

对外经贸英语读物丛书 ■ 孙维炎 主编

International Sales Contract

■ 诸葛霖 王小山 夏赛花 编著



对外贸易教育出版社

H317.4
2007-2
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国际销售合同

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(京)新登字 182 号

图书在版编目(CIP)数据

国际销售合同/诸君霖等编著. —北京:对外贸易教育出版社, 1994

ISBN 7-81000-690-8

I. 国… II. 诸… III. 国际贸易-贸易合同-基本知识
IV. F740.4

中国版本图书馆 CIP 数据核字(94)第 08939 号

对外贸易教育出版社出版

社址:北京惠新东街 12 号 邮政编码:100029

建设部政策研究中心科建照排部排版

经贸大学印刷厂印刷

新华书店北京发行所发行

787×1092 1/32 8.5 印张 191 千字

1994 年 8 月北京第 1 版 1994 年 8 月北京第 1 次印刷

ISBN 7-81000-690-8/H·144 责任编辑:王敬之

印数 0001—5000 册 定价:9.00 元

对外经贸英语读物丛书
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序 言

我国实行改革开放政策已有十四个年头了。十四年来,我国的经济发展取得了举世瞩目的成就,对外经济贸易事业也有了长足的进步。近一年来,外贸形势又有了可喜的进展,新的外贸体制调动了各方面的积极性,使进出口贸易额都有了较大的增长,吸收外资和对外投资也都呈现出新的好势头。

对外经贸事业能不能持续发展,除了其他种种因素之外,一个重要的条件是有没有足够的称职的人才。这些年来,通过多种渠道,多种形式,培养了大批从事外经贸的各类专业人才,但无论从数量还是质量上看,都还远远不能满足需要,都难以适应客观实际的要求,主要的困难似乎在于这些人才发展不够平衡,不够全面,多数人总是缺胳膊、少腿的。如有的人懂得外贸业务,但不熟悉专门知识,外语也显不足;有的人精通有关的专门知识,也已了解一些外贸业务知识,但外语能力很弱,对外经外贸外语更是生疏;有的人外语不错,但缺乏有关的专门知识,对外贸业务和对外经外贸外语一窍不通。总之,各个方面都精通的“全才”真是太少了。这势必严重地影响我国对外经贸业务的发展。面对这样的现实,我们对外经济贸易大学的一些同志看到了自己的责任,一致认为需要做一点工作,来改变这种状况。经过商议,我们决定用比较浅近通俗的英文编写一套外经贸方面的专业丛书,供有一定英语基础的

外经外贸工作者和在校的大学生阅读,以扩大他们的外经贸专业知识,提高英语水平。我们希望这套丛书能为促进我国的对外经济贸易事业的发展起到一定的作用。

孙维炎

一九九二年十二月五日

于北京

前 言

国际销售合同又称国际贸易买卖合同。一笔交易,有卖必有买,只是视角不同而已。

在进出口贸易的运作过程中,签订合同是中心环节,十分重要。偶有差错,便会带来经济损失,甚至导致政治损失,不可等闲视之。

外贸工作者首先要懂得外贸合同的有关法律知识,了解买卖双方的权利和义务,才可以在签订和履行合同时,维护自己的合法利益,按照有关法律与贸易对手磋商,进行有理有利有节的交涉,圆满地完成任务。

当今进出口业务大多可用英语进行谈判和协商。可以说英语已成为商业上的国际语言。负责起草合同条款的外销员以及履行合同的外贸业务人员应尽可能地熟读大量实用的外贸合同条款。因为合同语言有的不同于一般的句型结构,又有不少专用词汇。多读多用,熟能生巧,是掌握合同英语的必由之路。

本书收集了很多条款实例,读者可以反复比较许多条款相同,但措辞各异的实例,求得更为清楚的理解。这样做还可以边学业务,边学语言,一举两得。书中实例具有一定的代表性,但使用时必须视需要作必要的变动。

本书每页都配上中文注释,帮助读者理解课文和合同条款,本书可供各大学涉外经贸专业的学生之用,亦可供从事外

贸教学和对外业务的人员学习参考之用。

由于编者的业务与英语水平有限,纰缪挂漏,在所难免,尚希广大读者批评指正。

编者

一九九四年五月

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PART ONE

Legalities of International Sales Contract

The sale of goods has long been taking the lion's share^① in international trade. As the world economy grows, international trade takes on many forms in addition to commodity trade, such as technology transfer, ^②leasing, ^③processing, ^④contracting ^⑤labour service, ^⑥etc. The volume of these comparatively ^⑦new forms of trade has been on the increase especially in recent years. It brings about ^⑧ the diversity ^⑨ of international trade. In spite of this development, the sale of goods or commodity trade remains the most important among all the trade forms. It is not only because commodity trade takes the largest share, and is the most common transaction and most frequently ^⑩encountered ^⑪ in business, but also because it provides the basis on which the other forms of business transactions have evolved ^⑫. Therefore it is very important for business executives

① 占最大比例 ②技术转让 ③租赁 ④加工 ⑤(工程)承包 ⑥劳务
⑦相对而言 ⑧(使)产生 ⑨多样化 ⑩频繁的 ⑪遇到 ⑫进化、发展

to have a comprehensive^① knowledge of the commodity trade and hence^② sales transactions.

The international sale of goods, as it transcends^③ national boundaries, ^④ faces more complicated^⑤ situations and more difficulties in the application of relevant^⑥ laws and commercial practices than the domestic^⑦ sales.

First of all, the two contracting parties (buyer and seller) are in different countries. There are invariably^⑧ differences or even conflicts^⑨ between the two systems of law; besides, the transactions are governed by and subject to^⑩ the foreign trade policies and regulations of the two countries.

Secondly, although the contract for the international sale of goods is signed by the seller and the buyer, the involvement^⑪ of other parties is inevitable^⑫ for the performance of the contract such as carriers, ^⑬ insurance underwriters, ^⑭ and banks. Because of the involvement of the parties, the seller or the buyer will have to bear more risk for the transactions. The reason is quite simple. the more parties are involved, the more uncertainty they will encounter.

In international sale of goods, it is the sales contract that binds the parties participating^⑮ in the particular transaction. The contract specifies the obligations or duties of the seller and

① 全面的 ② 于是 ③ 越过 ④ 国界 ⑤ 复杂的 ⑥ 相关的 ⑦ 国内的
⑧ 总是 ⑨ 冲突 ⑩ 受...管理,并以...为准 ⑪ 涉及 ⑫ 无可避免的 ⑬ 承
运人 ⑭ 承保人 ⑮ 参加

the buyer respectively^① and also remedies for the injured party when the other party fails to perform his obligations. Without establishment^② of a contract the sales transaction is absolutely^③ impossible. Therefore, the sales contract is apparently^④ the core of a transaction. In essence, whatever form the international sale of goods may take, a transaction consists of^⑤ two basic procedures,^⑥ i. e. the formation and the performance of a contract, and it is through these two phases^⑦ of business procedures that our import and export trade is carried out.

In view of^⑧ the importance of the sales contract in international trade, Part I of this book is intended to give a descriptive account of the fundamentals^⑨ regarding the legalities^⑩ of the international sales contract so that foreign trade workers may acquire some basic and practical knowledge of sales transaction.

① 各自 ② 建立 ③ 绝对地 ④ 明显地 ⑤ 包括 ⑥ 程序 ⑦ 阶段 ⑧ 鉴于 ⑨ 基本点 ⑩ 法律方面的规定,涉及合法性

CHAPTER ONE

The Applicable Laws For International Sales Contract

Commercial Laws

Where do business people find the rules of the game when they enter into an international sales contract? The applicable law^① comes from three sources. ^②The first lies in the contract itself, which comprises principles and requirements negotiated^③ between the two parties and stated expressly^④ as provisions in the contract, which will be discussed in Part II of this book. This agreement, however, is limited in various ways by external^⑤ factors which constitute the other two sources of the applicable law: the domestic law of a country which bears upon the contract, and the principles of international business conduct.

Though domestic laws are very important as a source of the applicable law, an introduction to all domestic laws is impossible in a book such as this, nor is it necessary. Therefore the

① 适用法律 ②来源 ③谈判、商谈 ④明白无误的 ⑤外部的

only relevant domestic law introduced here is the Chinese Foreign Economic Contract Law (FECL)^①. This is done for the very practical reason that when doing business with foreign countries, the Chinese entrepreneurs^② must first have an idea of what the Chinese applicable law is like.

Most scholars agree that domestic commercial laws in the contemporary^③ world may be divided into^④ two categories,^⑤ i. e. the "Common Law System".^⑥ and the "Civil Law System"^⑦. The Common Law System has its root in the British Law and is now used virtually^⑧ in all the present and former^⑨ members of the British Commonwealth^⑩ plus the largest trading nation, the United States, and to them the most important law governing sales of goods is the Sale of Goods Act of Britain^⑪. However, in this area the United States has developed separately^⑫ from Britain for the last two hundred years and now has an internal commercial law known as the "Uniform Commercial Code" (UCC).^⑬ The UCC has become a national commercial law with its enactment^⑭ by all states except Louisiana.^⑮ The nations which adopt the Civil Law System are primarily^⑯ countries of the European continent and most of Latin American countries and some others. Though the origin^⑰ of the system

① 中国涉外经济合同法 ② 企业家 ③ 现代的 ④ 分为 ⑤ 类别 ⑥ 英美法系 ⑦ 大陆法系 ⑧ 基本上 ⑨ 以前的 ⑩ 英联邦 ⑪ 英国货物买卖法 ⑫ 单独地 ⑬ (美)统一商法 ⑭ (通过立法)制订 ⑮ (美)路易斯安娜州 ⑯ 主要地 ⑰ 根源