

Incoterm DDP – not to be recommended for suppliers outside the EU

Why do we advise against using the Incoterm DDP?

DDP (delivery duty paid) typically includes that the seller is responsible for the arrangement of carriage, delivering the goods at the named place cleared for import and all applicable taxes and duties paid, i.e. the seller organises customs clearance in the EU and pays customs duties and import VAT.

- 1.) The seller based outside the EU has to clear the goods for import. According to the Union Customs Codex (UCC), Article 170, any person declaring goods needs to be based in the EU. In the a. m. case the seller typically is not registered in the EU, he cannot clear the goods for import.
- 2.) Instead, the seller could engage an indirect representative like a customs agent or a logistics company based in the EU (Article 18, UCC). In that case the representative shall act in his or her own name but on behalf of the seller – then the representative becomes liable for all import duties of his or her customer and has to fulfill all formal requirements of the represented customers like keeping documents or participating in customs audits. Customs agents based in the EU avoid indirect representation by all means.
- 3.) To avoid the high risks involved in indirect representation a Customs Agent could act as a direct representative instead – he or she would then act in the seller's name and on their behalf. As the seller is based outside the EU (and therefore cannot declare goods, s. 1.) only the buyer could clear the goods for import – who agreed on Delivery Duty Paid in the first place which is the complete opposite.
- 4.) Should the Customs Agent clear the goods in the buyer's name without him knowing, the Customs Agent is acting without power of representation, i.e. he becomes debtor of all import duties. Customs Agents will not do so due to obvious reasons.
- 5.) Further to risks based on the UCC, there are risks due to VAT regulations.
 - a. Should the Customs Agent act without power of representation, he also becomes debtor of VAT. As he is not owner of the goods, he cannot have the VAT returned.
 - b. Financial authorities only return VAT to the one who is in power of disposition of the goods. In the a. m. case only the seller is in power of disposition of the good, i.e. he would be entitled to return of VAT if he was based in the EU. But as he is not, VAT is not returned at all:
 - i. Not to the seller, as he is based outside the EU
 - ii. Not to the buyer as he is not in power of disposition of the goods
 - iii. Not to the Customs Agent as he is also not in power of disposition of the goods
- 6.) There are also risks due to foreign trade legislation:

According to German foreign trade legislation the buyer of goods is the importer of goods – this is compulsory and overrides the Incoterms™

Due to the given reasons DDP is not suitable for deliveries into the EU from outside the EU. We therefore recommend to choose DAP (duty paid) instead; if DDP has already been agreed on, there is also the option to change it to DAP (duty paid) in due course.

Should you have questions or need help in finding the correct Incoterm™, please phone or e-mail your regular contact with us or use info@kopf-luebben.com.