



## Incoterms® 2020 Training (Canada Launch) 🇨🇦

### DISCUSSION QUESTIONS



**Q1.** A Canadian seller of canola seed references “EXW Calgary, Alberta, Canada Incoterms® 2020” in the contract with a US buyer. The seller gives the buyer notice that the goods under their contract of sale will be available for pick up at the seller’s warehouse (4<sup>th</sup> loading bay) between 4pm and 5pm on a given date. On the date of the scheduled pickup, the seller places the goods in front of the 4<sup>th</sup> loading bay at the seller’s location at 4pm, but when the buyer arrives at 4:45pm there is no access to the seller’s yard because the local fire department is there. The seller’s warehouse is on fire and the goods are ultimately destroyed. Should the buyer be concerned about the loss?

**Q2.** A Canadian exporter of industrial equipment using “EXW Regina, Saskatchewan, Canada Incoterms® 2020” in a sales contract gives the buyer notice that the goods under their contract of sale will be available for pick up at the seller’s warehouse between 1pm and 4pm on a given date. The buyer’s truck driver arrives on time on the prescribed date and backs the truck up to the loading bay and waits for the seller’s forklift driver to load the goods in the truck. During the loading the seller’s forklift driver smashes into several of the pallets inside the seller’s warehouse and destroys goods valued at \$20,000 CDN. Should the buyer be concerned about this loss?

**Q3.** On May 16<sup>th</sup>, 2020 a Vancouver, British Columbia, Canada exporter and a Japanese importer put together a contract that calls for the use of the following Incoterm® “FCA Vancouver, British Columbia, Canada Incoterms® 2010”. In the event of a dispute, will the Incoterms® 2010 be valid or will Incoterms® 2020 take precedence?

**Q4.** An Ottawa, Ontario, Canada based manufacturer of LED lighting equipment is using “FCA Port of Montreal, Quebec, Canada Incoterms® 2020” in a contract with a European Buyer. The seller agrees to deliver the goods to the container terminal in Montreal prior to ocean shipment. The goods are put in a container and then transported by the seller’s own truck to the container terminal where they are offloaded by a reach stacker. During the offloading, the reach stacker drops the goods and the goods in the container are destroyed. According to the Incoterms® 2020, who is supposed to bear the cost of this loss?

**Q5.** In Question 4, the FCA seller informs the buyer of the loss that occurred when the reach stacker at the shipping terminal dropped the goods and then explains that according to Incoterms® 2020 the loss is the buyer’s loss. However, the European buyer counters by saying that

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since an onboard Bill of Lading had been requested from the seller and since that document had not yet been provided to the buyer, the title to the goods still resided with the seller (i.e. the seller still owns the goods and therefore is the party that has suffered a loss). Does this shift the burden of the loss to the seller?

**Q6.** A Canadian seller of auto parts near Toronto, Ontario, Canada reference “CPT Houston, Texas, USA Incoterms<sup>®</sup> 2020” in their contract with a buyer in Houston, Texas, USA. The Canadian seller hires a Canadian trucking company to take the goods to Detroit, Michigan, USA where the goods are to be delivered to a cross-docking facility (also arranged by the Canadian seller). At that point, a USA-based trucking company that was suggested by the buyer (also separately contracted by the seller) is scheduled to receive the goods and take them onward to Houston. However, the goods suffer water damage while inside the cross-docking facility in Detroit, are destroyed, and never loaded on the truck that was supposed to take them onward to Houston. The buyer was completely unaware of the involvement of the Canadian trucking company and the cross-docking arrangement and there was no mention of the transfer of the goods in Detroit in the sales contract. Is the buyer or seller at risk of loss in this situation?

**Q7.** A Canadian seller of agricultural products in Northern Ontario, Canada has a sales contract with a US-based buyer using “CIP Nashville, Tennessee, USA Incoterms<sup>®</sup> 2020” in their contract. The contract calls for the delivery of the goods to a facility in Detroit, Michigan, USA where the buyers preferred trucking company is to receive the goods and take them to Nashville. The Canadian company uses its own truck to take the goods to Detroit, Michigan, USA and it hires the buyer’s recommended trucking company to meet the shipment in Detroit (to take the goods to Nashville). The seller buys the best cargo insurance available from a reputable insurance company for the Detroit to Nashville portion of the delivery. However, the shipment is halted at the United States border because the buyer failed to obtain an import permit for the agricultural products. It is then quarantined and later searched by a US Customs Contraband Enforcement Team. The fee for the examination is \$1,000 USD which is billed to and paid by the seller and the shipment is delayed three days in the process. As a result, the shipment arrives in Detroit one day after the agreed upon date for delivery and the trucking company that was scheduled to pick up the shipment and take it to Nashville levies a \$750 USD penalty for late delivery of the goods in Detroit. Is the seller responsible for these extra costs?

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**Q8.** A Canadian seller based in Edmonton, Alberta, Canada agrees to sell a truckload of manufactured products to a buyer in Monterrey, Mexico using “DAP Monterrey, Mexico Incoterms® 2020” in their contract. The contract provides a wide window for delivery on any date during the last two weeks of the month. The Canadian company sends their own flatbed truck to Mexico and it clears customs at both borders without issue. However, upon arrival at the buyer’s facility in Monterrey on a Friday afternoon, the truck driver learns that the facility has closed and will not re-open until Tuesday due to a national holiday. The truck driver leaves the flatbed trailer in the company’s yard and then drives to Texas, USA where he spends the weekend. However, over the weekend the manufactured goods on the flatbed truck are stolen. Is this loss to be shouldered by the seller or buyer?

**Q9.** A Canadian Manufacturer in Quebec, Canada manufactures garments and sells the goods to a prominent clothing retailer in the United States, using “DPU New York City, New York, USA Incoterms® 2020 terms in their agreement of sale. The retailer’s headquarters and their central warehouse are both located in Manhattan (which is a borough within New York City), at the address that appears on all of their correspondence. However, the goods are shipped by truck from Quebec to New York City and the driver ended up at another warehouse owned by the same retailer in the Bronx (a different borough within New York City), where the goods were unloaded. At that point, two issues arose:

- 1) The truck driver backed up to the loading bay at the buyer’s Bronx warehouse in New York City and the warehouse staff offloaded the goods with a forklift. However, in doing so, the forklift driver drove the forklift tines through a layer of boxes on one of the pallets causing \$4,000 USD in product damage.
- 2) Additionally, the US buyer had expected the goods to be delivered to their warehouse in Manhattan (a different part of New York City) but failed to specify the exact address for delivery in the contract. The buyer did send the seller an email requesting delivery at their Manhattan warehouse on the same day that the goods were unloaded at the Bronx location, but by the time the seller read the email, the goods had already been unloaded.

**Q9-1)** Is the buyer responsible for the damage done by the warehouse staff during unloading?

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**Q9-2)** Does the Quebec seller owe the buyer for any costs associated with transporting the goods from the Bronx location, to the Manhattan location?

**Q10.** An exporter of farm equipment in Winnipeg, Manitoba, Canada has an agreement to sell a large combine tractor to a buyer in Montana, USA using DDP Helena, Montana, USA Incoterms<sup>®</sup> 2020 in their contract of sale. The Canadian seller hired a specialist trucking company to deliver the oversized combine on a flatbed trailer. The shipment passed through customs without delay and arrived on the agreed upon date but at the buyer's location the combine was damaged during offloading. The truck driver asked the buyer to maneuver the large combine down the ramps on the trailer, but the buyer declined and suggested it would be better for the specialist driver to drive the machine down the ramps to get it off the flatbed. The truck driver agreed but the combine was not aligned properly, and as it was being offloaded, it tipped over causing extensive damage to the large machine. Are the losses associated with the damage to the combine the seller's or the buyer's responsibility?

**Q11.** An exporter of frozen seafood in Halifax, Nova Scotia, Canada has an agreement to sell four containers of crab to a buyer in UK using FAS Port of Halifax, Nova Scotia Incoterms<sup>®</sup> 2020 in their contract of sale. The seller hires a trucking company to take the containers to the Port of Halifax. The containers are delivered to the terminal facility on the scheduled day for the ship's departure but the ship is delayed and it is two days later before they are loaded onto the vessel destined for Port of Felixstowe, UK. Although carriage on the container ship has been pre-arranged and paid by the buyer, the Port of Halifax invoices the seller \$350 CDN in terminal charges for 2 days of power to support the refrigerated containers, holding time at the terminal and transfer charges to move the containers to the awaiting cranes that lift and place the goods onto the ship. Can the seller reclaim these costs from the buyer?

**Q12.** An exporter of radio transmission equipment in Vancouver, British Columbia, Canada has an agreement to sell a full container of electronics to a buyer in Japan using FOB Port of Vancouver, British Columbia Incoterms<sup>®</sup> 2020 in their contract of sale. On loading at the Port in Vancouver, the terminal crane operator drops the container onto the deck of the ship and all of the equipment is smashed. Who is responsible for the losses associated with this accident?

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**Q13.** An exporter of high-tech equipment in Ottawa, Ontario, Canada has an agreement to sell a full container of equipment to a buyer in Indonesia using CFR Port of Tanjung Priok, Indonesia Incoterms<sup>®</sup> 2020 in their contract of sale. The company in Ottawa hired a trucking company to take the container to the Port of Montreal, Quebec, Canada where it was loaded onboard and shipped to the Port of Tanjung Priok, Indonesia. While enroute the container is jettisoned along with many other containers during a heavy storm. So, the equipment never arrives at its destination. Does the buyer have any recourse to the seller for the shipment since it never arrived at the destination?

**Q14.** A Canadian exporter of wind-turbine components located in New Brunswick, Canada has an agreement to sell a full container of equipment to a South American buyer using CIF Port of Santos, Brazil Incoterms<sup>®</sup> 2020 in their contract of sale. The seller arranges the shipping with the carrier and purchases minimum cover insurance. When the goods are offloaded at Port of Santos, Brazil, the Port invoices the seller for unloading. Can the seller reclaim these costs from the buyer?

**Q15.** An exporter of canola seed located in Edmonton, Alberta, Canada is shipping canola seed to a food processor in California, USA using **CPT** San Francisco, California, USA Incoterms<sup>®</sup> 2020. The agreed upon delivery location is at a special terminal located in Spokane, Washington, USA where a US-based trucking company has been contracted to pick up the canola and haul it to San Francisco. The seller uses his own trucks to haul the canola from Edmonton to Spokane, Washington where the canola seed is supposed to be offloaded. However, the seller's truck gets held up at the border because an agricultural import permit has not been obtained. After a day of waiting at the border for import clearance (which has not yet been obtained), another truck collides with the vehicle carrying the canola and much of the canola seed is spilled onto the pavement. As this was intended as a food grade product, the shipment is destroyed. Is the buyer or seller responsible for this loss?

**Q16.** An exporter of optical equipment and electronics located in London, Ontario, Canada is shipping medical equipment to a hospital in Massachusetts, USA using **FCA** Sellers warehouse, London, Ontario Incoterms<sup>®</sup> 2020. The buyer contracted a US-based trucking company to pick up the goods, and the goods had been staged for loading (by the seller) at a loading dock in the seller's warehouse. However, the carrier didn't arrive at the seller's facility on the agreed upon date. So, the warehouse staff at the seller's location attempted to move the goods away from the

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loading bay area, but in the process, the forklift driver accidentally dropped the equipment and most of the shipment was damaged. Is this loss on the seller or the buyer?

**Q17.** A Canadian exporter in Vancouver, British Columbia, Canada is selling a rare, and very expensive Porsche to a buyer in Shanghai, China using a contract that incorporates CIF Port of Shanghai, China Incoterms® 2020. The buyer is not happy with the insurance coverage provided under CIF and wants to increase the amount of the coverage and the type of coverage. After checking with a marine insurance specialist in Shanghai, the buyer asks the seller to obtain a specialist appraisal of the car's value, which is needed for the additional insurance coverage. The seller has already made insurance arrangements that meet the minimum insurance requirements under CIF and doesn't want to take this extra step to get the car appraised. Under CIF terms, is the buyer allowed to buy additional insurance coverage? Does the seller need to assist? Who is responsible for the additional costs that are incurred?

**Q18.** A Canadian exporter based in Montreal, Quebec, Canada is selling a pre-fabricated home to a buyer in Portugal using CFR Port of Lisbon, Portugal Incoterms® 2020. The pre-fabricated home is packed into three containers and taken by trucks to the Port of Montreal for the shipment to Portugal. The freight forwarder in Montreal who is helping the exporter obtains a full/complete set of Bills of Lading from the shipping line. The original copies of the Ocean Bills of Lading were given to the exporter who, in turn, sent all of them to the buyer using a single courier. However, the courier package was lost (never received by the buyer), so when the goods arrived at the Port of Lisbon, the buyer was unable to get them released. Moreover, the shipping line has informed the exporter that they are going to charge \$200 Euros/day demurrage (for storage) at the Port of Lisbon while they wait for an original copy of the Bill of Lading. Is the buyer or seller responsible for these demurrage charges?

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