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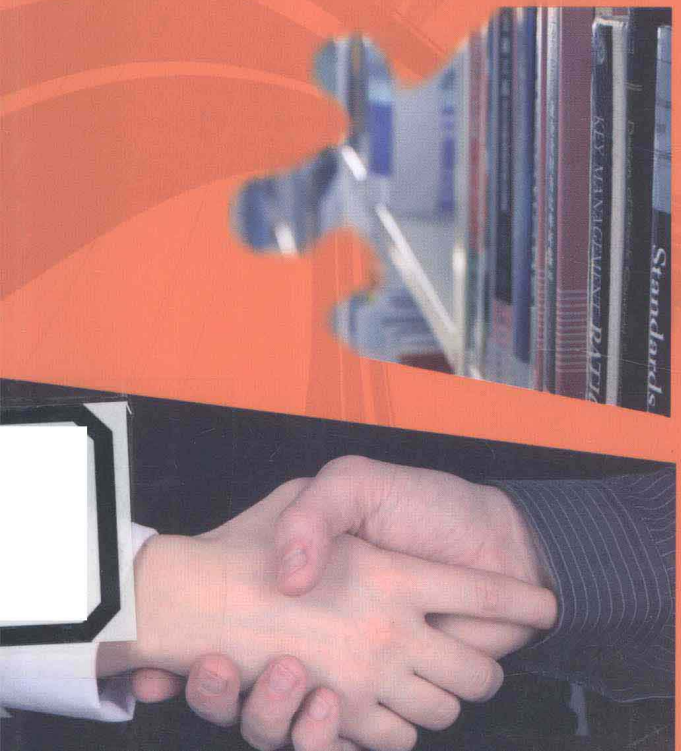
国际贸易实务

International Trade Practice

（第二版）

●英汉对照版●

主编/郭　琛



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副主编　袁自国　任雪梅

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内容简介

本书是以国内外国际贸易实务研究和教材建设的最新进展为主线组织编写而成的，对第一版进行了大规模的修订和完善。全书分为10章：第一章介绍了最新版本的国际贸易术语；第二章到第九章介绍了国际贸易合同的主要条款，如货物的品名、品质、数量、包装、价格、运输、保险、货款支付、检验、索赔、不可抗力及仲裁；第十章介绍了国际货物销售合同的商订。附录介绍了国际贸易实务常用词汇和单证样本。

本书可以作为普通高等学校国际贸易、国际经济、国际金融及工商管理等专业本科阶段的国际贸易实务课程双语教材，也可以作为跨国公司、银行及保险公司等金融机构的培训教材。

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前 言

本书第一版已出版近4年，得到了广泛的好评。众多师生在使用本教材的过程中，给我们提出了非常富有建设性的意见和建议，在此我们表示衷心的感谢。根据国内外教材建设的最新进展、我们在教学第一线所积累的经验以及众多同行师生的意见和建议，我们对第一版进行了大规模的修订和完善。

“国际贸易实务”是高等院校国际经济与贸易等专业的一门主干课，适宜采用外语讲授。《国际贸易实务（第二版）》正是为了适应入世后国际化竞争的需要而编写的，其目的是为有志于从事国际经贸事业的人员，提供适应新形势要求的必备理论知识和实践技能，以提高国际经贸人员的理论水平和实际操作能力，不断增强其国际竞争力。

编者借鉴了国内外学者的研究成果，在教材结构上作了一些尝试性的创新，既有简单基本常识的阐述，又有重点难点的讲解；既有理论知识的框架体系，又注意理论联系实际，用案例分析，着力于事务操作、技能训练。这种结合我国对外经贸实践，利用外资和外贸实务的引导式学习方式，必将有助于读者提高分析问题和解决问题的能力。全书结构完整，内容详实，简明易懂，符合国情。

本书撰写的分工如下：哈尔滨理工大学经济学院郭琛负责第一章、第五章、第八章（共约180千字）；哈尔滨师范大学西语学院袁自国负责第二章至第四章、第十章（共约90千字）；哈尔滨师范大学西语学院任雪梅负责第六章、第七章、第九章（共约80千字）。

本书主编对修订稿进行了全面、细致的审订。国际贸易的理论与实践正在不断发展完善之中，加之作者水平有限，书中错误或疏漏之处在所难免，恳请同行专家和广大读者批评指正。

编 者

2011年9月

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Chapter 1 International Trade Terms

1.1 Summary of International Trade Terms

1.1.1 Role of Trade Terms

Trade terms, also known as price terms or delivery terms, are standardized terms used in sales contracts that describe the place and manner for the transfer of goods from the seller to the buyer. These trade terms, such as Free on Board (FOB) and Cost, Insurance, and Freight (CIF), may also define a variety of other matters, including the price, the time when the risk of loss shifts from the seller to the buyer, and the costs of freight and insurance. The use of trade terms greatly simplifies the process of negotiation of contract, thus saving time and cost for businessmen.

1.1.2 International Rules & Practices on Trade Terms

Trade terms have been developed in practice for many years. However, different countries might have different interpretations of the terms, misunderstandings occurred frequently. To clear up the confusion, some commercial organizations drew up sets of rules or standard definitions.

1. Warsaw-Oxford Rules 1932

This rule was drafted by the Association of International Law in 1932. It contains 21 clauses, which only stipulate the nature of CIF contract, and the charges, risks and obligations which should be born by the seller or the buyer.

2. Revised American Foreign Trade Definitions 1941

This rule was made out by nine American commercial organizations in 1941. It is a set of foreign trade terms which are considered obsolete, but still sometimes is used in domestic U. S. trade. It contains 6 trade terms.

3. International Rule for the Interpretation of Trade Terms 2000

The International Chamber of Commerce (ICC) developed INCOTERMS (International Commercial TERMS). It was first published in 1936 and has been periodically revised. The INCOTERMS 2000 came into force on Jan. 1, 2000. In this rule, there are totally 13 trade terms, which have been divided into 4 different groups.

(1) The "E" term (EXW). The only term where the seller/exporter makes the goods available at his or her own premises to the buyer/importer.

(2) The "F" terms (FCA, FAS and FOB). Terms where the seller/exporter is responsible to deliver the goods to a carrier named by the buyer.

(3) The "C" terms (CFR, CIF, CPT and CIP). Terms where the seller/exporter is responsible for contacting and paying for carriage of the goods, but not responsible for additional costs or risk of loss or damages to the goods once they have been shipped. C terms evidence "shipment" (as opposed to "arrival") contracts.

(4) The "D" terms (DAF, DES, DEQ, DDU and DDP). Terms where the seller/exporter is responsible for all costs and risks associated with bringing the goods to the place of destination. D terms evidence "arrival" contracts.

4. International Rule for the Interpretation of Trade Terms 2010

The global economy has given business broader access than ever before to markets all over the world. Goods are sold in more countries, in large quantities, and in greater variety. But as the volume and complexity of global sales increase, so do possibilities for misunderstandings and costly disputes when sale contracts are not adequately drafted.

The INCOTERMS rules, the ICC rules on the use of domestic and international trade terms, facilitate the conduct of global trade. Reference to an INCOTERMS 2010 rule in a sale contract clearly defines the parties' respective obligations and reduces the risk of legal complications.

Since the creation of the INCOTERMS rules by ICC in 1936, this globally accepted contractual standard has been regularly updated to keep pace with the development of international trade. The INCOTERMS 2010 rules take account of the continued spread of customs-free zones, the increased use of electronic communications in business transactions, heightened concern about security in the movement of goods and consolidates in transport practices. INCOTERMS 2010 update and consolidate the 'delivered' rules, reducing the total number of rules from 13 to 11, and offers a simpler and clearer presentation of all the rules. INCOTERMS 2010 are also the first version of the INCOTERMS rules to make all references to buyers and sellers gender-neutral.

The broad expertise of ICC's Commission on Commercial Law and Practice, whose membership is drawn from all parts of the world and all trade sectors, ensures that the INCOTERMS 2010 rules respond to business needs everywhere.

ICC would like to express its gratitude to the members of the Commission, chaired by Fabio Bortolotti (Italy), to the Drafting Group, which comprised Charles Debattista (Co-Chair, France), Jens Bredow (Germany), Johnny Herre (Sweden), David Lwee (UK), Lauri Railas (Finland), Frank Reynolds (US), and Miroslav Subert (Szech Republic), and to Asko Raty (Finland) for assistance with the images depicting the 11 rules.

1.2 International Practice

1.2.1 Purpose and Scope of INCOTERMS

The purpose of INCOTERMS is to provide a set of international rules for the interpretation of the most commonly used trade terms in foreign trade. Thus, the uncertainties of different interpretation of such terms in different countries can be avoided or at least reduced to a considerable degree.

Frequently, parties to a contract are unaware of the different trading practices in their respective countries. This can give rise to misunderstandings, disputes and litigation, with all the waste of time and money that this entails. In order to remedy these problems, the International Chamber of Commerce first published in 1936 a set of international rules for the interpretation of trade terms. These rules were known as "INCOTERMS 1936". Amendments and additions were later made in 1953, 1967, 1976, 1980, 1990, 2000 and presently in 2010 in order to bring the rules in line with current international trade practices. It should be stressed that the scope of INCOTERMS is limited to matters relating to the rights and obligations of the parties to the contract of sale with respect to the delivery of goods sold (in the sense of "tangible", not including "intangibles" such as computer software).

It appears that two particular misconceptions about INCOTERMS are very common. First, INCOTERMS are frequently misunderstood as applying to the contract of carriage rather than the contract of sale. Second, they are sometimes wrongly assumed to provide for all the duties which parties may wish to include in a contract of sale.

First of all, as has always been underlined by ICC, INCOTERMS deal only with the relation between sellers and buyers under the contract of sale, and moreover, only do so in some very distinct respects. While it is essential for exporters and importers to consider the very practical relationship between the various contracts needed to perform an international sales transaction where not only the contract of sale is required, but also contracts of carriage, insurance and financing. INCOTERMS relate to only one of these contracts, namely the contract of sale. Nevertheless, the parties' agreement to use a particular INCOTERMS would necessarily have implications for the other contracts. To mention a few examples, a seller having agreed to CFR or CIF contract cannot perform such a contract by any other mode of transport than carriage by sea, since under these terms he must present a bill of lading or other maritime document to the buyer which is simply not possible if other modes of transport are used. Furthermore, the document required under a documentary credit would necessarily depend upon the means of transport intended to be used.

Second, they deal with the obligations to clear the goods for export and import, the packing of the goods, the buyer's obligation to take delivery as well as the obligation to provide proof that the respective obligations have been duly fulfilled. Although INCOTERMS are extremely important for the implementation of the contract of sale, a great number of problems may occur in such breaches as well as exemptions from liability in certain situations. It should be stressed that INCOTERMS are not intended to replace such contract terms that are needed for a complete contract of sale either by the incorporation of standard terms or by individually negotiated terms. Generally, INCOTERMS do not deal with the consequences of breach of contract and any exemptions from liability owing to various impediments. These questions must be resolved by other stipulations in the contract of sale and the applicable law. INCOTERMS have always been primarily intended for use where goods are sold for delivery across national boundaries, hence, it is a set of international commercial terms. However, INCOTERMS are in practice at times also incorporated into contracts for the sale of goods within purely domestic markets. Where INCOTERMS are used, the A2 and B2 clauses and any other stipulation of other articles dealing with export and import do, of course, become redundant.

1.2.2 Reasons of INCOTERMS' Revision

The main reason for successive revisions of INCOTERMS has been the need to adapt them to contemporary commercial practice. Thus, in the 1980 revision the term Free Carrier (now FCA) was introduced in order to deal with the frequent case where the reception point in maritime trade was no longer the traditional FOB point (passing of the ship's rail) but rather a point on land, prior to loading on board a vessel, where the goods were stowed into a container for subsequent transport by sea or by different means of transport in combination (so called combined or multimodal transport).

Further, in the 1990 revision of INCOTERMS, the clauses dealing with the seller's obligation to provide proof of delivery permitted a replacement of paper documentation by EDI messages provided the parties had agreed to communicate electronically. Needless to say, efforts are constantly made to improve upon the drafting and presentation of INCOTERMS in order to facilitate their practical implementation.

1.2.3 INCOTERMS 2000

During the process of revision, which has taken about two years, ICC has done its best to invite views and responses to successive drafts from a wide ranging spectrum of world traders, represented as these various sectors are on the national committees through which ICC operates.

The result of this dialogue is INCOTERMS 2000, a version which when compared with INCOTERMS 1990 may appear to have effected few changes. It is clear, however, that INCOTERMS now enjoy world wide recognition and ICC has therefore decided to consolidate upon that recognition and avoid change for its own sake. On the other hand, serious efforts have been made to ensure that the wording used in INCOTERMS 2000 clearly and accurately reflects trade practice. Moreover, substantive changes have made in two areas:

(1) the customs clearance and payment of duty obligations under FAS and DEQ;

(2) the loading and unloading obligations under FCA.

All changes, whether substantive or formal have been made on the basis of thorough research among users of INCOTERMS and particular regard has been given to queries received since 1990 by the Panel of INCOTERMS Experts, set up as an additional service to the users of INCOTERMS.

1.2.4 Incorporation of INCOTERMS into the Contract of Sale

In view of the changes made to INCOTERMS from time to time, it is important to ensure that where the parties intend to incorporate INCOTERMS into their contract of sale, an express reference is always made to the current version of INCOTERMS. This may easily be overlooked when, for example, a reference has been made to an earlier version in standard contract forms or in order forms used by merchants. A failure to refer to the current version may then result in disputes as to whether the parties intended to incorporate that version or an earlier version as a part of their contract. Merchants wishing to use INCOTERMS 2000 should therefore clearly specify that their contract is governed by "INCOTERMS 2000".

1.2.5 Structure of INCOTERMS

In 1990, for ease of understanding, the terms were grouped in four basically different categories : namely starting with the term whereby the seller only makes the goods available to the buyer at the seller's own premises (the "E" term Ex works); followed by the second group whereby the seller is called upon to deliver the goods to a carrier appointed by the buyer (the "F" terms FCA, FAS and FOB); continuing with the "C" terms where the seller has to contract for carriage , but without assuming the risk of loss of or damage to the goods or additional costs due to events occurring after shipment and dispatch (CFR, CIF , CPT, and CIP); and, finally, the "D" term whereby the seller has to bear all costs and risks needed to bring the goods to the place of destination (DAF, DES, DEQ, DDU, and DDP). Table 1.1 sets out this classification of the trade terns.

Table 1.1 INCOTERMS 2000

Group E	**Departure**
	EXW Ex Works (... named place)
Group F	**Main carriage unpaid**
	FCA Free Carrier (... named place) **FAS** Free Alongside Ship (... named port of shipment) **FOB** Free On Board (... named port of shipment)
Group C	**Main Carriage Paid**
	CFR Cost and Freight (... named port of destination) **CIF** Cost, Insurance and Freight (... named place of destination) **CPT** Carriage Paid To (... named port of destination) **CIP** Carriage and Insurance Paid To (... named place of destination)
Group D	**Arrival**
	DAF Delivered At Frontier (... named place) **DES** Delivered Ex Ship (... named port of destination) **DEQ** Delivered Ex Quay (... named port of destination) **DDU** Delivered Duty Unpaid (... named place of destination) **DDP** Delivered Duty Paid (... named place of destination)

Further, under all terms, as in INCOTERMS 2000, the respective obligations of the parties have been grouped under 13 headings where each heading on the seller's side "mirrors" the position of the buyer with respect to the same subject matter.

1.2.6 Terminology

While drafting INCOTERMS 2000, considerable efforts have been made to achieve as much consistency as possible and desirable with respect to the various expressions used throughout the thirteen terms. Thus, the use of different expressions intended to convey the same meaning has been avoided. Also, whenever possible, the same expressions as appear in the 1980 *UN Convention on Contracts for the International Sale of Goods* (CISG) have been used.

1. Shipper

In some cases it has been necessary to use the same term to express two different meanings simply because there has been no suitable alternative. Traders will be familiar with this difficulty both in the context of contracts of sale and also of contracts of carriage. Thus, for example, the term "shipper" signifies both the person handing over the goods for carriage and the person who makes the contract with the carrier: however, these two "shippers" may be different persons, for example, under a FOB contract where the seller would hand over the goods for carriage and the buyer would make the contract with the carrier.

2. Delivery

It is particularly important to note that the term "delivery" is used in two different senses in INCOTERMS. First, it is used to determine when the seller has fulfilled his delivery obligation which is specified in the A4 clauses throughout INCOTERMS. Second, the term "delivery" is also used in the context of the buyer's obligation to take or accept delivery of the goods, an obligation which appears in the B4 clauses throughout INCOTERMS. Used in this second context, the word "delivery" means first that the buyer "accepts" the very nature of the "C" terms, namely that the seller fulfils his obligations upon the shipment of the goods and, second that the buyer is obliged to receive the goods. This latter obligation is important so as to avoid unnecessary charges for storage of the goods until they have been collected by the buyer. Thus, for example, under CFR and CIF contracts, the buyer is bound to accept delivery of the goods and to receive them from the carrier and if the buyer fails to do so, he may become liable to pay damages to the seller who has made the contract of carriage with the carrier or, alternatively, the buyer might have to pay demurrage charges resting upon the goods in order to obtain the carrier's release of the goods to him. When it is said in this context that the buyer must "accept delivery", this does not mean that the buyer has accepted the goods as conforming with the contract of sale, but only that