

EXW | Ex Works
(named place of delivery)
Incoterms® 2020 [UPDATED]



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Ex Works (EXW) is the Incoterms® 2020 rule used to describe the delivery of goods by the seller at their place of business, normally in their factory, offices or warehouse. The seller does not need to then load items onto a truck or ship, and the remainder of the shipment is the responsibility of the buyer (e.g. overseas shipment and customs duty). EXW is therefore more favourable to the seller as they do not need to worry about the freight once it has left their premises. However it is vital to note that once the seller has informed the buyer that the goods for the contract are identified and set aside, the delivery has been made, the buyer bears the risk from that moment and is obliged to pay, even though the goods are still in the possession and physical control of the seller.

Not only that, it is not the seller's responsibility to load the goods onto the buyer's collecting

means of transport. How would this play out in real life? Will the seller allow the buyer's transport contractor to bring their own forklift and labour, and allow them to rampage around the seller's warehouse? What would be the insurance, workplace safety and other ramifications of this?

If the goods are being exported there are more problems. It is the buyer who must export clear the goods, and in most countries only an entity registered in that country can export. Add to that potential VAT/GST issues because unless the seller has evidence of the export they must charge this tax as it would be seen as a local sale.

In effect, using EXW as described in Incoterms 2020 is almost impossible.

Ex Works Seller and Buyer Obligations

EXW 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.

EXW A2 / B2: DELIVERY

A2 (Delivery)

The seller delivers simply when the goods are placed at the disposal of the buyer at an agreed point, which is usually the seller's own premises or somewhere like their contracted manufacturer, on the specifically agreed date or within the agreed period such as "by 31 March" or "within 90 days after contract date." This means that even though the goods are simply sitting within the seller's premises they have already been "delivered," the act of delivery here is not a physical handing over by a movement of the goods but a notional one achieved by the seller giving the appropriate notice to the buyer.

When the buyer arranges a collecting vehicle, whether a carrier's vehicle or, new for the 2020 rules, the buyer's own vehicle, to be at the named premises the seller has no obligation to load that vehicle. According to this rule the buyer must load the vehicle but in most cases this is simply not practical for a number of reasons. The seller most likely, for insurance and safety reasons, will not allow non-employees into their warehouse or factory. The seller certainly would not allow a buyer to go rampaging around the premises in a forklift that the buyer rolled off their vehicle, and to physically move the goods off say a rack three metres up might need a specialised forklift. The seller might even use an automated picking and despatch system. Usually the seller would be best placed to load the buyer's vehicle, but if this is the expectation then the contract should clearly state that they do so at the buyer's cost and risk. If the buyer is not prepared to take this risk then EXW is not the appropriate rule to be used and the parties should consider the FCA rule instead where it is the seller's obligation and risk to load the collecting vehicle.

If the goods are going to be at a location other than the seller's premises, such as a contracted manufacturer, or if the seller has several places within their premises such as numerous despatch docks, this information needs to be communicated to the buyer so their vehicle goes to the correct location. 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. Or there might be restrictions on truck size in a narrow roadway.

B2 (Delivery)

The buyer's role in EXW is that they must take delivery when the seller has made the goods available and has given their notice of this under A10. This usually will be when the goods are simply sitting in the seller's premises and may well be before the buyer's collecting vehicle arrives at the seller's premises. The buyer should consider their exposure to risk from this point on and would be wise to ensure that they have adequate insurance cover such as under Institute Cargo Clauses (A).

The delivery requirements of the EXW rule can be difficult to work with.

EXW A3 / B3: TRANSFER OF RISK

A3 (All Rules)

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 (All Rules)

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 give notice as described in B10 below and if the goods have been clearly identified as the goods described in the contract then the buyer bears all risks of loss or damage from the agreed date or the end of the agreed period for delivery.

EXW 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.

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.

Note that as the seller in EXW is not responsible for loading the goods onto the vehicle the buyer will bear the cost of loading which would typically need to be added into its contract with the carrier. There is no point in the carrier's truck turning up at the seller's premises with no loading equipment and the seller refusing to load.

EXW 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.

EXW A6 / B6: DELIVERY / TRANSPORT / DOCUMENT

A6 (Delivery / Transport / Document)

Because the seller delivers when it makes the cargo available to the buyer to collect, the seller has no obligation to provide the buyer with any delivery or transport document.

B6 (Delivery / Transport / Document)

Because the buyer receives the goods from the seller it must provide the seller with appropriate evidence of having taken delivery. The form of that evidence is a matter to be agreed in the contract of sale to suit both parties. It could be a signature on the seller's copy of the invoice, it could be the buyer's simple receipt, it could be a freight forwarder's cargo receipt, or some other form of evidence of having taken the goods.

EXW A7 / B7: EXPORT / IMPORT CLEARANCE

A7 (Export / Import clearance)

EXW is more suited to domestic transactions rather than international transactions.

In domestic transactions the seller has no obligations as there are not likely to be any clearances required.

In international transactions the seller has no obligation to arrange any export/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 countries of export/transit/import such as permits or licences; security clearance for export/transit/import; pre-shipment inspection required by the export/transit/import authorities; and any other official authorisations or approvals.

B7 (Export / Import clearance)

In domestic transactions the buyer has no obligation to the seller as there are not likely to be any clearances required.

In international transactions it is up to the buyer to carry out at its own cost all export/transit/import formalities required by the countries concerned, such as any permits or licences; any security clearances; pre-shipment inspection; and any other authorisations or formalities. Note the expression "it is up to" the buyer because all of these occur after EXW delivery so if the buyer fails to do any of these it is at its own risk as delivery has already occurred.

EXW 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.

EXW 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.

B9 (Allocation Of Costs)

The buyer must pay all costs from the time the goods have been delivered under A2, reimburse the seller for any costs they incurred providing the buyer with any assistance or information which the buyer needed to arrange transport, insurance or export and import formalities.

The buyer must pay any and all duties, taxes, other charges and costs of any customs and other export formalities required if the goods are exported.

The buyer also must pay any additional costs incurred either if they have failed to take delivery of the goods when they have been placed at their disposal or if they have failed to give the seller appropriate notice provided the seller had clearly identified the goods as being the contract goods.

EXW A10 / B10: NOTICES

A10 (Notices)

The seller must give notice to the buyer which is needed for the buyer to take delivery of the goods. The form of this notice should be included in the terms and conditions of the contract, detailing whether a brief email or some manner of more formal notice is agreed.

B10 (Notices)

If the parties agree that the buyer is entitled to nominate a place of taking delivery within the named place, and/or the time within any agreed period, the buyer must give the seller sufficient notice. This means for example that if the agreed delivery place is a large bulk storage facility, the buyer may nominate a particular area which is outside a restricted zone, in which it is not allowed to operate its own equipment with its own personnel, so that it can load its vehicle. It also means for example where the delivery period is a particular calendar month, and the buyer wants to take delivery on the 17th day of that month, the buyer must give sufficient notice of this to the seller. Both such matters would usually be detailed in the sales contract.

Ex Works (EXW): Advantages and Disadvantages

This rule's first version came into force in the original Incoterms® 1936 and included in its heading "Ex-factory, ex-mill, ex-plantation, ex-warehouse etc" in the English section of that book with German and French translations included in the book. Its origin in common usages go back long before that.

All advantage would seem to be to the seller, it does nothing more than shout (or email) "come and get 'em" or words to that effect. However if the sales contract is not well-drafted, while the seller might be expecting that the buyer is going to export the goods to an overseas market it could find that the buyer is in fact unable to complete export formalities and tries to reduce its potential losses by selling the goods into the seller's home market at a discounted price.

It would seem at first glance that the buyer is disadvantaged by having to take all risks and arrange and pay for everything. Assuming that it is in a good position to do so then it would likely find that it can arrange all transport and formalities at the same costs as might be offered the seller were it of a mind to do so, but without paying the seller any mark-up on these costs. Another possibility is that the buyer is buying goods not only from one seller but a number of sellers and chooses to accumulate them at another location then consolidate them into one larger more cost-effective shipment in one or more shipping containers.

On the other hand, the buyer must be in a position, for an overseas sale, to carry out export formalities in the seller's country. Most countries require the exporter to be a legally registered entity in that

country to be able to carry out export formalities which generally means the buyer, usually an entity legally registered in its own country, will not be able to do so. If the buyer tries to circumvent this by using a buying agent, freight forwarder, friend or relative in the seller's country to carry out export formalities it calls into question whether that third party to the sale is really in a legal position to be the exporter of record. Add to this the issues of the seller's country's taxation authorities looking at an EXW sale as a local sale and therefore likely subject to VAT/GST – how will the overseas buyer be able to recover the tax if it is of course not registered for VAT/GST in the seller's country? The Incoterms® 2020 rules simply cannot deal with tax laws and regulations varying from country to country, as the rules must be universal across all countries, continents, markets and legal/tax jurisdictions.

Another aspect of EXW that makes life difficult is that the seller has no obligation to load the buyer's means of transport. It is the buyer who must arrange this, and that introduces all manner of potential problems. If the seller makes its goods available in its covered warehouse, it quite probably will be subject to various occupational health and safety regulations plus a variety of insurance implications. It therefore cannot allow the buyer or its carrier to turn up with its truck, a forklift and its own staff to go rampaging through the seller's warehouse. Even if the seller at the last minute places the goods outside the doors of its warehouse while ever the buyer attempts to load on the seller's grounds there are likely to be similar problems.

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. There could be complications if the issuing authority in the seller's country will only show a registered company in that country as the exporter/shipper/consignor because the seller is none of them.

EXW is therefore best kept for domestic trades where questions of export formalities, how to claim refund of taxes and so on simply don't come into the equation, and where in those rare occasions the buyer is able to load the goods without all the local rules and regulations preventing it from doing so.

Now for letters of credit (LCs). This rule is extremely difficult to arrange payment by an LC. The banks typically want to see a negotiable bill of lading for sea, an air waybill for air, a copy of a rail or road transport document as appropriate. We have seen that the seller is not in any way responsible for transport and is not entitled to receive any document of transport. To make a workable LC as far as the seller is concerned it would need to call only for an invoice, possibly a packing list, and a copy of the buyer's receipt (not the original, that should rightly be kept by the seller). The seller has no obligation to obtain a certificate of origin, that should be arranged by the buyer as exporter or their carrier. The risk to the seller is that the buyer has already received the goods and if the seller is not familiar with LCs and makes a mistake in its documents so they are not compliant and rejected, or if the buyer or its bank are unscrupulous, they can claim a spurious discrepancy in the presented documents, refusing to pay. An LC is no better than an open account, but in fact worse because it will cost both parties in bank charges.

The transport document and any export formalities should not show the seller as exporter or consignor, and a carrier doing this would be completely incorrect and making serious misrepresentations which could come back to the detriment of the seller. For example if the carrier made an error in the export

formalities which was a serious breach of the export regulations the local authorities would likely want to take action against the party declared as exporter; or if the buyer does not take the container from the terminal at the destination the carrier could claim demurrage and detention from the seller if it was named as shipper or consignor on the bill of lading despite not being a party to the contract of carriage.

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Refer to ICC publication no. 723E for the text*

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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).

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