

经贸英语快餐系列

涉外经贸法律英语

荣民 尹德永 编著

首都经济贸易大学出版社
·北京·

图书在版编目(CIP)数据

涉外经贸法律英语:英汉对照/荣民,尹德永编著. - 北京:首都经济贸易大学出版社,2000.1

(经贸英语快餐系列)

ISBN 7-5638-0832-9

I. 涉… II. 荣… III. 对外贸易-法律-英语 IV. H31

中国版本图书馆 CIP 数据核字(1999)第 68222 号

首都经济贸易大学出版社出版发行

(北京市朝阳区红庙)

北京怀柔红螺福利印刷厂印刷

全国新华书店经销

850×1168 毫米 32 开本 10.375 印张 265 千字

2000 年 1 月第 1 版 2000 年 1 月第 1 次印刷

印数:1~6 000

ISBN 7-5638-0832-9/H·23

定价:17.90 元

出版说明

培养复合型专业人才已成为新世纪的一个重要课题。在权威机构所列出的当今及未来各类热门人才排行榜中,具备外语和相关专业知识并能将其融会贯通的复合型人才无一落选。在现实工作和生活中,那些既懂外语又懂专业的人才的确是社会中的一个耀眼群体。作为出版者,我们衷心希望有志成为这种复合型人才的人都能实现自己的理想。为此,我们推出这套《经贸英语快餐系列》丛书,以满足有关人士提高专业英语水平的需要。

为了本丛书的出版,我们专门聘请了一批在有关专业上学有所长的人士来编写。编写者中,既有对外经济贸易大学、北京物资学院等高校的专家学者,也有对外经济贸易合作部的专业骨干,还有富于实践经验的相关专业从业人员。本丛书共包括6个分册:《金融英语》、《会计英语》、《工商管理英语》、《贸易实务英语》、《商业书信英语》和《涉外经贸法律英语》。

本丛书的体例和特点如下:

1. 各分册内容按单元划分,将有关专业知识按单元分类进行介绍,在突出重点的同时,也兼顾了覆盖范围,力求使各专业中可能涉及的重要英语表达法及概念都有所涵盖。

2. 每一单元分为四个部分,分别为句式(Sentence Patterns)、专业词汇(Professional Terms)、相关知识(Relevant Knowledge)、阅读材料(Reading Material)。在句式部分中,将该单元所阐述的内容中较为重要、特殊的句型罗列出来,使读者在熟读、熟记之后,既能大大提高理解专业英语资料的能力,也可以用这些句式对中文资料进行汉译英的练习与实践,一举两得。专业词汇部分为重

要术语介绍,对相关的专业词汇以英汉对照形式给出,可以作为资料备查。在相关知识部分,对读者在从事实际工作中可能遇到的疑难问题、注意事项进行了介绍,以使读者在了解专业知识之余,增强实践能力。阅读材料部分的设置,主要目的在于提高读者理解专业外语资料的能力,开阔视野。每单元四个部分的内容共同构成一个掌握专业英语的完整体系,改变了以往专业英语书籍要么阅读过多,要么全是句式的模式,更便于读者对专业英语的学习。

3. 本丛书的另一个重要特点是英语的原汁原味。书中所选句式或阅读材料多是编写者从他们搜集整理的英语国家专业资料中选取的,不仅句式地道,且从实践考虑,有一定的难度,因此很适合有志于提高专业英语水准的读者学习。

学海无涯。尽管编著者和出版者倾尽了心力,但仍不能保证本丛书的完美无瑕,谨请读者批评指正。

出版者

2000年1月

Contents

Unit1	Elementary Articles of Contract(1)	(1)
Unit2	Elementary Articles of Contract(2)	(14)
Unit3	Elementary Articles of Contract(3)	(28)
Unit4	Elementary Articles of Contract(4)	(41)
Unit5	Articles of Contract for the International Sale of Goods(1)	(56)
Unit6	Articles of Contract for the International Sale of Goods(2)	(75)
Unit7	Articles of Contract for Joint Ventures(1)	(87)
Unit8	Articles of Contract for Joint Ventures(2)	(104)
Unit9	Articles of Contract for Joint Ventures(3)	(118)
Unit10	Articles of Contract for Technology Trans fer(1)	(135)
Unit11	Articles of Contract for Technology Trans fer(2)	(149)
Unit12	Articles of Contract for Technology Trans fer(3)	(164)
Unit13	Arbitration	(179)
Unit14	Litigation	(197)
Unit15	Incoterms	(220)
Unit16	Law on Letter of Credit	(241)
Unit17	Other Documents—Bill of Lading and Insurance Policy	(261)

Unit18	Law on Company	(285)
Unit19	Law on Negotiable Instrument	(305)

目 录

第一单元	合同基本条款(1)	(1)
第二单元	合同基本条款(2)	(14)
第三单元	合同基本条款(3)	(28)
第四单元	合同基本条款(4)	(41)
第五单元	国际货物销售合同条款(1)	(56)
第六单元	国际货物销售合同条款(2)	(75)
第七单元	中外合资、合营企业条款(1)	(87)
第八单元	中外合资、合营企业条款(2)	(104)
第九单元	中外合资、合营企业条款(3)	(118)
第十单元	技术转让合同条款(1)	(135)
第十一单元	技术转让合同条款(2)	(149)
第十二单元	技术转让合同条款(3)	(164)
第十三单元	仲裁	(179)
第十四单元	诉讼	(197)
第十五单元	国际贸易术语	(220)
第十六单元	信用证法律	(241)
第十七单元	其他单证——提单和保险单	(261)
第十八单元	公司法	(285)
第十九单元	票据法	(305)

Unit1 Elementary Articles of Contract(1)

Sentence Patterns

1. Contract ordinarily connotes an agreement between two or more persons—not merely a shared belief, but a common understanding as to something which is to be done in the future by one or both of them.

合同,通常是指在两个或更多的人之间就未来一方或各方应完成的事项而共同达成的协议,它不仅是各方的共识,而且代表各方对此的共同理解。

2. Contracts are essentially promises, or groups of promises, to do something in the future. If the promises have certain characteristics defined by law, then the promises give rise to rights which will be protected by society and the breach of the promises will give rise to enforced remedies.

合同实质上是对有关未来应完成事项的承诺或一系列承诺。如果这些承诺具有某些被法律确定的特征,那么这些承诺将产生权利,该权利受社会所保护,一旦违反将产生强制的补偿。

3. This contract, entered into as of the ____ (date) of ____ (month), 1996, by and between ____, a corporation organized

under the laws of ____ (hereinafter called the "Purchaser"), and
____, a corporation organized under the laws of ____ (here-
inafter called the "Seller").

本合同由依____法律成立的____公司(以下简称“买方”)和依
法律成立的____公司(以下简称“卖方”)于1996年____月____
日签订。

4. In consideration of the covenants and agreements herein con-
tained, to be performed by the parties hereto, and of the pay-
ments hereinafter provided, it is mutually agreed as fol-
lows.....

考虑各方提出并拟执行本契约和协议以及下面规定的支付条
款,双方同意达成以下条款……

5. The buyer and the seller, through friendly negotiation, have
signed this contract on a basis of ____ and agreed on the terms
and conditions stipulated below.

买卖双方经友好协商,同意以____方式签订合同,并就如下条
款达成一致。

6. This contract is made by and between the buyers and the sell-
ers, whereby the buyers agree to buy and the sellers agree to
sell the undermentioned commodity according to the terms and
conditions stipulated below.

买卖双方同意按下列条款由买方购进,由卖方出售下列商品,为
此订立本合同。

7. Whereas, ____ has been engaged in the manufacture, distribu-
tion and sale of ____ and also owns some technical information
and experiences useful for development of the Product.....

鉴于____从事于____的生产、分发和销售,并拥有开发本产品的
技术信息和经验……

8. Whereas Party B possesses know-how for the designing, manufacturing, installing and marketing of ____;

Whereas Party B has the right and desires to transfer the above said know-how to party A;

Whereas Party A desires to design, manufacture, sell and export ____ by using party B's know-how;

The two parties desire to enter into this contract through friendly consultation under the terms and conditions, as follows.....

鉴于乙方拥有专有技术设计、制造、安装和市场营销____;

鉴于乙方拥有对上述专有技术的所有权并希望将其转让给甲方;

鉴于甲方愿意通过使用乙方的专有技术,设计、制造、销售和出口____;

双方通过友好协商对以下条款和条件达成协议如下.....

9. In accordance with the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures and other relevant Chinese laws and regulations, ____ Co. and ____ Co. adhering to the principle of equality and mutual benefit and through friendly consultations, agree to jointly invest to set up a joint venture enterprise in ____, the People's Republic of China. The contract hereunder is concluded.

中国____公司和____国____公司,根据《中华人民共和国中外合资经营企业法》和中国的其他相关法规,本着平等互利的原则,通过友好协商,同意在中华人民共和国____省____市,共同投资举办合资经营企业,特订立本合同。

10. On the basis of equality and mutual benefits and through friendly negotiation between both parties, both sides have decided to enter into a contract as follows.....

经双方友好协商,在平等互利的基础上,同意签订如下合同……

11. Whereas

(A) By a loan agreement dated ____ made between ____ Co. (Borrower) and ____ Co. (Lender), the Lender has agreed to make available to the Borrower a loan facility of up to \$ ____.

(B) It is a condition precedent to the Lender making the loan facility available to the Borrower that the Guarantor shall issue this Guarantee.

Now this deed witnesses as follows…….

鉴于

(A)根据____年____公司(借款方)和____公司(贷款方)签署的贷款协议,贷款方同意向借款方提供____美元的贷款;

(B) 贷款方将贷款提供给借款方的条件是担保人将签署本担保协议。

现列有关担保协议的内容如下……

12. The undersigned Sellers and Buyers have agreed to close the following transactions according to the terms and conditions stipulated below…….

兹经买卖双方同意,通过订立下列条款和条件以成交如下商品……

13. In international trade, a sales confirmation is a document regarded as a contract.

在国际贸易中,售货确认书可视为合同的凭证。

14. The buyer is requested to sign and return one copy of this sales confirmation immediately after receipt of the same. Objection if any, should be raised by the buyer within 5 days after the receipt of this sales confirmation, in the absence of which it is un-

derstood that the buyer has accepted the terms and conditions of the sales confirmation.

买方收到本售货确认后需立即签回一份。如买方对本售货确认书有异议,应于收到后 5 天内提出,否则即认为买方已同意接受本售货确认书所规定的各项条款。

Professional Terms

1. contract 合同(通常用语,表示形成的书面文件)
2. agreement 协议;合同(强调各方协商过程中的意思表示一致)
3. covenant 契约;合同条款(尤指契约里各方同意的条款)
4. hereinafter 在下文(替代前述所罗列的有关内容在下文中的出现)
5. hereinbefore 在上文(替代前述所罗列的有关内容在上文中的出现)
6. hereto 到这里,至此
7. hereunder 在下面
8. hereby 以此,特此
9. under the stipulation of (law) 依照法律的规定
10. in accordance with 根据,符合
11. in light of 按照
12. based on 根据;基于
13. promise 承诺
14. breach 违反(合同)
15. to give rise to 产生
16. enforced remedy 强制性的补偿
17. in consideration of 考虑到,意识到

- 18. to desire to 愿意, 希望
- 19. whereas 鉴于(公文用语)
- 20. know-how 专有技术
- 21. adhering to 坚持, 固守
- 22. the principle of equality and mutual benefits 平等互利的原则
- 23. deed 行为, 尤指具有法律效力的行为
- 24. witness 证明, 证据
- 25. to close transaction 达成交易



Relevant knowledge

There are enormous cultural differences between Asia and the United States. These cultural differences lead to very different styles of contract negotiation.

The classic difference is that in Asia, the good faith human relationship between the parties is central. In the United States, on the whole, there is a greater effort to have precise legal descriptions during the negotiation, of everything that might happen, resolving every particular type of dispute that might happen and resolving every particular type of dispute that can be predicted in advance. Thus, during negotiations, the United States party frequently likes to have a lawyer present and tends to be less ready to use a situation of simple negotiation between the principals.

This does not mean that concepts of good faith and good faith relationship between the parties to a contract are not taken seriously in the west, but it does mean that in the legal tradition. We tend to look more to spelling out all the precise details and you should not be

surprised if your Western partner asks you to do that. There is a good faith obligation as part of normal contract law under the United States and European law.

亚洲与美国存在着巨大的文化差异。这种文化差异使得双方的合同协商方式迥然不同。

这种典型差异在于：在亚洲，以当事人之间具有良好的信用的人际关系为基础。而在美国，一般当事人会花很大的精力去进行准确的法律描述，比如可能发生的事情，解决可能发生的特殊纠纷的方法及解决可以预见的特殊纠纷的方法。因此，在美国进行的合同谈判往往有律师在场，当事人不喜欢匆匆结束谈判达成合同。

这并不意味着当事人之间的良好信用和人际关系在西方不受重视，而仅仅是在其法律传统上如此。西方人愿意从合同中寻找细节，因此当你的西方合作者也要求你这样做时，就不足为奇了。在美国或欧洲的法律中，良好的信用义务实际上是一般合同法的组成部分。


A Contract is a legally binding agreement which the courts will enforce. This definition, like all definitions, is not perfect, but it does emphasize the most important element in all contracts—agreement. All contracts are agreements, although not all agreements are contracts.

So, without agreement there can be no contract. But how do you prove the existence of agreement which is really no more than a state of mind? English judges, who are more interested in practical solutions than in abstract theories, have adopted a simple approach to this difficult problem. They have found, from experience, that if one person makes a clear and definite offer and another person unconditionally accepts that offer then it is reasonable to say that the two of them are in agreement. There is no attempt to look inside their minds to find out what they are really thinking: it is what they say

and do that counts.

合同是法院可以强制执行的具有法律约束力的协议。这个定义和其他所有的定义一样,并不完美,但它却强调了所有合同中最重要因素——协议。所有的合同都是协议,但不是所有的协议都是合同。

因此,无协议就无合同。但是如何确认协议的确存在而非只有一种意念呢?喜欢寻找实用方法的英国法官采用了一个简单的方法来解决这个难题。他们从经验中发现,如果某人作出了一个明确的要约,而另一个人无条件地接受了这个要约,那么就可以说这两个人达成了协议。这样,就无需寻求当事人当时在想什么,他们所说的和所做的才是事情的关键。



Reading Material

Contract, as we will use that term, ordinarily connotes an agreement between two or more persons, not merely a shared belief, but a common understanding as to something which is to be done in the future by one or both of them. Sometimes, the term contract is used also to refer to a document—the set of papers in which such an agreement is set forth. For lawyers, contract usually is used to refer to an agreement that has legal effect; i. e., it creates obligations for which some sort of legal enforcement^① will be available if performance is not forthcoming as promised. Thus, it will sometimes be necessary to distinguish among three elements in a transaction, each of which can be called a contract: (1) the agreement-in-fact between the parties, (2) the agreement-as-written (which may or may not correspond accurately to the agreement-in-fact), and (3) the set of

rights and duties created by (1) and (2). Without trying at this point to state a short but comprehensive definition of law (if that were possible), it is perhaps sufficient to suggest that we will be surveying the ways in which such agreements are made and enforced in our legal system—the role of lawyers and judges in creating contracts, in deciding disputes that may arise with respect to their performance, and in fashioning appropriate remedies for their breach.

In the Anglo-American legal system, a great number of things—both tangible and intangible—are susceptible of “ownership”. A bulldozer, a diamond ring, the Empire State Building, “Gone with the Wind”—all may be the “property” of one person or a group of persons, which means that the state will protect the right of the “owner” to use, enjoy, and even consume that thing, to the exclusion of all other persons. The first-year property course traditionally focuses on the detailed rules that in Anglo-American law govern the ownership of “real property” (land and the buildings on it). Later you will have the opportunity to explore bodies of law relating to ownership of other, less tangible, kinds of property such as copyrights, patents, shares of corporate stock, and negotiable instruments.

Any society that recognizes property rights must also address the question of how it should respond when someone violates those rights. And property rights are not the only kind of individual rights that may need legal protection. Even societies that do not permit private ownership of wealth to the degree that ours does are likely to recognize the personal rights of individuals to be free from certain kinds of conduct such as the infliction of physical injury or other interferences with their individual freedom or dignity. The courses in criminal law and torts deal with different aspects of this question:

criminal law focuses on those violations of personal and property rights that society deems serious enough to be deterred by the threat of severe punishment for their commission (robbery, rape, and murder are obvious examples), tort law considers what remedy should be made available to the individuals so injured. Because of the nature of the conduct regulated, criminal law and tort law overlap to a great degree, but they are not congruent. Many acts are criminal but not tortious, because they are offenses not against individuals but against the state—treason, for example, or tax evasion; others, such as slander, may be tortious but not criminal.

Where does contract law fit into this picture? We have noted already that our society recognizes and protects a variety of types of property and personal rights. Ownership of property^② ordinarily includes the right to use and consume the thing owned, but in many cases it will be more to the advantage of the owner to transfer, or “convey”, the right of ownership to some other person in exchange for something else of value (money, perhaps, or the ownership of some other property). A piano is more valuable to one who can play it than to one who cannot, and two lots of adjoining real property may be worth much more when combined into one parcel than when held separately. Similarly, the ownership of factory machinery may be much more valuable when it is combined with a right to the work of skilled technicians and laborers, a dependable source of supply of raw materials, and licenses to use patented processes in the manufacturing of goods. Agreements for exchange are the means by which such resources are assembled and put to productive use. Some such agreements call for the immediate and simultaneous exchange of money for goods or services (your purchase of a morning paper, for instance, or of a hamburger or a haircut). Where exchanges of any