INCOTERMS provide a standard so that all the parties know that when a term is employed it is used in the INCOTERMS sense. This means that both parties can have some security about their rights and obligations, and that the risk of ambiguity is reduce, though not eliminated. There are advantages and disadvantages of using any INCOTERMS for the benefit of any party. It really depends on the purchasing power and negotiation power of both parties in order to finalise on the INCOTERM used. In this case Procurement would negotiate the best INCOTERM for the benefit of its company and at the same time to achieve win-win situation for both parties.

Transfer of risk and contractual obligations

Foreseeing the transfer of risk is a key aspect of preparing the contract. By using INCOTERMS, the risk of loss and damage can be shifted in different ways between the supplier and the buyer. It is up to the parties to select the means that is appropriate for their contract and, if necessary, modify the INCOTERMS used.

When products ‘at the seller’s risk’ are damaged or lost, the seller may be prevented from completing its obligation to deliver according to the terms of the contract. In this situation, the buyer will not have to pay the purchase price and may resort to legal remedies available to recover any losses incurred because of the default.

When damage or destruction occurs to products ‘at the buyer’s risk’, the buyer will have to bear the loss. The buyer must still fulfil its obligations to pay the seller. It will be up to the buyer to claim for damages on insurance companies or transport operators, as appropriate. Such claims may involve both contracts for procurement and carriage as well as mandatory international legal conventions.

Reading


Activity 4.3

What is the main difference between the F-group terms and the C-group terms? When would it be unwise for the buyer to accept the EXW terms?