

Incoterms

With reference to the International Terms of buying and selling, we would like to have a look at the terms of buying and selling for both the importer (buyer) and exporter (seller). This will explain to what extent you will be liable for goods that you've bought or sold.

With this you would see where the liabilities end or start. We will also go into the VAT factor and give some clarification on the matter as well.

We start in this issue with the first Incoterm: **(EX WORKS)**

According to the International Chamber of Commerce (ICC) the first Incoterm, (EXW) Ex Works, at a named place, is defined as "the seller delivers when he places the goods at the disposal of the buyer at the seller's premises or another named place (i.e.) works, factory, warehouse, etc.) not cleared for export and not loaded on any collecting vehicle".

It is evident from this description that for the seller, the term Ex Works, represents a minimum obligation. While for the buyer, it represents a maximum obligation, since the buyer is responsible for the costs and risks related to the collection and removal of the goods from the seller's premises. If the buyer wants the seller to be responsible for the loading of the goods on a vehicle of departure and also for the cost, it should be stipulated in the contract of sale. It is imperative that such a term should only be used if the buyer is able either directly or indirectly to fulfill all export formalities.

Ex Works is the sole E-term also known as a departure term and is also a multi-modal transport term, which means that it can be used for any form of transport, i.e. Road, Rail, Sea and Air.

The seller's primary duty is to place the goods at the disposal of the buyer at the named place, while the buyer's primary duty is to take delivery of the goods when they have been placed at the named place. The documents required in terms of the contract of sale should be the commercial invoice and the buyer's receipt, while other documents that could be considered for stipulation in the contract of sale could be any documents needed for the export or transit of the goods through any country for import clearance.

The three (3) critical points of Ex Works are:

- 1) The buyer must arrange carriage;
- 2) The risk transfers from the seller to the buyer when the goods are placed at the disposal of the buyer, and
- 3) The cost transfers from the seller to the buyer when the goods are placed at the disposal of the buyer i.e. At a named place.

THE SELLER'S OBLIGATIONS

The ICC Working Part on Trade Terms, identified ten obligations that the seller might need to fulfill in terms of (EXW) Ex Works:

- 1) The provision of goods in conformity with the contract
- 2) Licenses, authority and formalities
- 3) Contracts of carriage and insurance
- 4) Delivery
- 5) Transfer of risk
- 6) Division of costs
- 7) Notice to the buyer
- 8) Proof of delivery, transport documents or equivalent electronic message
- 9) Checking, packaging, marking, and
- 10) Other obligations.

The provision of goods in conformity with the contract implies that the documents stipulated in the contract of sale must be provided. If in respect of the licenses, authorisations and formalities the buyer requires the seller's assistance, the costs should be for the account of the buyer. The seller has no obligation in respect of the contracts of carriage and insurance. The delivery of the goods must only be at the named place.

However, if the buyer requires any more assistance from the seller, it must be added after EXW in the contract of sale.

As the transfer of risks, the seller bears all risks of the loss or damage to the goods until delivery has taken place at the named place.

In relation to the division of costs, the seller must pay all the costs relating to the goods up and to delivery at the named place. The seller must give sufficient notice to the buyer as to when and where the goods will be placed at his disposal. The seller has no responsibility as to the proof of delivery, transport documents or equivalent electronic message.

Depending on the stipulations in the contract of sale, the checking, packaging and marking costs are for the seller's account. As for other obligations, the buyer may request the seller's assistance with information in respect of the goods and the export requirements.

THE BUYER'S OBLIGATIONS

The ICC Working Party on Trade and Terms also identified ten obligations that the buyer might need to fulfill in terms of (EXW) Ex Works:

- 1) The payment of the price
- 2) Licences, authorisations and formalities
- 3) Contracts of carriage and insurance
- 4) Taking delivery
- 5) Transfer of risks
- 6) Division of costs
- 7) Notice to the seller
- 8) Proof of delivery, transport documents or equivalent electronic message
- 9) Inspection of goods, and
- 10) Other obligations.

The payment of the price requires the buyer to pay the price stipulated in contract of sale. In respect of the licenses, authorisations and formalities, the buyer is required at his own risk and cost to obtain such documentation and authorisations. The buyer has no obligation in respect of the contract of carriage and insurance. The buyer must take delivery of the goods when they have been delivered in accordance with the contract of sale.

As for the transfer of risks, the buyer bears all risks of loss or damage to goods from the time of delivery and from the agreed delivery date.

In relation to the division of costs, the buyer is responsible for all costs relating to their delivery, any additional costs incurred due to the buyer failing to take delivery, and, where applicable, all duties, taxes and other charges payable upon export. The buyer must, if entitled by the contract of sale, give sufficient notice to the seller as to when and where the goods must be placed at his disposal.

As for proof of delivery, transport documents or equivalent electronic message, the buyer must provide the seller with appropriate proof of having taken delivery. The buyer must pay all costs such as per-shipment inspection in respect of the inspection of goods.

As for other obligations, the buyer must pay all costs incurred to obtain the relevant documentation and also reimburse the seller for any costs incurred in rendering such assistance.

EX WORKS AND VAT

As the seller is not in control of the freight and the delivery, Ex Works contract should be Standard Rated and the buyer should claim the VAT from SARS at the point of export.