

Demystifying Incoterms in eCommerce Transactions



By Steven Weigler, Esq.
Emergence Counsel

<https://emergencecounsel.com/e-commerce/importance-of-knowing-incoterms-for-e-commerce-sellers/>

What are Incoterms?

Incoterms is the abbreviation of “International Commercial Terms,” a set of codes, rules, or conditions related to the transportation and delivery of goods. The International Chamber of Commerce (ICC) is responsible for defining and revising Incoterms. The ICC last updated Incoterms on January 1, 2020. Incoterms may seem confusing and daunting to independent eCommerce sellers who did not pursue a career in shipping regulations.

However, Incoterms are a common language for all eCommerce Sellers, which is essential when selling products or services abroad or operating across customs borders. Incoterms are composed of 11 rules that define the different shipment stages and the people responsible at each point.

Why should eCommerce Sellers care about Incoterms?

Have your shipping costs gone up without notice? Did you receive a change in shipping terms email notice? Did the packaging responsibilities or container requirements change? Are you now responsible for loading and unloading goods during cross-border transit? Are you involved in a dispute over damaged goods? Or perhaps you had to purchase shipping insurance? Like many sellers, it is likely your shipment has been delayed, and you may

be having problems communicating with a transporter. Or possibly a freight company? Maybe you have a bill of lading you don't understand. Any of these issues can lead to your shipment sitting in a harbor or a free-trade zone.

How transporters and eCommerce sellers may handle these are prescribed in the suggested language in Incoterms. In other words, Incoterms is like a dictionary or catalog of worldwide accepted terms for shipping. Shippers pull from Incoterms to set their shipping terms. Those receiving the shipment may want a say or at least understand the terms (i.e., the liability of loss or damages at the port, responsibility for delays, customs practices, etc.)

Incoterms is like a dictionary or catalog of worldwide accepted terms for shipping.

Incoterms and the Supply Chain

The importance of knowing Incoterms for eCommerce sellers means that everyone is aligned on the shipping procedure, especially when multiple parties or stakeholders are involved. In addition, since Incoterms are universally accepted, there is almost a guarantee of timely payment of goods, services, and duties while the buyers, carriers, and suppliers remain protected. Overall, Incoterms remain a powerful tool in the quest to mitigate issues with the supply chain when properly coordinated with other elements of a sales agreement, trade terms, contracts of carriage, and insurance.

What Incoterms Is Not

Even though Incoterms reflect commercial practices, eCommerce Sellers need to understand that it is not part of sale contracts and is not meant to be a replacement. Incoterms do not transfer the ownership of goods or intellectual property rights. Additionally, they do not deal with export or import ban matters or act as a remedy for breach of contract. Instead, Incoterms are negotiated and folded into relevant contracts and rights agreements. An eCommerce attorney can help sellers understand and, if necessary, negotiate shipping terms. While shipping is not the sexiest part of an eCommerce business, eCommerce sellers must know what they are getting into. Otherwise, a significant investment may be lost at sea.

Contact EmergeCounsel today for a free consultation to discuss how we can help your eCommerce business.

About the Author

After years of corporate counsel experience with a Fortune 100 company, Steven Weigler built and managed a startup where he was able to create and institute a protective intellectual property strategy, commercialize the resulting products and protect the intellectual property, build and manage a sales, marketing and operations team under a “lean startup” budget, and secure both angel and A round financing, and finally negotiated an exit.

Steven’s combination of legal, entrepreneurial, governmental and corporate experience gives him a unique, focused perspective on what entrepreneurs who are starting up or emerging their businesses need but rarely have: a) someone who zealously protects their interest and b) someone who has the empathy to understand each entrepreneur’s vision and motivation as well as their business plan. Steven has a passion of e-commerce and advises many clients on all aspects of the industry.

About EmergeCounsel

EmergeCounsel strategizes with a worldwide clientele in the focus areas of protection of intellectual property and business assets for eCommerce business. Our TotalTM® provides trademark guidance, search, appeals of office actions and denials, and trademark monitoring at flat and affordable rates. In addition, EmergeCounsel has an extensive network of professionals who provide co-counsel and services for businesses of all sizes.

PO Box 13677, Denver, CO 80201

www.emergecounsel.com 1-888-Emerge0