Incoterms® 2010

By the International Chamber of Commerce (ICC)

ICC Rules for the use of Domestic and International Trade Terms

Kenya Maritime Authority

WHO WE ARE

Kenya Maritime Authority (KMA) was set up in June 2004 as the Government agency to take charge of maritime affairs in the country.
KMA falls under the State Department of Transport in the Ministry of Transport, Infrastructure, Housing and Urban Development.

MANDATE

The statutes that guide the operations of Kenya Maritime Authority are the Kenya Maritime Authority Act, No.5 of 2006 and the Merchant Shipping Act 2009.

The mandate of Kenya Maritime Authority as provided for in KMA Act 2006 is "to regulate, co-ordinate and oversee maritime affairs".

VISION

To be a leading maritime administration transforming Kenya into a globally competitive nation.

MISSION

To ensure sustainable, safe, secure, clean and efficient water transport for the benefit of stakeholders through effective regulation, coordination and oversight of maritime affairs.

For safe and efficient water transport

ISO 9001: 2008 CERTIFIED

KENYA VISION 2030

Incoterms® 2010

By the International Chamber of Commerce (ICC)

Incoterms 2000		Incoterms 2010	
EXW	EX-Works	EXW	EX-Works
FAS	Free Alongside ship	FAS	Free Alongside ship
FCA	Free CArrier	FCA	Free CArrier
FOB	Free On Board	FOB	Free On Board
CPT	Carriege Paid To	CPT	Carriege Paid To
CFR	Cost and FReight	CFR	Cost and FReight
CIP	Carriege Insurance Paid to	CIP	Carriege Insurance Paid to
CIF	Cost Insurance Freight	CIF	Cost Insurance Freight
DEQ	Delivery Ex Quay	DAT	Delivery At Terminal
DAF	Delivered At land Frontier		
DES	Delivered Ex Ship	DAP	Delivery At Place
DDU	Delivered Duty Unpaid		
DDP	Delivered Duty Paid	DDP	Delivered Duty Paid

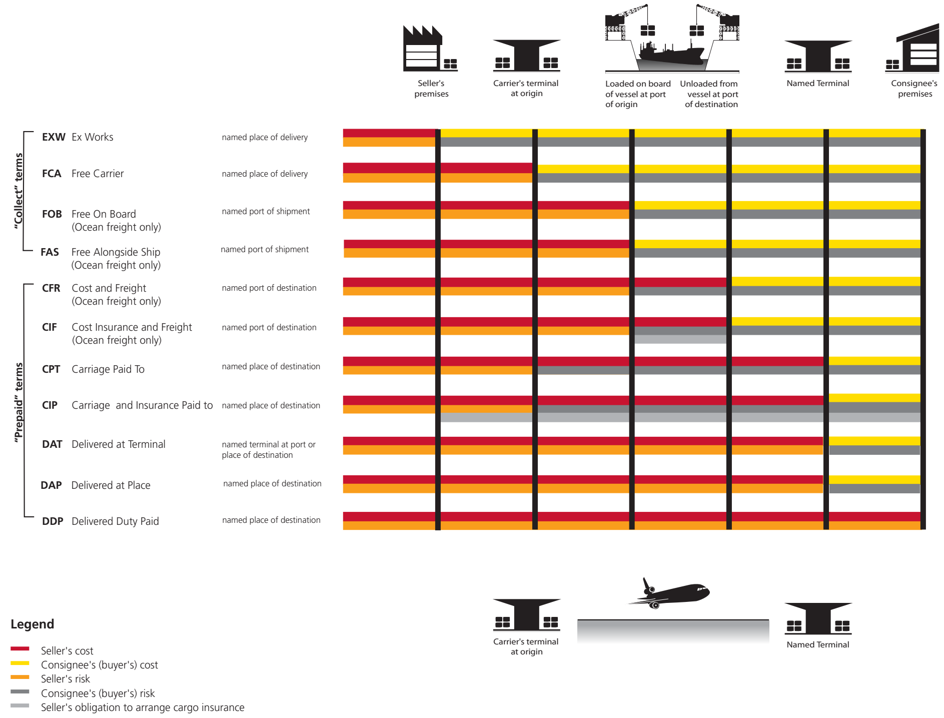
Incoterms 2010

International trade transactions are becoming complex and dynamic. Therefore, universally accepted rules are pre-requisite to avoid misunderstandings, litigations and costly disputes. INCOTERMS were developed to assist traders to avoid costly misunderstandings by providing clarity on issues relating to tasks, costs and risks involved in the delivery of goods from sellers to buyers. They are aimed at reduction or elimination of uncertainties arising from different interpretation of the rules in different countries.

The INCOTERMS or International Commercial Terms are internationally recognized standards used worldwide for domestic and international sales of goods contract, developed by the International Chamber of Commerce since 1936 and revised 8 times, with the current version as INCOTERMS 2010 which incorporated latest developments and trading practices. The Incoterms 2010, which came into effect on 1st January 2011, contain 11 terms, reduced from 13 terms in INCOTERMS 2000. The Incoterms 2010 address issues relating to transfer of risk, export clearance, transport costs, insurance, use of carriers/forwarders, import clearance, security related clearances and electronic freight documentation. Separate contracts however, should be made to take of issues like transfer of ownership; payment terms, commission rates, method of transportation, breach of contract, contracts of carriage of goods and terms of sale for intangible and immovable goods.

Incoterms 2010 are divided into two categories: (a) those suitable for all modes of transport (EXW, FCA, CPT, CIP, DAT, DAP, and DDP) and (b) those suitable only for sea/inland waterway transport (FOB, FAS, CIF and CFR). These terms are briefly explained below:

Basic overview of the Incoterms® 2010 rules



EXW
"Ex Works "means that the seller delivers when it places the goods at the disposal of the buyer at the seller's premises or at another named place (i.e., works, factory, warehouse, etc.). The seller does not need to load the goods on any collecting vehicle, nor does it need to clear the goods for export, where such clearance is applicable.

FCA
"Free Carrier "means that the seller delivers the goods to the carrier or another person nominated by the buyer at the seller's premises or another named place. The parties are well advised to specify as clearly as possible the point within the named place of delivery, as the risk passes to the buyer at that point.

FOB (applicable to ocean freight)
"Free on Board "means that the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel, and the buyer bears all costs from that moment onwards.

FAS (applicable to ocean freight)
"Free alongside Ship "means that the seller delivers when the goods are placed alongside the vessel (e.g., on a quay or a barge) nominated by the buyer at the named port of shipment. The risk of loss of or damage to the goods passes when the goods are alongside the ship, and the buyer bears all costs from the moment onwards.

CFR (applicable to ocean freight)
"Cost and Freight "means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.

CIF (applicable to ocean freight)
"Cost, Insurance and Freight "means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.

CPT
"Carried Paid To" means that the seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such place is agreed between the parties) and that the seller must contract for and pay the costs of carriage necessary to bring goods to the named place of destination.

CIP
"Carriage and Insurance Paid" means that the seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such place is agreed between the parties) and that the seller must contract for and pay to costs of carriage necessary to bring the goods to the named place of destination.

DAT
"Delivered at Terminal" means that the seller delivers when the goods, once unloaded from the arriving means of transport, are placed at the disposal of the buyer at a named terminal at the named port or place of destination. "Terminal" includes any place, whether covered or not, such as a quay, warehouse, container yard or road, rail or air cargo terminal. The seller bears all risks involved in bringing the goods to and unloading them at the terminal at the named port or place of destination.

DAP
"Delivered at Place" means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place.

DDP
"Delivered Duty Paid" means that the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.

Factors to consider before choosing an Incoterm for transacting business

a) Mode of transport

b) Risk profile

c) Payment method

d) Regulation of buyer's country

e) Normal business practice

f) Documentary requirements

g) Cost control

h) Country constraints

i) Keeping the customer happy

Why do traders sell FOB and buy CIF (Inappropriate use of Incoterms)

a) To free themselves from transport and insurance arrangements;

b) Customary arrangements or demands by overseas sellers/ buyers;

c) Liquidity problems of most exporters in developing countries, they are constrained to cater for transport logistics, particularly if the buyer does not pay them in advance;

d) Local rules or regulations could also be root cause;

e) Importers generally buy CIF if they are new in international trade or they have very small shipments. It is a more convenient way of shipping since they don't have to deal with freight or other shipping details, but it comes at an extra cost.

Buyers/ Seller Responsibilities

	Rules for any mode or modes of transport							Rules for sea and inland waterway transport			
	EXW	FCA	CPT	CIP	DAT	DAP	DDP	FAS	FOB	CFR	CIF
	Ex Works	Free Carrier	Carriage Paid To	Carriage & Insurance Paid To	Delivered at Terminal	Delivered at Place	Delivered Duty Paid	Free Alongside Ship	Free on Board	Cost & Freight	Cost, Insurance & Freight
SERVICES	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays
Export Packing	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Marking & Labeling	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Block and Brace	1	1	1	1	1	1	1	1	1	1	1
Export Clearance (License, EEI/AES)	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Freight Forwarder Documentation Fees	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Inland Freight to Main Carrier	Buyer	2	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Seller	Seller
Vessel Loading Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Seller	Seller
Ocean Freight / Air Freight	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Nominate Export Forwarder	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Marine Insurance	3	3	3	Seller	3	3	3	3	3	3	Seller
Unload Main Carrier Charges	Buyer	Buyer	4	4	Seller	Seller	Seller	Buyer	Buyer	4	4
Destination Terminal Charges	Buyer	Buyer	4	4	4	Seller	Seller	Buyer	Buyer	4	4
Nominate On-Carrier	Buyer	Buyer	5	5	5	5	Seller	Buyer	Buyer	Buyer	Buyer
Security Information Requirements	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
Customs Broker Clearance Fees	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer	Buyer	Buyer	Buyer
Duty, Customs Fees, Taxes	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer	Buyer	Buyer	Buyer
Delivery to Buyer Destination	Buyer	Buyer	5	5	5	5	Seller	Buyer	Buyer	Buyer	Buyer
Delivering Carrier Unloading	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer

Notes:
1 = Incoterms® 2010 do not deal with the parties' obligations for stowage within a container and therefore, where relevant, the parties should deal with this in the sales contract.
2 = FCA Seller's Facility - Buyer pays inland freight, other FCA qualifiers, Seller arranges and loads pre-carriage carrier and pays inland freight to the "F" delivery place
3 = Incoterms® 2010 does not obligate the buyer nor must the seller to insure the goods, therefore this issue be addressed elsewhere in the sales contract.
4 = Charges paid by Buyer or Seller depending on contract of carriage
5 = Charges paid by Seller if through Bill of Lading or door to door rate to Buyer's destination

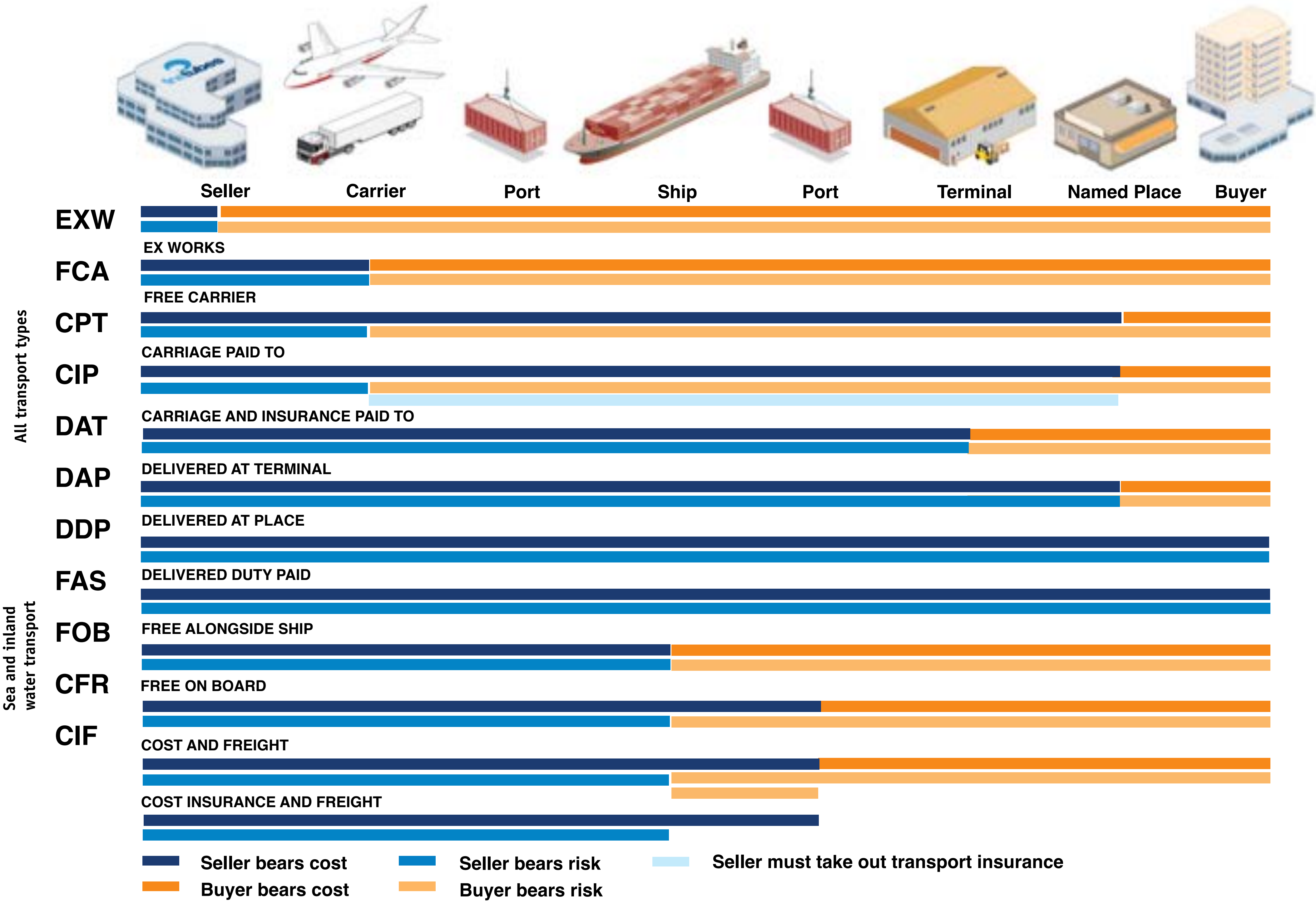
Use of Incoterms in Kenya and the Region

In East Africa, most of traders opt for Incoterms that put them at a disadvantage compared to their foreign trading partners. Majority of Traders in the region use Free On Board (FOB) for imports and Costs Insurance and Freight (CIF) terms for exports. Since traders in the region are net importers of finished products and exporters of primary commodities, there is a huge depletion of foreign reserves, reduced state revenue, loss of control of goods, loss of profits, loss of right to negotiate on better terms of carriage or insurance for shipment of goods and our export products become uncompetitive in the international market. Section 20 of the Insurance Act prohibits placing of Kenya business other than reinsurance business with an insurer not registered under the Act without prior approval by the Commissioner. Buyers are forbidden to insure imports abroad or import on Cost, Insurance and Freight basis (CIF).

Kenyan traders are encouraged to contract CIF for exports and FOB for imports in order to enjoy the following benefits:

National benefits

1. Development of local transport and insurance sectors;
2. Increased revenues for the state budget via taxes on transport and insurance;
3. Creation of job opportunities in local companies;
4. Reduced expenses in foreign currency, thus improving external trade balance.


Seller
Carrier
Port
Ship
Port
Terminal
Named Place
Buyer
All transport types
Sea and inland water transport
EXW
EX WORKS
FCA
FREE CARRIER
CPT
CARRIAGE PAID TO
CIP
CARRIAGE AND INSURANCE PAID TO
DAT
DELIVERED AT TERMINAL
DAP
DELIVERED AT PLACE
DDP
DELIVERED DUTY PAID
FAS
FREE ALONGSIDE SHIP
FOB
FREE ON BOARD
CFR
COST AND FREIGHT
CIF
COST INSURANCE AND FREIGHT
Seller bears cost
Buyer bears cost
Seller bears risk
Buyer bears risk
Seller must take out transport insurance

Individual benefits

1. Discounts on freight and insurance rates given to regular/quantity importers/exporters;

2. Foreign exchange savings accruing from transacting freight and insurance in local currency;

3. Easier processing of insurance claims;

4. Freedom to choose a carrier offering the most suitable terms;

5. Freedom to procure the most suitable insurance cover for CIF exports and FOB imports thereby controlling premium cost;

6. Provision of all facts and an optimistic viewpoint of the risk leading to a more realistic assessment of the premium;

7. Assurance to the exporter of goods sold under extended payment terms that insurance cover for the financial risk has actually been arranged;

8. Assurance that goods will not be held by transporter for non-payment of freight;

9. Freedom to change supplier for FOB import without necessarily cancelling the transport contract, leaving no bad effects on an import plan;

10. Freedom to change buyer for CIF export, after delivering goods on board if the exporter suspects insolvency or any other problem with the buyer;

11. An opportunity to sharpen skills, knowledge and experience in import/export transactions and also in dealing with transport logistics and insurance suppliers;

By selling/exporting FOB and buying/importing CIF, the importer/exporter:

1. Loses the right to nominate or negotiate terms of carriage or insurance for shipment of goods;

2. Reduces his/her income from sale of goods;

3. Incurs expenses that could have been avoided had he/she been directly involved in arrangements for shipment;

4. Consequently the price of products traded become less competitive;

The Appropriate use of INCOTERMS enables traders to realize savings which can make a huge difference in the bottom line of traders. Overall it puts the trade at an advantage when sourcing or supplying goods thus resulting in reduction in the cost of doing business. It is in view of the foregoing that the Kenya Maritime Authority (KMA) in collaboration with partners such as the Inter-governmental Standing Committee on Shipping (ISCOS), Kenya Shippers Council (KSC), Export Promotion Council (EPC), Kenya investment Authority (KEINVEST) amongst others, creates awareness on trade facilitation to the importers/exporters in Kenya and the region as a whole.

KENYA MARITIME AUTHORITY

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