

The Intersection of Incoterms & Maritime Operations in Modern Shipping

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Abstract

Hong Kong's position as the world's leading transshipment centre means that its links between ocean freight, insurance and physical logistics operations are particularly significant. Indeed, Incoterms are often treated as a purchasing technicality and a formalised "gameplay" in tender evaluation. Still, the ongoing industry-wide practice of using "maritime-only" Incoterms, such as FOB and CIF, for containerised freight has operational, legal, and financial consequences. By contrasting risk transfer with cost allocation, this paper explains that, because today's containerised logistics at world-class modern terminals such as Kwai Tsing Container Terminals is truly multimodal, it must involve terms such as FCA and CIP; otherwise, the so-called "transshipment" would create perilous gaps in marine insurance and insurable interest. Additionally, the paper discusses the complexities arising from the interplay between sales contracts and carriage contracts: Incoterms impose chartering obligations, as well as THC and laytime/demurrage liabilities. Current industry challenges and trends are also considered in this paper, including political supply chain rerouting, the digitalisation of trade through electronic B/Ls and smart contracts, and the ongoing puzzle of how to allocate the emerging costs of decarbonisation and new carbon taxes, such as the EU ETS. A local case study on the Greater Bay Area (GBA) multimodal container transshipment challenges between river and ocean at a micro level reveals the often-overlooked complexities of risk and liability allocation. In particular, while the default use of FOB may be intended to maximise the mainland manufacturer's price and discount, such a choice of Incoterm exposes the shipper to serious risk in the absence of any river freight insurance since the first leg of transportation from the factory to ocean via barge is legally a non-marine ocean byway. To align legal risk with operational reality, FCA would be the optimal term to reflect the costs and benefits of all operations involved. In summary, this paper argues that, in the face of growing operational complexity in today's shipping sector, Incoterms must be applied precisely and with an acute awareness of on-the-ground realities to avoid insurance coverage gaps and ensure the continued free flow of trade.

Keywords: *Incoterms 2020, Maritime Operations, Marine Cargo Insurance, Risk Transfer, Containerised Freight, and Greater Bay Area (GBA)*

1. Introduction

The continuous maritime flows of international trade necessitate that, wherever a sale takes place, both the buyer and the seller understand their respective responsibilities, costs, and risks. In the absence of globally accepted commercial terms, buyers and sellers could not transact without getting bogged down in disputes over jurisdiction, statute, legal interpretation and simply how a particular operation is to be run. In major world transshipment hubs such as Hong Kong, these concerns are even more pertinent (AECOM, 2025). As the "super-connector" linking Mainland China and the world, port

operations there, where transshipments are often on a very large scale and where river-to-ocean supply chains are sometimes staggeringly complex, can function smoothly only when contracts and conditions are watertight. As the International Chamber of Commerce (ICC), the global body that publishes the ICC Rules of Arbitration and other commercial protocols, notes: “Without clearly defined terms and conditions of sale, world trade would not be possible.” (International Chamber of Commerce, 2019)

To address this need for risk-averting standardisation across jurisdictions, the ICC’s International Commercial Terms (Incoterms) have been published since the 1930s. The Incoterms 2020 rules are the most recent iteration of what the ICC terms “International Rules for the Interpretation of Trade Terms”, providing recognised global guidelines “defining the responsibilities of buyers and sellers by clearly stating who is responsible for organising and paying for transportation, insurance, loading and unloading, export and import clearance, and any other formalities” (Cargobase, 2025). In short, Incoterms define when the risk of loss or damage to the goods passes from the seller to the buyer, who is responsible for freight, terminal handling, insurance, customs clearance, etc. (Lau et al., 2017)

For the mariner, these terms are often understood as a purely sales contract–related procurement function. But in an era of growing seaborne trade, the misapplication of which term to what cargo at which port has significant operational consequences for daily vessel operations, chartering and cargo insurance arrangements (Doo, 2024). To prove this, this paper analyses the links between commercial terms and physical operations, using Hong Kong’s waters as a case in point for the need for a deeper understanding of Incoterms 2020 to maximise efficiency in voyage planning, minimise liability, and ensure you have the right marine insurance cover (GeoServe, 2024).

2. Incoterms 2020 in Maritime Trade

The 11 Incoterms 2020 rules are organised into two columns of transport-mode-specific rules. Seven can be used for any mode or combination of transport: EXW (Ex Works), FCA (Free Carrier), CPT (Carriage Paid To), CIP (Carriage and Insurance Paid To), DAP (Delivered at Place), DPU (Delivered at Place Unloaded), and DDP (Delivered Duty Paid). Four are restricted to sea and inland waterway transport only: FAS (Free Alongside Ship), FOB (Free on Board), CFR (Cost and Freight), and CIF (Cost, Insurance and Freight), while the summary tables can be observed from <TTT> and <TTT>. In a highly integrated multimodal logistics hub like Hong Kong, where cargo moves from Pearl River Delta River barges or cross-border trucks to ocean-going freighters or air cargo daily, the decision of which transport mode to choose is an initial step in the contracting process (Bae, 2024).

Category 1: Rules for Any Mode or Modes of Transport (Multimodal) (Best for containerised freight, air, rail, and road)				
Incoterm	Full Name	Risk Transfers to Buyer	Who Pays Main Freight?	Insurance Responsibility
EXW	Ex Works	At the seller’s premises (unloaded)	Buyer	Buyer
FCA	Free Carrier	Upon handover to the carrier at the named place	Buyer	Buyer

CPT	Carriage Paid To	Upon handover to the first carrier at the origin	Seller	Buyer
CIP	Carriage & Insurance Paid To	Upon handover to the first carrier at the origin	Seller	Seller (Max coverage: ICC "A")
DAP	Delivered at the place	At the destination, ready for unloading	Seller	Seller (bears the transport risk)
DPU	Delivered at Place Unloaded	At the destination, after unloading	Seller	Seller (bears the transport risk)
DDP	Delivered Duty Paid	At the destination, cleared for import	Seller (pays import duties)	Seller (bears the transport risk)

Table 2.1: Summary of the Seven Rules under Category 1 of Incoterms 2020

Category 2: Rules for Sea & Inland Waterway Transport Only (Best for traditional bulk cargo and non-containerised sea freight)				
Incoterm	Full Name	Risk Transfers to Buyer	Who Pays Main Freight?	Insurance Responsibility
FAS	Free Alongside Ship	When goods are placed alongside the ship	Buyer	Buyer
FOB	Free On Board	When goods are loaded on board the ship	Buyer	Buyer
CFR	Cost and Freight	When goods are loaded on board the ship	Seller	Buyer
CIF	Cost, Insurance and Freight	When goods are loaded on board the ship	Seller	Seller (Min coverage: ICC "C")

Table 2.2: Summary of the Seven Rules under Category 2 of Incoterms 2020

It is important, however, to understand a basic (but often misunderstood) legal concept of the Incoterms system: the idea of “delivery.” In maritime trade/commercial law, delivery does not always refer to the arrival of the goods at their destination. It is the precise moment when the risk of loss or damage to the goods passes from the seller to the buyer. (The split of costs is different.) (Global Legal Entity Identifier Foundation (GLEIF), 2024) For example, under any “C-term” (CFR or CIF), the seller pays the freight costs to bring the goods to the named destination port. But risk passes—i.e., delivery occurs in the legal sense—much earlier, when the goods are loaded onto the vessel at the port of origin. It is vital to understand this dichotomy between risk and costs. Failure to do so can lead to very large claims disputes in the event of a marine casualty (Ramberg, 2011).

The most pernicious operational mistake that persists in modern shipping, one that is on vivid display in a container hub like Hong Kong’s Kwai Tsing Container Terminals, is the misuse of the Incoterms 2020 maritime-only terms for containerised cargo. Traders all too often default to FOB or CIF out of historic habit, even when shipping standard TEUs (Twenty-foot Equivalent Units). But, by its terms, FOB or CIF risk passes only when the goods are “on board” the vessel. In modern containerised logistics, a seller will often hand the container over to the carrier at a Container Freight Station (CFS) or terminal yard several days before the vessel even arrives (Yip et al., 2014). Now, suppose there’s a typhoon and the container is damaged while it is still sitting in the Kwai Tsing yard. A legal grey area arises because, under FOB/CIF, the risk has not technically passed to the buyer, even though the seller has physically relinquished control (Islamic Corporation for the Insurance of Investment and Export Credit (ICIEC), 2024). In such cases, to better align with modern container operations, the ICC now strongly recommends using the multimodal equivalents, i.e., FCA (instead of FOB) and

CIP (instead of CIF), where risk will now pass appropriately to the carrier at the terminal.

3. Cargo Insurance & Risk Transfer

At the core of marine cargo insurance is the basic principle that to claim a loss, the claimant must hold an “insurable interest” at the time of loss. Incoterms are the main legal mechanism that defines this point in time. Incoterms clearly specify when the risk of loss shifts from the seller to the buyer (Park & Lemaire, 2011). In a fast-moving transshipment centre like Hong Kong, with its container port regularly battered by extreme weather such as Typhoon Signal No. 8 or Black Rainstorm warnings, the precise moment when this risk passes can be crucial. If a container of high-value electronics is flooded in a Kwai Chung warehouse before it is loaded onto a ship, which cargo policy must cover that loss: the sellers’ or the buyers’? The Incoterm in place at the time of the loss will usually dictate the answer.

One of the most significant changes to the Incoterms in the 2020 revision was the splitting of the two Incoterms that require the seller to purchase insurance into two tiers of mandatory insurance cover. The seller’s obligations under the Incoterms that require insurance are only one part of the story; the other part is the buyer’s policy, and precisely at what point in the transport process will the buyer’s policy apply? In both CIF (Cost, Insurance and Freight) and CIP (Carriage and Insurance Paid To), the old editions of Incoterms only required the seller to provide minimum cover, at the Institute Cargo Clauses (C) level. ICC (C) is named perils insurance, meaning it only covers the most material perils, typically fire, stranding, collision, etc (Partida Logistics, 2024). In Incoterms 2020, there is a recognition that CIP is the predominant Incoterm used for manufactured and containerised cargoes – the lifeblood of Hong Kong’s re-export economy. Losses to manufactured cargo often result from theft, careless handling, and water damage, and are therefore often not covered by ICC (C) cover. As such, CIP’s mandatory insurance requirement has been moved up from ICC (C) to ICC (A), or, in other words, “All Risks” cover. CIF, on the other hand, has been retained at the ICC (C) minimum level, as it is the Incoterm of choice for bulk cargoes such as iron ore and grain, where an ICC (A) policy is either cost-prohibitive or unnecessary. Of course, parties to a CIF contract are still free to negotiate an ICC (A) or above cover, but the default now falls squarely at the ICC (C) level (Dunt, 2012).

Claims trainees and adjusters joining the front lines of the Hong Kong marine insurance industry will be all too familiar with the commercial invoice and the named Incoterm on the front page. The first thing an adjuster does when a cargo claim is submitted is to check the Incoterm to see whether the claimant would have held the risk at the time of the in-transit anomaly (Qi, 2024). For example, the claimant may be the buyer under an FOB contract, where the goods have been damaged by the ship’s crane while being loaded on board, but have not yet passed the ship’s rail or come to rest on board. In that case, the buyer’s insurer will deny the claim as the risk had not yet passed to the buyer. In addition, adjusters must also consider policy assignment. In CIF and CIP, the seller is the policyholder but is obligated to endorse the insurance certificate to the buyer. The buyer can then bring a claim directly against the seller’s insurer. Claims professionals need to understand this type of mechanics to determine who is liable, who has

subrogation rights, and whether an insurable interest exists (Szpytko & Salgado Duarte, 2024).

4. Operational Realities: Chartering, Loading & Laytime

It is axiomatic in the law of carriage that the commercial sales contract (Incoterms) and the contract of carriage (Charterparty or Bill of Lading) are distinct and separate legal entities, yet in practice inseparable. The Incoterms are the bridge between these two spheres of law, as they define the party responsible for contracting for space on a vessel and acting as the charterer. For “F” terms (FOB or FAS), the buyer is the party negotiating the charter party with shipowners or ship operators and contracting for tonnage. Shipbrokers, to the exclusion of all others, are masters of this profession and are most easily found in bulk centres like Hong Kong. For the “C” terms (CFR or CIF) and “D” terms (DAP and DDP), the seller is on the hook for contracting for carriage and is de facto the charterer of record. In short, there needs to be strict alignment between the delivery window in the sales contract and the laycan (laydays and cancelling date) in the charterparty, as any breach, often involving demurrage fines or detention, is costly (Force, 1996).

The Incoterms also have significant practical implications for who is to pay the Terminal Handling Charges (THC) and stevedoring costs in ports, which can be onerous and expensive, though well-run ports such as Hong Kong (Lau & Ng, 2017). The world-renowned “mid-stream” operations in Victoria Harbour, where containers are loaded and discharged onto barges whilst the mother ship is anchored, as well as “land-side” operations at the Kwai Tsing Container Terminals, provide but two classic examples (Salim, 2025). The basic FOB delivery point is “on board” the vessel; thus, by its very nature, the seller pays all costs to get the goods safely loaded and “on board,” i.e., origin THC, origin stevedoring, and “mid-stream” barge charges, if any. “C” terms, e.g., CFR, are less clear. While the seller pays the ocean freight, the question of destination THC (a grey area) is less clear-cut, except that, unless the contract of carriage is negotiated on “Liner Terms” (loading and discharging by the carrier built into the freight rate), the buyer must pay destination unloading costs. Lack of clarity in splitting THC between the Incoterm and the shipping line’s tariff has led to many, probably most, containers held hostage by the carrier at the destination port until argued over between buyer and seller.

It is in the interaction of the Incoterms with charterparty clauses that the law and practice of carriage most intersect, and where financially precarious positions can most easily arise. The terms “laytime” and “demurrage” refer to the time and costs associated with loading and unloading a vessel. When agreeing a charterparty, there is an agreed period of time for the vessel to be loaded and discharged at the origin and destination ports, called “laytime.” If the vessel is used for loading or discharging beyond the laytime, the charterer must, under the charterparty, pay demurrage (liquidated damages) to the shipowner for detention. As the Incoterms strictly determine which party has the “call” (control) over the vessel, they indirectly determine who pays for berthing (Plomaritou & Papadopoulos, 2017).

For example, if the vessel is delayed at the discharge port due to port congestion, under a CFR contract, the seller is on the hook to the shipowner for demurrage, as the seller

is the charterer. Under CFR terms, however, the risk has passed to the buyer in the origin port, and the buyer must unload. If the vessel is detained at the destination, the seller is liable to the buyer for that demurrage (Lam & Bai, 2016) unless the sales contract provides for the seller to pass it on to the buyer. The seller then becomes responsible for clawing back those costs from the buyer who caused or is suffering from the demurrage at the destination. By contrast, under a DAP contract (Delivered at Place), the seller still has the risk and the cost of delivery to the destination. Therefore, for example, if the vessel must wait for a berth and incurs demurrage, the seller will pay, as the risk remains with the seller. The exception would be if the vessel has to wait for the buyer to clear the goods through customs, in which case the cost is likely to be passed on to the buyer. The complexities of overlapping liabilities in shipping require professionals in this industry to properly match the laytime provisions of their charterparty to the delivery and unloading obligations in their sales contract under the Incoterms.

5. Contemporary Challenges & Technological Disruptions

In the current age of supply chain disruption, geopolitical turmoil, increased regulatory burden and accelerated digital transformation, international maritime trade is facing a period of historic uncertainty and change. While the origin of the word “contemporary” itself is intrinsically linked to global maritime trade in the 19th century, today’s supply chains are being pushed and tested as never before, leading to strains in the allocation of risk and cost responsibilities between sellers and buyers under the Incoterms 2020 ruleset as traders and industry professionals are forced to consider how their contracts are being drafted.

5.1. Supply Chain Disruptions & Risk Transfer

For Hong Kong traders and the law firms that represent them, two recent notable examples of this have been the historic port congestion during the pandemic recovery and the recent geopolitical crisis in the Red Sea, which disrupted container vessels by forcing them to reroute around the Cape of Good Hope. In particular, for a major transshipment hub like Hong Kong, which was built around highly linearised schedules between Asian manufacturers and European markets, this form of legal “friction” is acutely impactful. Rerouting a vessel around the Cape of Good Hope results in a significant deviation in transit time, involving several weeks and incurring substantial carrier-imposed emergency transit surcharges (ETS) (Hong Kong Monetary Authority, 2026). When the vessel is sold under “C” terms, such as CIF or CFR, the risk of physical loss or damage transfers to the buyer upon loading at the port of origin, but the seller remains responsible for the contract of carriage (ZERO44, 2024). The immediate question becomes who is responsible for bearing the costs of these emergency carrier-imposed surcharges? In the normal case, this cost is covered under the Incoterms 2020 Articles A7/A8/B7/B8, which stipulate that “C” terms, such as CFR, place the responsibility for freight costs on the seller. Still, this emergency surcharge is an unplanned, unilateral carrier cost which is not actually covered in the contract of sale. As such, this often becomes a contractual grey area for disputes and complex force majeure claims (unless specifically stated in the contract). Furthermore, beyond the immediate cost impact, although the Incoterm transfers the physical risk of loss to the agreed-upon place, it provides no inherent default protection against commercial losses

caused by these extreme delays. The need for bespoke contractual clauses for the carrier, or for contractual elements outside the 3-letter rule, becomes starkly clear (Cullinane & Bergqvist, 2014).

5.2. Digitalisation & Paperless Trading

At the same time, the larger industry is undergoing a revolution in digitalisation, with the increasing use of electronic Bills of Lading (eB/L), Blockchain supply chain tracking, and, of course, smart contracts. Hong Kong has led the way in this trend, with the HKMA driving the move to a paperless system for trade finance and shipping documents, and initiatives such as eTrade Connect, set up as a platform for industry-wide digitisation and standardisation. While the Incoterms 2020 rules themselves are clear that this is possible and legal (Articles A1/B1), stating that “unless otherwise agreed, documents may be provided in either paper form or in electronic form so long as it is customary in the trade or trade usages applicable to the transaction”, the operational and cyber-physical friction and lack of standardisation mean this process is very often in need of customisation (Yip, 2008). The situation becomes especially true when considering potential uses of smart contracts that automatically pay under specific GPS-related conditional parameters, such as the container crossing a GPS-coordinated geofenced boundary at Kwai Tsing. In these use cases, the exact point of delivery must be absolutely clear, or else the referenced Incoterm may not align with the legal transfer of risk (resulting in smart contract payments either arriving too early or leaving a period without insurance coverage). For example, if an FOB transaction is incorrectly specified (containerised, box delivery at the freight station days before the actual loading onto the vessel), then the smart contract payment trigger will not be set up correctly.

5.3. Decarbonisation, ESG & Cost Allocation

Finally, perhaps one of the most significant challenges to modern maritime trade (and to Hong Kong, as one of the world’s largest transshipment hubs) is the massive global push toward decarbonisation and ESG. As shipping seeks to meet the International Maritime Organisation’s (IMO) roadmap of emission-reduction targets, high new operational costs are being introduced, including the recent inclusion of the sector in the EU Emissions Trading System (ETS) and major carriers rolling out new green-fuel surcharges. As more of the actual costs associated with the previously “externalised” environmental impact of shipping are internalised as direct costs to the shipowner/trader, a new category of cost is emerging in this grey area, both a freight cost and a fuel/emissions “tax”. While Incoterms 2020 (Articles A9/B9) are extremely specific that costs are apportioned strictly between the buyer and the seller, carbon taxes, emissions levies, and carrier green surcharges are, in a legal sense, a very grey area between “freight costs” and “taxes/duties”. The buyer is responsible for import taxes/duties so in FOB terms where the buyer pays the freight, they are also clearly responsible for the carrier’s carbon fuel surcharge, but in CFR/CIF where the seller is responsible for the freight and has had carriers impose green surcharges as part of “EU ETS cost” paid by the seller and passed through, there is still a significant pushback as it was not part of the initial contract of sale and is being “passed back” to the seller by the carrier (Ng & Kee, 2012). As ESG and decarbonisation requirements come into force worldwide, the next update to the Incoterms in 2025 will likely need to clarify

which party is responsible for carbon liabilities to avoid this becoming a systemic source of commercial disputes (Zhou, 2026).

6. Case Study: Greater Bay Area (GBA)

Operating within the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) involves a complex network of logistics operations, encompassing enormous mainland manufacturing production bases and Hong Kong's continued operation as one of the world's last great international free ports. One of the key characteristics of GBA trade is its dependence on river borne cargo traffic: millions of TEUs per year are produced in the Pearl River Delta (PRD) manufacturing centers of Dongguan, Zhongshan or Foshan and then moved by river barge down the Pearl River estuary to Hong Kong to be transhipped by feeder container vessel to ocean-going ships at the Kwai Tsing Container Terminals or one of the mid-stream holding areas (Cullinane, 2012).

The cross mode of this transit path regularly creates a common, and often costly, real-world disconnect with the actual meaning of the Incoterms rules in play. When mainland sellers insist on FOB Hong Kong terms in their commercial contracts for goods being physically transported, their focus is typically on loading a container onto the feeder barge at the PRD river port of origin. At this point, they believe risk and title transfer to the buyer (Bennett, 2006). However, the FOB Incoterm under international Incoterms 2020 rules is still by its nature a purely maritime transport term under which the risk of loss remains with the seller until the goods are loaded on board the named vessel (a Hong Kong ocean-going vessel in this case) at the named place of shipment (Hong Kong). The result can be that, in the event of a barge capsizing, colliding, or sinking en route up the river (all genuine risks in Southern China's typhoon season), a mainland seller finds itself at risk of a total loss for which it has not even purchased marine cargo insurance.

Practically speaking, to align with commercial realities, local shippers and maritime law specialists increasingly advise that FCA Free Carrier at the PRD origin port better reflects the multimodal reality of GBA transshipment. FCA ensures that the seller's risk ends at the point where the container is delivered to the barge operator (the "first carrier" or first link in the multimodal transport chain). With the continuing growth in border trucking across the Hong Kong-Zhuhai-Macao Bridge (HZMB), DAP and DDP Incoterms have also come to be more commonly used in the GBA as a result of the continued customs border distinction when crossing from Shenzhen or Zhuhai into Hong Kong (despite the "One Country, Two Systems" structure for the GBA). When a mainland supplier is DDP Hong Kong, they will need to be familiar with and willing to comply with all the special Hong Kong import declaration requirements to ensure their cargo can cross the border and reach their buyer without delay.

7. Conclusion

In summary, modern maritime commerce would not function smoothly without an adequate understanding of the Incoterms 2020 rules. The examples illustrated in this paper confirm that, for shipping professionals, Incoterms should not be regarded as a mere afterthought or optional part of a deal, but rather that their implementation can

significantly impact the daily operations of vessels and vessel chartering, and influence marine cargo insurance.

The incorrect application of old-school FOB or CIF by industry stakeholders to containerised cargo movements at super-connectors like Hong Kong can cause confusion in contractual practice and will not stand up if tested by the courts at a later stage. Shippers and their legal counsel should apply appropriate multimodal terms, such as FCA and CIP, to ensure that the transfer of risk in the sales contract coincides with the delivery of the container to the CFS/terminal yard.

Conversely, since the choice of Incoterms also determines who is responsible for cost, including demurrage and Terminal Handling Charges (THC) under the contracts of carriage, this creates many pain points and is often a bone of contention between all parties. On the other hand, given the current unprecedented turmoil in the shipping industry, including high-profile geopolitical issues and supply chain disruptions, a drastic reduction in crew change costs (non-COVID-19 situation), speedy digitalisation, and new and emerging global ESG and decarbonisation regulations, risk and cost allocation is becoming more challenging than ever before. For example, green fuel surcharges, smart contract delivery terms and many other factors will all need to be carefully considered when professionally drafting sales contracts.

The Greater Bay Area case studies in this paper show that regional specificity, hinterland river trade, and cross-border customs clearance will also require a considered approach to selecting and applying the right Incoterms to avoid disastrous uninsured losses. Maritime professionals, lawyers and insurance adjusters alike must strive to close the gap between commercial contracting and physical operations to create a common, operational understanding of Incoterms and their associated risk transfer implications to reduce disputes, improve voyage planning and management and continue to facilitate resilient global trade through mega-connectors like Hong Kong into the future.

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