FCA | Free Carrier (named place of delivery) Incoterms® 2020 [UPDATED]

TRADE FINANCE GLOBAL

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The FCA (Free Carrier) rule requires the seller to deliver the goods to the buyer or its carrier either at the seller's premises loaded onto the collecting vehicle or delivered to another premises (typically a forwarder's warehouse, airport or container terminal) not unloaded from the seller's vehicle. The seller must carry out any export formalities and the buyer carries out any import formalities. From this it can be seen as a step up from the largely unworkable EXW in that the seller is now responsible for physically handing the goods over with risk transferring to the buyer only when delivery has been made, This rule works well for land transport within the Europe/Central Asia landmass, because often the truck collecting the goods will be the one transporting the goods to the destination.

Despite being recommended in place of FOB for cross-ocean container shipments this rule in practice is largely unworkable for them. This is because in such shipments the buyer wants to only take on the risk of damage or loss of the goods when they have actually been exported. They don't want to be faced with any possibilities of having to deal with any problems whatsoever in the exporting country.

The 2020 version introduced a new obligation on the buyer, if agreed, to instruct its carrier to issue an on board bill of lading but while it is well-intentioned it is not a well-thought out provision and will fail in its execution. It still leaves delivery being when the seller hands over the goods to the buyer's carrier. The seller has no obligation to actually put the goods on board, and if anything was to happen to the goods between delivery and going on board, while at the buyer's risk, the reality in such trade is that not only would the seller not be given an board bill of lading but the buyer would not consider the goods exported and refuse payment. This new provision was added mainly to deal with the seller's needs for letters of credit but an unintended consequence would be that usually the seller would end up being named as shipper on that bill of lading, imposing on them liabilities that they neither knew about or accepted. It is also the only provision in the Incoterms® 2020 rules which requires a party to instruct a carrier yet gives no direct remedy to the other party should the carrier fail to act accordingly.

FCA Seller and Buyer Obligations

FCA A1 / B1: GENERAL OBLIGATIONS

A1 (General Obligations)

In each of the eleven rules the seller must provide the goods and their commercial invoice as required by the contract of sale and any other evidence of conformity such as an analysis certificate or weighbridge document etc that might be relevant and specified in the contract.

Each of the rules also provides that any document can be in paper or electronic form as agreed to in the contract, or if the contract makes no mention of this then as is customary. The rules do not define what "electronic form" is, it can be anything from a pdf file to blockchain or some format yet to be developed in the future.

B1 (General Obligations)

In each of the rules the buyer must pay the price for the goods as stated in the contract of sale.

The rules do not refer to when the payment is to be made (before shipment, immediately after shipment, thirty days after shipment, half now half later, or whatever) or how it is to be paid (prepayment, against an email of copy documents, on presentation of documents to a bank under a letter of credit, or other arrangement). These matters should be specified in the contract.

FCA A2 / B2: DELIVERY

A2 (Delivery)

The seller delivers in one of two ways:

1) If the named place is the seller's premises then when the goods have been loaded on the means of transport provided by the buyer. This includes of course the buyer's carrier but allows the buyer to collect on its own vehicle such as in a domestic sale. The word "loaded" here would usually mean safely placed on the vehicle, but for example if pallets or crates are loaded onto a truck then any tying down or lashing will be the responsibility of the vehicle's driver under safety and traffic rules. If the goods are loaded into a container on the back of the vehicle it would reasonably be expected that the seller would lash and secure the goods. As in EXW the seller would need to inform the buyer of any specific locations such as its own warehouse, contract manufacturer or a particular loading dock. Any restrictions at the site need to be communicated too. If for example the loading dock needs to be accessed through a carpark it might be that a forty-foot container on a trailer can not be brought close to that dock.

2) If the named place is not the seller's premises then when the seller places the goods at the disposal of the buyer or its carrier on the seller's vehicle delivering the goods to that place but not unloaded. Clearly the seller cannot be expected to provide the means to unload the goods into say a carrier's terminal nor would they be allowed to for safety, security and insurance reasons.

This delivery must be made on:

1) the agreed date or

2) at the time nominated by the buyer within the agreed period, or

3) failing these, at the end of the agreed period. Why at the end? Because before that the buyer could still inform the seller of his desired time within the agreed period.

B2 (Delivery)

The buyer's obligation is to take delivery when the goods have been delivered as described in A2.

Note that this rule does not discuss the means of transport at all, it merely mentions the carrier regardless of how the carrier will arrange transport of the goods.

FCA A3 / B3: TRANSFER OF RISK

A3 (Transfer of risk)

In all the rules the seller bears all risks of loss or damage to the goods until they have been delivered in accordance with A2 described above. The exception is loss or damage in circumstances described in B3 below, which varies dependent on the buyer's role in B2

B3 (Transfer of risk)

The buyer bears all risks of loss or damage to the goods once the seller has delivered them as described in A2.

Additionally, if the buyer fails to have its carrier or another person give the required notice under B2, or that person fails to take the goods from the seller, then the buyer bears all risks either from the agreed date or time, or if no agreed date or time, then at the end of the agreed period.

For example, if the contract states the delivery must occur in June so the seller has the goods ready at their premises to place on a truck provided by the buyer's carrier, and that carrier informs the seller that he will collect the goods on the 20th day of June but fails to do so, then buyer bears the risk of loss or damage to the goods from the end of the contract period being 30th June.

FCA A4 / B4: CARRIAGE

A4 (Carriage)

In this rule the seller has no obligation to the buyer for arranging carriage of the goods.

The seller however does have an obligation to provide the buyer with any information in its possession, including any transport-related security requirements, and requested by the buyer at its risk and request.

The seller's responsibility for any transport-related security requirements is only up to delivery, so if the seller trucks the goods to the carrier's premises then transport-related security requirements for that leg only are the seller's.

In some instances the seller and buyer can agree for the seller to contract for carriage, possibly because it can obtain more favourable rates than the buyer could, but such carriage is at the buyer's risk and cost. While the rule states that the contract for carriage is to be "on the usual terms" it is most likely that the two parties will agree in their contract exactly what those terms are.

B4 (Carriage)

The buyer must arrange for the carriage of the goods, whether by the buyer itself or a contracted carrier, at its own cost from the named place of delivery. This allows for the buyer itself to take delivery of the goods such as might occur in a domestic transaction. The exception is where, as stated in A4, the contract for carriage is arranged by the seller.

Note that the contract of carriage needs to be specific as to where it commences. Remember that in A2 there are two places the delivery can occur, either at the seller's premises loaded onto the collecting vehicle, or not unloaded from the seller's vehicle at another place which is typically the carrier's premises.

FCA A5 / B5: INSURANCE

A5 (Insurance)

The seller does not have the risk beyond the delivery point so it has no obligation to the buyer to arrange a contract of insurance. However, if the buyer requests, at its risk and cost, the seller must provide the buyer with information in its possession that the buyer needs to arrange its insurance. If there is any information which the buyer requests that is not already known to the seller, logically the seller can, and probably would, choose to assist.

Nevertheless, and this is not covered by the Incoterms® 2020 rules, a wise seller would investigate taking out marine insurance on a contingency basis. If the goods are lost or damaged in transit, and the buyer therefore refuses to pay for them, in essence breaching the contract, the seller will want to have a fall-back of being able to claim on its own marine insurance.

B5 (Insurance)

Despite having the risk of loss or damage to the goods from the delivery point, the buyer does not have an obligation to the seller to insure the goods. Whether the buyer chooses to insure the goods or bear the risk themselves is entirely their choice.

FCA A6 / B6: DELIVERY / TRANSPORT / DOCUMENT

A6 (Delivery/ Transport document)

The seller, at its own cost, must provide the buyer with the usual proof evidencing that the goods have been delivered to the buyer or another person, most usually of course its carrier, in accordance with A2. What form that proof takes is a matter for the parties to agree in their contract of sale. It could be as simple as the buyer's signature on a copy of the invoice through to a forwarder's cargo receipt or anything else agreed.

If the buyer requests, the seller must assist the buyer, at the buyer's risk and cost, in obtaining a transport document.

Where the buyer has instructed its carrier to issue a transport document to the seller under B6, for example a bill of lading or air waybill, and it is in negotiable form such as a bill of lading consigned to order and in multiple originals, the seller is obliged to present a full set of those originals to the buyer. This will usually be along with other shipping documents presented to the seller's bank under a letter of credit issued by the buyer's bank

B6 (Delivery / Transport document)

The buyer must accept the proof provided by the seller that goods have been delivered as described in A2.

When the parties have agreed in their contract that the seller is to be given a transport document stating that the goods were loaded, such as an "on board" bill of lading, the buyer must instruct its carrier accordingly at the buyer's cost and risk.

FCA A7 / B7: EXPORT / IMPORT CLEARANCE

A7 (Export / Import clearance)

This rule, like all the multimodal rules, is suitable for both domestic and international transactions.

Where applicable, the seller must at its own risk and expense carry out all export clearance formalities required by the country of export, such as licences or permits; security clearance for export; pre-shipment inspection; and any other authorisations or approvals.

The seller has no obligation to arrange any transit/import clearances. However if the buyer requests, at its own risk and cost, the seller must assist in obtaining any documents and/or information which relate to formalities required by the country of transit or import such as permits or licences; security clearance for transit/import; pre-shipment inspection required by the transit/import authorities; and any other official authorisations or approvals.

B7 (Export / Import clearance)

Where applicable, the buyer must assist the seller at the seller's request, risk and cost, in obtaining any documents and/or information needed for all export-related formalities required by the country of export.

Where applicable, the buyer must carry out and pay for all formalities required by any country of transit and the country of import. These include licences and permits required for transit; import licences and permits required for import; import clearance; security clearance for transit and import; pre-shipment inspection; and any other official authorisations and approvals. They are the buyer's responsibility because they occur after delivery by the seller.

At first glance it might seem strange that both seller and buyer have responsibility for pre-shipment inspections. To clarify, the seller is responsible if it is a requirement of the country of export, and the buyer is responsible if it is a requirement of the country of transit/import.

FCA A8 / B8: CHECKING / PACKAGING / MARKING

A8 (Checking / Packaging / Marking)

In all rules the seller must pay the costs of any checking operations which are necessary for delivering the goods, such as checking quality, measuring the goods and/or packaging, weighing, counting the goods and/or packaging.

The seller must also package the goods, at its own cost, unless it is usual for the trade of the goods that they are sold unpackaged, such as in the case of bulk goods. The seller must also take into account the transport of the goods and package them appropriately, unless the parties have agreed in their contract that the goods be packaged and/or marked in a specific manner.

B8(Checking / Packaging / Marking)

In all rules there is no obligation from the buyer to the seller as regards packaging and marking. There can in practice however be agreed exceptions, such as when the buyer provides the seller with labels, logos, or similar.

FCA A9 / B9: ALLOCATION OF COSTS

A9 (Allocation of costs)

The seller must pay all costs until the goods have been delivered under A2, except any costs the buyer must pay as stated in B9.

The seller has to pay any costs involved in providing the usual proof that the goods have been delivered, so if the contract between the parties states that proof as being a bill of lading or an air waybill then the carrier's document fee is for the seller.

The seller pays any costs, export duties and taxes, where applicable, related to export clearance.

If the buyer is requested by the seller to provide information or documents to assist the seller in their export formalities, then the seller must pay the buyer for these costs.

B9 (Allocation of costs)

The buyer must pay the seller all costs relating to the goods from when they have been delivered, other than those payable by the seller.

If the seller has been requested by the buyer to provide assistance in obtaining information or documents needed for the buyer to effect carriage, import formalities, insurance and the transport document, then the buyer must reimburse the seller's costs.

Where applicable, the buyer pays any duties, taxes and other costs for transit or import clearance.

Additionally, and provided the seller has advised that the goods have been clearly identified as the goods under the contract, the buyer pays any additional costs incurred if the buyer fails to nominate who is to take the goods from the seller or that person fails to do so.

FCA A10 / B10: NOTICES

A10 (Notices)

Even though the buyer arranges its carrier or another person to take delivery of the goods, the seller must give the buyer sufficient notice that either the goods have been delivered or that the carrier or another person has failed to take delivery within the time agreed.

B10 (Notices)

The buyer must notify the seller of a number of things so that the seller can deliver and carry out any export formalities. These are contact details and location of the carrier or another person who the seller is to deliver to; the selected time, if any, in the agreed delivery period, such as when a container terminal is accepting cargo for a particular vessel, or when an airline requires cargo for a specific flight; the mode of transport and any transport-related security requirements.

Free Carrier (FCA): Advantages and Disadvantages

The first version of this rule appeared in Incoterms® 1980 to take into account container and roll on-roll off transport by sea as well as transport by air, road and rail. It absorbed the previous FOR/FOT (Free on Rail/Free on Truck, "truck" referring to a railway wagon not a road transport vehicle) appearing in the 1953 version to take into account the development of the rail freight network in Europe post World War Two, and FOB Airport which had originally appeared in the 1976 version to cater for the then new era of larger more powerful aircraft being able to carry cargo in addition to the passengers' baggage. For some strange reason, in the Incoterms® 1990 version FCA's delivery article was expanded to detail specific delivery procedures for rail transport, road transport (not mentioned in any previous versions), inland waterway, sea transport, air transport, unnamed transport (!) and multimodal transport. Sensibly Incoterms® 2000 revised this again to allow the current two options of delivery: loaded at the seller's premises; or not unloaded elsewhere, typically at the carrier's premises.

While initially seeming similar to EXW, FCA is in fact the more practical rule to use both in domestic and in international cross-border trades where the seller wants to minimise its effort and costs.

The seller must load the goods onto the buyer's means of transport. This means that in most cases the buyer's truck or its carrier's truck backs up to the seller's loading dock and the seller's staff and equipment complete the loading. Depending on local rules and regulations, it would usually then be the truck driver's responsibility to ensure that the load is secured on his truck, but this occurs after the seller has loaded the goods.

FCA is available for both domestic and international transactions.

If the transaction is an international trade then the seller will need to complete any export formalities required by its country's authorities. This usually will mean that the buyer must inform the seller of the means of transport from the seller's country, whether by road, rail, air or sea. The seller will usually need to know from the buyer the name and contact details of its carrier, the freight booking information including reference number/s, and any relevant data such as truck registration, railcar number, the flight details or the vessel's details so that it can correctly declare both the date of export and the means of export to its authorities. The seller can outsource this task to the buyer's carrier if they agree, at the seller's cost.

Should the buyer fail to advise the seller about the carrier's details, and fail to advise the booking details either via their carrier or themselves, the buyer will have no recourse on the seller and likely will have breached the contract. Similarly, if the buyer or its carrier fail to collect the goods at the agreed time and place, the buyer likely will have breached the contrac

The seller will of course build into its selling price the estimated costs of loading the goods and

carrying out the export formalities, plus no doubt a positive margin of error in case they cost more than initially anticipated, a margin to take into account its administrative costs and quite likely a profit margin which after all it is entitled to do on any costs which are an input when determining its selling price. The costs of all these and its original ex works price are hidden from the buyer, simply being bundled into the one FCA price.

The seller is comforted by the knowledge that once it has delivered the goods, either at its own premises or those of the buyer's nominated person or carrier, its risk for loss or damage of the goods has finished. If the truck used by the buyer's carrier to collect the goods from the seller has an accident at the first corner after leaving the seller's premises and the goods are damaged, or even if that truck has an electrical fault causing it to burst into flames at the seller's loading dock immediately after loading has been completed, and damaging or destroying those goods, nevertheless the seller has delivered and is entitled to be paid for the goods.

In an export transaction using FCA the seller usually need not add VAT/GST to its sale, though it might require some form of evidence of export from the buyer to justify this action to its country's tax authorities.

For the first time, Incoterms® 2020 introduces the requirement that if the seller requires it the buyer must instruct its carrier to issue the seller with a transport document that the goods have been loaded. While this addition is mentioned in the Explanatory Notes for FCA as specifically regarding issue of a bill of lading typically for letter of credit purposes, in B6 it mentions "a transport document stating that the goods have been loaded (such as a bill of lading with an on board notation)" which does not preclude the seller and buyer agreeing in their contract that a copy of the bill of lading, copy of the air waybill marked "original for shipper", a copy of a road transport or rail document is to be provided to the seller for other purposes such as reporting the transaction as an export for taxation purposes. The shipper in such a document should usually still be shown as the buyer, not the seller as the seller is not a party to the contract of carriage and does not want any of the liabilities of the shipper, but the document ideally will evidence in some way that the goods were sourced from the seller.

What happens if the buyer refuses payment as a result of a dispute, or the documents under an L/C are not compliant and the market price has collapsed, or the buyer becomes bankrupt during transit? This is a matter outside of the Incoterms® 2020 rules but a prudent seller would investigate obtaining contingency insurance for the marine risks because the risk will still be theirs.

The advantages to the buyer are several. It allows the buyer control of the carriage of the goods, possibly consolidating them from multiple sales into economical transport units such as a full truck load or a full container load (FCL). It allows the buyer control over its transport costs by negotiating rates with its own carrier of choice and therefore no need to pay the seller a profit margin on its freight costs. It also means that the buyer through its carrier (hopefully) has full knowledge of where its goods are at any time

The disadvantages that the buyer might feel are outweighed by the advantages include the risk of loss or damage to the goods commencing at the earliest point in the seller's country, but a prudent

buyer would maintain an open marine insurance policy under such as the Institute Cargo Clauses (A) or (Air) with its warehouse to warehouse coverage. Another disadvantage might be seen as the need to pay inland costs in the seller's country, but any good forwarder should be able to use its local office or agent in the seller's country to accurately advise on these.

Another concern for the buyer could be that without the above on board bill of lading, it would not have any evidence of the date of export. This might be important if the buyer's country converts the transaction's value into local currency for value for duty using the exchange rate on the date of export, ie, on board for a container shipment.

An interesting provision that has been in the Incoterms® rules ever since the 1990 version has been that the seller must arrange for shipment at the buyer's cost and risk on the "usual terms" if it is so agreed in the contract. Sellers should be wary of doing this, and it will depend on the mode of transport and customary procedures in the relevant countries as to whether this is practical, desirable or could have unfortunate legal consequences for the seller. The contract should lay out very specifically what is required of the seller and limit their liability if they are to be declared as the shipper or consignor. This provision seems a little at odds with how FCA is supposed to work and presumably was added when the rules were written for a Europe-centred trade world where goods can be trucked by the seller at the buyer's cost and risk especially within a customs zone. Whether it has a place now in the wider world of cross-border international trade so dependent on sea transport is a good question but nevertheless the prevailing thought was to leave it in the FCA rule as "it can't hurt."

If the buyer requires extra documents such as a certificate of origin, the seller must assist the buyer, at the buyer's request, risk and cost, to obtain it.

If the parties want payment to be by LC the banks again will have problems. While the FCA Incoterms® 2020 rule now provides for the seller to be given a transport document by the buyer's carrier, if agreed in the contract, typically LCs include a latest shipment date. It is not the seller's responsibility to do anything beyond the delivery point, so for example in a container shipment the seller could deliver on the last day of the shipment period meaning the container would not be loaded on board for several days, and sometimes in peak seasons or bad weather, possibly not for two or three weeks after that. The solution to this is to include in the contract that the LC must specify a place of receipt (SWIFT MT700 tag 44A) and a place of delivery (tag 44B). Typically banks like to also show a port or airport of loading (tag 44E) and a discharge port or destination airport. The contract should also specify these so that if the buyer arranges transport from or to other ports then they will possibly be in breach of the contract. The contract should drill down to the fine detail such as local port or airport names which are likely to appear on the transport document, such as "BMT" for Bangkok Modern Terminal instead of just "Bangkok", or "Jan Smuts Airport" instead of just "Johannesburg airport", or broaden the scope with "any" such as "any port in Bangkok" or "any airport in Johannesburg."

As well the seller has no control over when the container is loaded on board or the date of the flight, so the LC should state a latest delivery date (tag 44C) or shipment period (tag 44D) with at least 21

days added to the agreed delivery date or last day of the agreed period to allow for delays outside the seller's control or responsibility.

It might be tempting for the carrier to name the seller as the shipper on the transport document as mentioned above, but the seller should be aware that the LC rules (UCP600 article 14k) allow that the shipper or consignor on any document need not be the beneficiary (seller). The shipper or consignor in the case of a transport document under FCA should be the buyer, which then introduces a further problem for a sea shipment if the LC requires the bill of lading be consigned to order and blank endorsed – the seller is not the shipper so cannot endorse the bill of lading, so if the LC calls for a negotiable bill of lading then there is no choice for the seller/beneficiary to be shown as shipper whether it wants to be shown as a merchant on the bill of lading or not.

An FCA transaction does not easily lend itself to payment by LC, though it is possible with intelligent thought by the seller and buyer and most importantly by the buyer's issuing bank who will find themselves well out of their comfort zone and outside of the typical attitude of "we've always done it this way."

ABOUT TRADE FINANCE GLOBAL

TRADE FINANCE WITHOUT BARRIERS

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Want a more detailed explanation on how to use the Incoterms rules?

Trade Finance Global (TFG) has published a comprehensive Commentary on the Incoterms® 2020 rules. This is meant to be used in conjunction with The International Chamber of Commerce's (ICC) new book, Incoterms® 2020.

The Commentary on the Incoterms® 2020 rules is authored by Bob Ronai CDCS, a member of the ICC's Incoterms® 2020 Drafting Group, in partnership with Trade Finance Global (TFG).

This 94 page e-book is designed to provide an Article by Article overview and commentary of the Incoterms® rules, in plain simple English.

- Written by a Member of the ICC Incoterms® 2020 Drafting Group
- Introduction to why Incoterms® 2020 Rules were written and the process
- Article-by-article (A1-A10 and B1-B10) explanation of the rules
- Any mode and sea / inland transport rules
- Includes updates on EXW, FCA, CPT, CIP, DAP, DPU, DDP, FAS, FOB, CFR and CIF
- Advantages and disadvantages of each Incoterms® Rule and how they might work with a Letter of Credit
- Conclusions and top tips for using Incoterms® 2020 Rules

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