新世纪商务英语专业本科系列教材（第二版）/ 总主编 王立非

国际商务合同简明教程

A SHORT COURSE IN INTERNATIONAL CONTRACTS

外方编者 Karla C. Shippey 中方主编 严明

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总序

进入“十三五”，我国高等英语教育迎来深化改革和创新发展的关键期，商务英语专业也随之从规模发展进入内涵发展和质量提升的新常态。截至2016年，全国已有293所高校开办了商务英语本科专业，有近500所高校的英语类专业开设了商务方向或课程。2017年，教育部制订的《高等学校商务英语专业本科教学质量国家标准》（以下简称《国家标准》）也将颁布，《国家标准》对商务英语人才培养提出了明确要求，以满足对外开放的国家战略和需求。

为了认真贯彻落实《国家标准》，全国高等学校商务英语专业教学协作组与上海外语教育出版社密切合作，对入选“十二五”普通高等教育本科国家级规划教材的“新世纪商务英语专业本科系列教材”进行全面修订。修订后的“新世纪商务英语专业本科系列教材（第二版）”体系更加完整，涵盖英语知识与技能和商务知识与技能两个模块，很好地体现出《国家标准》对商务英语专业学生知识和能力的要求。

本系列教材中，英语知识与技能模块包含《商务英语综合教程》、《商务英语视听说教程》、《商务英语阅读教程》、《商务英语写作教程》、《商务英语论文写作》、《商务英语口译教程》、《商务英汉翻译教程》等。

商务知识与技能模块包含《国际贸易实务与操作》和《国际商业伦理》、《国际商务合同》、《国际经济学》、《国际知识产权》、《国际营销》、《国际支付》、《国际贸易单证》等简明教程。

本系列教材具有以下四个鲜明的特色：

第一，完全对接《国家标准》规定的培养目标和课程体系，突出打牢英语基本功，拓宽国际视野，提升人文素养，培养商务意识和素养，着重提高英语应用能力、商务实践能力、跨文化交流能力、思辨与创新能力、自主学习能力。

第二，编写理念先进，选材新颖，充满时代感，坚持语言、文化、商务三者有机结合，充分体现国际化、人文性、复合型、应用性的特点和全人教育的理念。

第三，体系完整，覆盖商务英语专业核心课程，英语知识与技能教材突出听、说、读、写、译、跨文化交际等技能训练导向；商务知识与技能教材理论体系完整，知识讲解简明扼要，语言原汁原味，配套练习实用性和可操作性强，注重中外真实案例分析，培养思辨和创新能力。

第四，课堂任务设计多样化和立体化的特色鲜明，突出网络多媒体技术的应用，提供丰富的视频材料和教学资源，加大了英语学习的趣味性和输入的有效性。

本系列教材是全国高等学校商务英语专业教学协作组重点推荐教材，由国内商务英语教学专家编写，可供一、二年级商务英语专业本科生、英语专业商贸方向学生、财经类院校本科生以及各类经管专业本科生使用，同时也可作为大学英语ESP课程模块的商务英语教材，以及各类企业培训和社会商务英语学习者的参考书。本套教材的修订得到上海外语教育出版社领导和编辑的大力支持，在此表示衷心感谢。

全国高等学校商务英语专业教学协作组组长

对外经济贸易大学教授、博士生导师

前言

主要内容

本书融合了原版《国际商务合同》（*A Short Course in International Contracts*, Karla C. Shippey, JD 编）和配套实践教程，共分 21 章。第 1 至 11 章主要介绍国际合同的基本理论，主要包括：合同在国际商务中的作用、影响国际商务合同的因素、交易当事人、如何起草国际货物销售合同、国际贸易术语、准确起草合同条款、合同效力、合同背后的法律体系。第 12 至 21 章介绍各种合同（协议）范本，例如销售要约、订购单、咨询合同、经销协议、寄售协议等。书后附有词汇表和参考答案。

各章结构和特点

各章分为六部分，每部分均针对读者学习需求，方便阅读和使用（user-friendly）。具体结构和特色如下：

第一部分为“本章概要”和“学习目标”，特点：本部分具有高度概括性，对原教材进行要点提炼，并具有宏观的指导性，提供学习目标提示。

第二部分为原版《国际商务合同》正文，特点：本部分除了原版文章，还提供了生词、术语注释和文章要点解释，随时给予指点，方便读者使用。

第三部分为“知识链接”，特点：本部分提供背景知识，涵盖了国际商务合同理论、实务和案例。

第四部分为“巩固练习”，特点：练习编写以巩固原书理解为基调，涵盖了原书各章宏观概要、各节主旨以及微观重点知识点，同时顾及中国涉外合同理论和实务。

第五部分为“案例分析”，特点：案例经过精挑细选，具有代表性和应用性，“案例”一词取广义，包括实例、虚拟学术案例、仲裁、诉讼等，其中侧重中国涉外案例。

第六部分为“拓展阅读”，特点：第 1 至 11 章侧重相关主题文章；第 12 至 21 章提供相关范本，突出中国涉外商务合同范本。

注意事项

主题问题：原书第 10 章题目为“Validity of Contracts Locally”，直译为“合同在当地的效力”，编者认为该章主要介绍合同的争端解决方法，所以原题目有些不妥，建议改为“合同争端解决”。原书第 3、7、9 章题目均为“Parties to the Transaction”，即交易当事人，略显模糊。根据其内容，建议读者对第 7 章的主题理解为“合同风险预防”，第 9 章理解为“审校合同”。另外，原书第 1、2、10 章都谈及“合同与文化”问题，建议读者把相关部分作为一个整体来理解和学习。

语言问题：原书作者为美国律师 Karla C. Shippey, JD，其语言凸显了美式思维和法律思维，前者如归纳式思维，即多从细节谈起，后者如多元化思维，即习惯从不同角度阐述问题，对一个问题给出多种解答。另外，如同原书前言所述，作者在行文中刻意避免过于古板的法言法语（legalese），体现了西方简明语言运动（plain language movement）的趋势。但在实践中，很多合同文件的措辞还是比较传统的，例如原书合同范本中很多地方用了 will 一词，但在实践上还是 shall 用得更多。

本书可供高校法律、商贸和英语专业的师生、外贸工作者、律师等人员作为参考书籍。编写中不足之处自然存在，敬请指正！

编　者

Introduction

A SHORT COURSE IN INTERNATIONAL CONTRACTS is intended to give you an understanding of commercial agreements between parties trading across country borders. For the most part, you will face the same issues in negotiating domestic contracts as you will when you make agreements with traders in other countries. For example, parties to any commercial contract, whether domestic or international, must consider quality control, compliance with government regulations, protection of intellectual property rights, and dispute resolution. The international aspect of the contract adds a level of complexity to negotiations, performance, and enforcement because the parties are distant, have diverse cultural backgrounds, and are subject to the laws of different countries.

THE LAWYER'S POINT OF VIEW

International contracts must be understood within the context of the legal profession. If you should be so unlucky as to be in a crowd of practitioners of the legal profession, there are two words that you will hear spoken over and over again. Without a doubt, it is those two words that have led to the development of the complex language known to the general public as "legalese." No matter what the culture, regardless of the country, legal professionals from around the world live by this two-word creed. Ask them a question, and their eyes will take on a thoughtful gaze, their brow will furrow intently, and they will declare, "It depends" (or the equivalent in their own tongue).

Legal practitioners are trained to consider all options, and therefore they strive to state explicitly every possibility, leaving no room for argument or doubt. For example, if a sales contract requires a buyer to inform a seller that the goods being purchased must meet certain specifications, a question may arise as to the meaning of the word "inform." An attorney for the buyer might say, "it depends." In this case, the seller should have known that the buyer had particular specifications because the seller previously filled five orders for the buyer for the same goods. Then an attorney for the seller might say, "it depends." In this case, the buyer should have given written instructions because the buyer wrote the specifications on the previous five order forms. Thus, the attorneys

might turn the simple phrase "the buyer must inform the seller of any particular specifications for the goods" into legalese: "the buyer, regardless of whether he or she has previously ordered any of the seller's goods to conform with any specifications whatsoever, shall inform, whether in writing, orally, or otherwise, the seller of any and all specifications with which the buyer demands conformance of the goods that are the subject of this contract."

SIMPLE VS. COMPLEX CROSS-BORDER TRANSACTIONS

The author of this book has made every effort to avoid "legalese" and to recognize the extent to which different customs and laws will affect the creation, interpretation, and enforcement of cross-border contracts. To this end, the author has provided examples throughout the text to illustrate the effects of various regional business practices, a special section to explain how contracts are viewed in different legal systems, and a glossary to define the technical legal meaning of common legal terms.

Nevertheless, you are forewarned that the author starts from a biased platform: she is a lawyer, and an American one at that. For this reason, the author must admit to a strong belief in the "contract-happy" American tradition that every commercial relationship is best defined in a written contract because, while the contracting parties offer each other mutual benefits, they also have at least potentially adverse interests in securing the best deal. Written contracts take on added significance when parties from different cultures and countries have different expectations and customs and are subject to contrary laws. Increasingly, parties who are trading internationally have begun to recognize the advantages of entering into written contracts. There is a distinct trend among parties to cross-border transactions to operate on something more than a handshake.

In answer to the question of how simple an international commercial contract may be, the author is compelled to answer in the tradition of her chosen profession, "it depends." On the one hand, any contract can be written in plain terms. On the other hand, the complexity of the relationship, rights, and obligations of the parties should

be reflected in the length and intricacy of the contract provisions. When parties first meet and agree, they usually prefer not to think of what might go wrong and a simple contract is enticing. But if something does go wrong, parties who have fully set out their rights and obligations will be prepared for, if not protected against, the failure to complete the contract terms. While the author has presented "plain term" contract provisions, she has also included cautionary notes to alert you to the potential pitfalls in an effort to develop your awareness of whether a contract term states your intent. You should keep in mind that, while contract provisions should be as clear and definite as possible, when it becomes necessary to interpret the meaning of a contract provision — well, yes once again — *it depends* on the interpreter.

SAMPLE CONTRACTS

Finally, a few comments must be made about the sample contracts included in this book. You may find these forms quite useful in your own transactions. However, you will most certainly need to change the provisions to fit your own special situation. The author has dealt with the common issues and has tried to bring to your attention the problems that frequently arise because of imprecise or missing contract terms. Always be careful that your contract covers the rights and risks of your particular transaction, and seek the assistance of a lawyer to draft or review the contract in light of your specific circumstances. If you decide to use any of the forms, you should be certain to note the conventions used to indicate alternative phrasing in the forms. The conventions are not part of the forms. Alternative phrasing is shown in brackets, and inside the brackets, by parentheses. The brackets contain both instructions (in italics) and actual text (in roman). A slash between words that are enclosed in brackets indicates that you must select one of the words, again, depending on your specific situation.

Karla C. Shippey, J.D.
Orange, California

新世纪商务英语专业本科系列教材（第二版）

“十二五”普通高等教育本科国家级规划教材

全国高等学校商务英语专业教学协作组重点推荐教材

根据《高等学校商务英语专业本科教学质量国家标准》编写修订

专业核心课程	书名	配套资源	编者
英语知识与技能	商务英语综合教程(1-4册)	学生用书（MP3录音） 教师用书（电子教案） 综合训练	王立非
	商务英语视听说教程(1-4册)	学生用书（音视频） 教师用书（电子教案）	姜荷梅
	商务英语阅读教程(1-4册)	学生用书 教师用书	叶兴国
	商务英语写作教程		丁言仁
	商务英语论文写作		丁言仁
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	国际贸易单证简明教程		Edward G. Hinkelman 李月菊
	国际支付简明教程		Edward G. Hinkelman 白艳 袁艺舟 刘军伟
	国际商务合同简明教程		Karla C. Shippey 严明
	国际知识产权简明教程		Karla C. Shippey 张小号

Contents

The Role of Contracts in International Commerce

CHAPTER 1

合同在国际商务中的作用

本章概要

开篇介绍了合同的定义、形式以及国际商务合同的复杂性，正文从均势、跨境权利和义务、跨文化思考等八个方面阐述了合同在国际商务中的作用。

学习目标

本章题目为“合同在国际商务中的作用”，该主题具有开放性，可以从不同方面展开。原书作者作为一个美国律师，其思维方式体现了西方人的具体化和现实性，本着“问题—方案”的思路，对“合同在国际商务中的作用”作出了八个方面的具体论述。简单说来，作者强调了合同在国际商务中容易出现问题的几个方面，从而说明了合同的作用，并提出了相应的建议。国内学者或者学生面对这个问题，一般会从较抽象的角度回答：合同作用在于明确当事人权利义务关系，具有法律约束力，作为证据以保护当事人的权益。

学习“合同在国际商务中的作用”，需要关注的问题如前所述，包括诸多方面。本章在全书中具有统领性，可以说涵盖了其他各章的内容。本章学习目标可以归结为以下两个方面：

（1）基本目标

- 掌握国际商务中合同在哪些方面容易出现问题（如权利义务、适用法律、文化等），以便意识到合同的作用；
- 熟悉解决上述问题的方案（如合同要有明确的权利义务，必要的条款等），以便实现合同在国际商务中的作用。

（2）拓展目标

- 了解合同的性质、要素（如要约和承诺）和生命周期（即订立、履行和终止）；
- 了解合同在中国涉外商务中的作用。

第1段介绍了合同及商务合同的概念，其共同点为合同是两方或两方以上当事人之间的协议。第2段介绍了合同形式及合同与法律的关系，后者强调如果合同条款内容不确定或缺失，法律可以进行解释。第3段介绍了国际商务合同的复杂性。由于地域、社会价值和习惯、法律等方面的差异，当事人之间容易产生误解或争议。因此，最好以书面形式明确当事人之间的合同。

CONTRACTS ARE SO MUCH a part of living in a society that you are probably unaware of how many contracts you make every day. In the broadest sense, a *contract* is simply an agreement that defines a relationship between two or more parties. Two people exchanging wedding vows enter into a contract of marriage; a person who has a child contracts to nurture and support that child; shoppers selecting food in a market contract to purchase the goods for a stated amount. A *commercial contract*, in simplest terms, is merely an agreement made by two or more parties for the purpose of transacting business.

Any contract may be oral or written. Written terms may be recorded in a simple memorandum, certificate, or receipt. Because a contractual relationship is made between two or more parties who have potentially adverse interests, the contract terms are usually supplemented and restricted by laws that serve to protect the parties and to define specific relationships between them in the event that provisions are indefinite, ambiguous, or even missing.

When one party enters into a commercial contract with an unfamiliar and distant party across a country border, a contract takes on added significance. The creation of an international contract is a more complex process than the formation of a contract between parties from the same country and culture. In a cross-border transaction, the parties usually do not meet face-to-face, they have different societal values and practices, and the laws to which they are subject are imposed by different governments with distinct legal systems. These factors can easily lead to misunderstandings, and therefore the contracting parties should define their mutual understanding in contractual, and preferably written, terms. The role of a contract in an international commercial transaction is of particular importance with respect to the following aspects.

Word Study

contract /'kɒntrækt/ *n.* 合同；契约
agreement /ə'gri:mənt/ *n.* 协议；协定
memorandum /ˌmemə'rændəm/ *n.* 备忘录
ambiguous /æm'bɪgjuəs/ *a.* 模棱两可的
balance of power 均势
right /raɪt/ *n.* 权利

Balance of Power

合同在国际商务中的重要性可体现为以下八个方面

（1）**均势**：实践中，多数合同中双方的地位是不平衡的。比如，起草合同的当事人、熟悉合同的当事人一般占有优势地位。但在强制执行时，原先具有优势地位的当事人可能处于不利地位，如法院拒绝强制执行强势当事人起草的不合理条款。

The essence of a contract is the mutual understanding reached by two parties who hold adverse positions against each other. In most contractual situations, one party will have a stronger position than the other. For example, a large corporation that offers goods for sale may be able to insist on contract terms that are highly favorable to the corporation while restricting the rights of individual buyers. The corporation may offer a standard form sales contract with nonnegotiable terms — take it or leave it — to the buyer.

THE PARTY WHO DRAFTS THE CONTRACT

The balance of power between contracting parties usually tips in favor of the party who drafts the written contract. Even if the essential contract terms have already been negotiated and agreed by both parties, the drafting party will typically include provisions that are more skewed to his or her favor. To illustrate, a seller who drafts a sales contract may provide trade terms by which the risk of loss passes to the buyer at the first possible moment of the transfer.

THE PARTY FAMILIAR WITH WRITTEN CONTRACTS

In cross-border transactions, the balance of power may tip toward the party who is most familiar with written contracts and whose country has a more highly developed system of contract enforcement. This party may insist on terms that are common in his or her domestic contracts, and the other party, with less or no understanding of those terms, may simply acquiesce. As an example, a clause that is commonly inserted into contracts in the United States is, "Time is of the essence." If such a clause is included, failure to perform the contract within the time allowed is considered a material breach of the contract, entitling the other party to claim damages or other remedies. In cultures that place more emphasis on continuing business relationships, this clause has little meaning because contract terms are commonly renegotiated to allow for a party's difficulties in performing the contract — the ongoing relationship is more important than the one-time deal.

Word Study

enforcement
/ɪnˈfɔːsmənt/ *n.*
强制执行
breach
/briːtʃ/ *n.*
违约
damages
/ˈdæmɪdʒz/ *n.*
损害赔偿金
negotiation
/nɪˌgəʊʃɪˈeɪʃən/ *n.*
协商
obligation
/ɒblɪˈgeɪʃən/ *n.*
义务

ENFORCEMENT OF ONE-SIDED CONTRACTS

In the context of enforcement, the balance of power can work against the stronger party in a contract negotiation. Courts and arbitrators often refuse to enforce terms that unreasonably burden one party or that are otherwise unconscionable. Furthermore, contract provisions are typically given a strict interpretation against the party who drafted the terms, since that party had the opportunity to draft a clear and definite contract.

TIP: Because of the problem with enforcement, parties to cross-border transactions should avoid taking unfair advantage. A contract that is in accord with fair business practices will encourage both parties to perform their obligations, and therefore the need for enforcement — and the need to outlay the costs attendant to enforcement — may be avoided.

Cross-Border Rights and Obligations

In any contractual arrangement, it is important to establish clearly the rights and obligations of each party. If these terms are absent or ambiguous, the parties will probably not be able to perform the contract without first modifying the terms. Moreover, enforcement will be unpredictable, because a court will have to imply terms based on what the court believes would have been the intent of the parties.

（2）**权利和义务**：合同中的权利和义务应该清晰准确。原因有二，一是各国的商业惯例不同；二是依据国际法来推定条款，其结果可能是不确定或者不利的。

DIFFERENCES IN BUSINESS PRACTICES

For contracts made between parties within the same country, missing or indefinite terms may be filled in by local laws or practices. The rationale is that the parties likely intended to follow the local laws and practices with which they were familiar. If the parties are from different countries, their intentions cannot be so