces DEQ and should be used where DEQ would have been used previously. DAT is primarily for use in the sale of containerised goods, which are delivered by unloading them from the arriving means of transport and placing them at the disposal of the buyer at the named port or place of destination. Note that “terminal” replaces “quay” as a global change and includes any place, whether covered or not, such as quay, warehouse, container yard or road, rail or air cargo terminal.

Both DAP and DAT may be used irrespective of the mode of transport employed. The general provision for electronic versions of documents noted in Part 1 of the Client Alert also applies.

Although DAP and DAT are new terms, they can be compared usefully to DDU and DEQ, respectively. This Alert now sets out such a comparison.

DAP: Key changes from legacy DDU

A2/B2: Contracts of carriage and insurance is the same except that there are now obligations on both buyer and seller to provide information (at the other’s request) to allow the other to contract for insurance.

A3/B3: Delivery now provides for an “agreed point” for unloading within the place of destination. Additionally, the option to provide for delivery to a person named by the buyer has been removed. If such provision is required, it should be included as an express term.

A5/B5: Risk is materially the same.

A6/B6: Allocation of costs now makes it explicit that the seller must pay any costs of unloading specified in the contract of carriage. If a seller wishes to recover those costs from the buyer, the seller should include an express term to that effect. Otherwise, the buyer is to pay any costs of unloading.

A8/B8: Delivery document is now simplified so that the seller need only provide the buyer (at the seller’s expense) with a document enabling the buyer to take delivery. This can be any kind of document.

A9: Checking – packaging – marking is changed so that the seller must now actually package (as opposed to providing packaging for) the goods, unless it is usual to transport such goods unpackaged. If the buyer notified the seller of any special packaging requirements prior to the contract of sale, the seller must comply.

B9: Inspection is now explicit that the seller must pay the costs of any pre-shipment inspection mandated by the authorities of the country of export.

A10/B10: Assistance now provides that the buyer must assist the seller (at the seller’s request, risk and expense) to obtain documents and information necessary for the transport and export of the goods. The buyer must (in a timely manner) advise the seller of any security information requirements. The seller’s obligations are expanded to cover documents and information that the buyer needs for the transport of the goods to the final destination.

DAT – Key changes from legacy DEQ

A2/B2: Contracts of carriage and insurance is the same except that there are now obligations on both buyer and seller to provide information (at the other's request) to allow the other to contract for insurance.

A3/B3: Delivery makes explicit the obligation of the seller to unload as well as placing the goods at the disposal of the buyer.

A5/B5: Risk is now explicit that the risk is with the buyer if the buyer fails to obtain import authorisation.

A6/B6: Allocation of costs makes it explicit that the buyer is liable for the seller's additional costs if the buyer fails to obtain import authorisation. There is no longer a stipulation that the buyer is responsible for the costs of transportation of the goods from the time of delivery, though this is still implicit.

A8/B8: Delivery document is now simplified so that the seller need only provide the buyer (at the seller's expense) with a document enabling the buyer to take delivery. This can be any kind of document.

A9: Checking – packaging – marking is changed so that the seller must now actually package (as opposed to providing packaging for) the goods, unless it is usual to transport such goods unpackaged. If the buyer notified the seller of any special packaging requirements prior to the contract of sale, the seller must comply.

B9: Inspection is now explicit that the seller must pay the costs of any pre-shipment inspection mandated by the authorities of the country of export.

A10/B10: Assistance now provides that the buyer must assist the seller (at the seller's request, risk and expense) to obtain documents and information necessary for the transport and export of the goods. The buyer must (in a timely manner) advise the seller of any security information requirements. The seller's obligations are expanded to cover documents and information that the buyer needs for the transport of the goods to the final destination.

Conclusions

In this series of INCOTERMS 2010 Client Alerts, we have:

1. Outlined the main changes to INCOTERMS 2010 and the rationale for such changes.
2. Considered the changes in the FOB and CIF obligations brought about by INCOTERMS 2010.
3. Dealt with the new "D-Terms" (DAP and DAT) and identified changes to the terms they replace.

As we stated in Part 1 of the Client Alert, traders should familiarise themselves with the new Terms and take time to consider what impact the new INCOTERMS 2010 may have on their standard form contracts. It would be sensible to implement any necessary changes now, ready for the new INCOTERMS coming into force on 1 January 2011. This should help to minimise disputes arising out of any inconsistencies between the old terms and the new terms as well as disputes about which terms apply.

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