新时代商务英语专业系列教材

New Era Business English Series

总主编 / 翁凤翔　郭桂杭

International Trade Law

国际贸易法

主　编 / 陈建平

重庆大学出版社

新时代商务英语专业系列教材
New Era Business English Series

总主编 / 翁凤翔　郭桂杭

A Listening Course in Business English

国际贸易法

主　编 / 陈建平

重庆大学出版社

内 容 提 要

教材共16个单元，重点介绍两大法律体系、联合国国际货物销售合同公约、国际贸易术语解释通则、国际海上货物运输法、国际货物运输保险法、国际结算法、反倾销法、合同法、代理法、产品责任法、世界贸易组织、国际货币基金组织、世界银行、知识产权法、国际商事仲裁等内容，旨在使读者在英语语境中较为系统地学习国际贸易法律知识，熟悉和掌握英文国际贸易法律术语、基本概念及基础理论知识，进而提高专业英语技能。

图书在版编目(CIP)数据

国际贸易法：英文/陈建平主编. —重庆：重庆大学出版社，2017.1

商务英语专业系列教材

ISBN 978-7-5689-0382-0

Ⅰ.①国… Ⅱ.①陈… Ⅲ.①贸易法—高等学校—教材—英文 Ⅳ.①D996.1

中国版本图书馆CIP数据核字(2017)第006855号

国际贸易法

GUOJI MAOYIFA

主　编　陈建平

责任编辑：陈　亮　　版式设计：高小平

责任校对：关德强　　责任印制：张　策

*

重庆大学出版社出版发行

出版人：易树平

社址：重庆市沙坪坝区大学城西路21号

邮编：401331

电话：(023) 88617190　88617185(中小学)

传真：(023) 88617186　88617166

网址：http://www.cqup.com.cn

邮箱：fxk@cqup.com.cn (营销中心)

全国新华书店经销

重庆市正前方彩色印刷有限公司印刷

*

开本：787mm×1092mm　1/16　印张：11.25　字数：277千

2017年2月第1版　2017年2月第1次印刷

ISBN 978-7-5689-0382-0　定价：35.00元

总 序

商务英语作为本科专业获得教育部批准进入我国大学本科教育基本目录已经好些年了。商务英语本科专业的身份与地位获得了我国官方和外语界的认可。迄今为止，据不完全统计，有300所左右的大学开设了商务英语本科专业。各种商务英语学术活动也开始活跃。商务英语专业与英语语言文学专业、翻译专业成为我国英语教学的“三驾马车”。商务英语教学在全国已经形成较大规模，正呈良性发展态势，越来越多的大学正在积极准备申报商务英语本科专业。可以预计，将来在我国，除了研究性大学外的大部分普通本科院校的外语学院都可能开设商务英语本科专业。这是大势所趋，因为随着我国改革开放和经济全球化、世界经济一体化进程的加快，各个融入经济一体化的国家和地区急需有扎实英语功底的，熟悉国际商务基本知识的，具备国际商务领域操作技能的跨文化商务交际复合型、应用型商务英语人才。

高校商务英语专业教育首先必须有充足的合格师资；其次，需要有合适的教材。目前，虽然市面上有很多商务英语教材，但是，完整的四年商务英语本科专业教材并不多。重庆大学出版社出版的商务英语本科专业系列教材一定程度上能满足当前商务英语本科专业的教学需要。

本套系列教材能基本满足商务英语本科专业1—4年级通常开设课程的需要。商务英语专业不是商务专业而是语言专业。所以，基础年级的教材仍然是英语语言学习教材。但是，与传统的英语语言文学专业教材不同的是：商务英语专业学生所学习的英语具有显著的国际商务特色。所以，本套教材特别注重商务英语本科专业教育的特点，在基础阶段的英语技能教材中融入了商务英语元素，让学生在学习普通英语的同时，接触一些基础的商务英语语汇，通过听、说、读、写、译等技能训练，熟悉掌握商务英语专业四级和八级考试词汇，熟悉基础的商务英语篇章，了解国际商务常识。

根据我国《高等学校商务英语本科专业教学质量国家标准》（以下简称《标准》），本套教材不仅包含一、二年级的基础教材，还包含高年级的继续夯实商务英语语言知识的教材，如《高级商务英语教程》1—3册等。此外，还包括英语语言文学专业学生所没有的突出商务英语本科专业特色的国际商务知识类教材，如《国际商务概论》《国际贸易实务》《国际贸易法》《市场营销》等。本套教材的总主编都是教育部商务英语专业教学协作组成员，参与了该《标准》的起草与制定，熟悉《标准》的要求，这为本套教材的质量提供了基本保障。此外，参与编写本套教材的主编及编者都是多年从事商务英语教学与研究的有经验的教师，因而，在教材的内容、体例、知识、练习以及辅助教材等方面，都充分考虑到了教材使用者的需求。教材的编写宗旨是：力求传授实用的商务英语知识和国际商务有关领域的知识，提高学生的商务英语综合素质

和跨文化商务交际能力以及思辨创新能力。

教材编写考虑到了以后推出的全国商务英语本科专业四级和专业八级的考试要求。在教材的选材、练习、词汇等方面都尽可能与商务英语本科专业四级、八级考试对接。

本套教材特别适合培养复合型、应用型的商务英语人才的商务英语本科专业的学生使用，也可作为商务英语爱好者学习商务英语的教材。教材中若存在不当和疏漏之处，敬请专家、学者及教材使用者批评指正，以便我们不断修订完善。

翁凤翔

2016 年 3 月

前　言

《国际贸易法》教材旨在使读者在英语语境中较为系统地学习国际贸易法律知识，熟悉和掌握英文国际贸易法律术语、基本概念及基础理论知识，从而提高专业英语技能。本书共16个单元，重点介绍两大法律体系、联合国国际货物销售合同公约、国际贸易术语解释通则、国际海上货物运输法、国际货物运输保险法、国际结算法、反倾销法、合同法、代理法、产品责任法、世界贸易组织、国际货币基金组织、世界银行、知识产权法、国际商事仲裁等内容。

本书在编写上具有以下特点：

1. 在编排结构上，呈现立体式趋势。各个单元首先明确了重要概念和学习目标，课后配有参考文献、阅读书目、课文注释、问题讨论、案例分析等栏目，便于教师有效地组织课堂教学及学生自主学习。

2. 在内容体系上，注重国际商务法律知识与专业英语知识的有机统一，使学生能在专业英语语境中较为系统地学习国际商务法律知识，强化专业英语技能。

3. 课文注释注重背景知识和专业词语介绍。对专有名称、专业词汇、难词及难点进行中文翻译和解释，以帮助学生更好地理解课文内容，拓展知识面。

本书主要用作高等院校商务英语本科专业国际商务法律教材，也可作为其他英语专业、法律专业及经济、管理类专业的国际贸易法双语教材、法律英语教材或教学参考用书，此外，还可作涉外经济部门的法律英语和国际商法的培训教材或自学参考书。

本书的多数章节已在本校学生中使用多年，效果较好。本书配有教学课件，如有需要请与我们联系（chenjianping@nbu.edu.cn）。

在本书的编写、出版过程中，翁凤翔教授给予悉心指导和关心，在此谨表衷心的谢意。也感谢重庆大学出版社高小平先生以及作者单位宁波大学国际交流学院同事的支持和帮助。

由于编者水平有限，书中错误或不当之处在所难免，敬请学界同仁及读者批评指正。

编　者

2016年8月

Contents

UNIT 1 Introduction to Two Major Legal Systems

Key Concepts

common law　civil law　adversarial procedure　inquisitorial procedure
natural law　cross-examinations

Learning Objectives

1. Understand the concepts of civil law system and common law system.
2. Understand the differences between adversarial procedure and inquisitorial procedure.
3. Be familiar with the differences between civil law system and common law system.

Civil Law System[1]

The Civil Law System is the oldest and most influential of the legal families. It is derived from Roman and Germanic practice. As distinguished from public law, the body of the law deals with rights of private citizens. It is also called Romano-Germanic Family or Continental System. The French Civil Code of 1804 and the German Civil Code of 1896 are now regarded as the very basis of the modern civil law.

Civil law is a legal system inspired by Roman law[2], the primary feature of which is that laws are written into a collection, codified, and not (as in common law) interpreted by judges.

Conceptually, it is the group of legal ideas and systems ultimately derived from the Code of Justinian[3], but heavily overlaid by Germanic, ecclesiastical, feudal, and local practices, as well as doctrinal strains such as natural law[4], codification, and legislative positivism.

Materially, civil law proceeds from abstractions, formulates general principles, and distinguishes substantive rules from procedural rules. It holds legislation as the primary source of

law, and the court system is usually inquisitorial, unbound by precedent, and composed of specially trained judicial officers with a limited authority to interpret law. Juries separate from the judges are not used, although in some cases, volunteer lay judges participate along with legally trained career judges.

The principle of civil law is to provide all citizens with an accessible and written collection of the laws which apply to them and which judges must follow. It is the most widespread type of legal system in the world, applied in various forms in approximately 150 countries and oldest surviving legal system in the world. Colonial expansion spread the civil law system and European civil law has been adopted in much of Latin America as well as in parts of Asia and Africa.

The civil law system takes as its major inspiration Roman law, and in particular the Corpus Juris Civilis of Emperor Justinian, and subsequent expounding and developments in Medieval Roman Law. Roman law was received differently in different countries. In some it went into force wholesale by legislative act, i.e., it became positive law, whereas in others it was diffused into society by increasingly influential legal experts and scholars.

Roman law was in place in the Byzantine Empire until its final fall in the 15th century. However, subject as it was to multiple incursions and occupations in the latter Middle Ages, its laws became widely available in Western Europe. It was first received into the Holy Roman Empire partly because it was considered imperial law, and it spread in Europe mainly because its students were the only trained lawyers. It became the basis of Scots law, though partly rivaled by feudal Common law. In England, it was taught academically at Oxford and Cambridge, but underlay only probate and matrimonial law, inherited by canon law when secularized, and maritime law, adapted from the law merchant through the Bordeaux trade.

Consequently, neither of the two waves of Romanism completely dominated in Europe. Roman law was a secondary source that was applied only when local customs and laws were found lacking on a certain subject. However, after a time, even local law came to be interpreted and evaluated primarily on the basis of Roman law (it being a common European legal tradition of sorts), thereby in turn influencing the main source of law. Eventually, the works of Civilian glossators and commentators led to the development of a common body of law and writing about law, a common legal language, and a common method of teaching and scholarship, all termed the *jus commune*, or law common to Europe, which consolidated canon law and Roman law, and to some extent, feudal law.

An important characteristic, beyond Roman law foundations, is the extended codification of the adopted Roman law, i.e. its inclusion into civil codes. The system of codification has its origins in the Code of Hammurabi, written in ancient Babylon during the 18th century BC.

The concept of codification was further developed during the 17th and 18th centuries AD, as an expression of both Natural Law and the ideas of the Enlightenment. The political ideal of that era was expressed by the concepts of democracy, protection of property and the rule of law. That ideal required the creation of certainty of law, through the recording of law and through its uniformity. So,

the aforementioned mix of Roman law and customary and local law ceased to exist, and the road opened for law codification, which could contribute to the aims of the above mentioned political ideal.

Another reason that contributed to codification was that the notion of the nation state required the recording of the law that would be applicable to that state.

Certainly, there was also reaction to the aim of law codification. The proponents of codification regarded it as conducive to certainty, unity and systematic recording of the law; whereas its opponents claimed that codification would result in the ossification of the law.

In the end, despite whatever resistance to codification, the codification of European private laws moved forward. Codifications were completed by Denmark (1687), Sweden (1734), Prussia (1794), France (1804), and Austria (1811). The French codes were imported into areas conquered by Emperor Napoleon and later adopted with modifications in the Netherlands (1838), Italy and Romania (1865), Portugal (1867), Spain (1888), Germany (1900), and Switzerland (1912). These codifications were in turn imported into colonies at one time or another by most of these countries. The Swiss version was adopted in Brazil (1916) and Turkey (1926).

Because Germany was a rising power in the late 19th century and its legal system was well organized, when many Asian nations were developing, the German Civil Code became the basis for the legal systems of Japan and South Korea. In China, the German Civil Code was introduced in the later years of the Qing Dynasty and formed the basis of the law of the Republic of China, which remains in force in Taiwan.

Some authors consider civil law to have served as the foundation for socialist law used in Communist countries, which in this view would basically be civil law with the addition of Marxist-Leninist ideas. Even if this is so, civil law was generally the legal system in place before the rise of socialist law, and some Eastern European countries reverted back to the pre-Socialist civil law following the fall of socialism, while others continued using their Socialist legal systems.

Several legal institutions in civil law are similar to institutions in Islamic law and jurisprudence during the Middle Ages, and some have suggested a borrowing. For example, the Islamic *Hawala* institution is the basis of the *Avallo* in Italian civil law and the *Aval* in French civil law.

Common Law System[5]

Common Law System is also called Anglo-American Law System (British-American Law System). It is the legal system of England and countries that were once English colonies. It is based on court-made rules and precedents. An import aspect of the common law is its basis in the customary practice of the courts, and the term itself is often used to describe that part of English law that is not based on statutory law or legislation.

Common law (also known as case law or precedent) is law developed by judges through decisions of courts and similar tribunals rather than through legislative statutes or executive branch action. A "common law system" is a legal system that gives great precedential weight to common

law, on the principle that it is unfair to treat similar facts differently on different occasions. The body of precedent is called "common law" and it binds future decisions. In cases where the parties disagree on what the law is, an idealized common law court looks to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision (this principle is known as *stare decisis*). If, however, the court finds that the current dispute is fundamentally distinct from all previous cases (called a "matter of first impression"), judges have the authority and duty to make law by creating precedent. Thereafter, the new decision becomes precedent, and will bind future courts.

In practice, common law systems are considerably more complicated than the idealized system described above. The decisions of a court are binding only in a particular jurisdiction, and even within a given jurisdiction, some courts have more power than others. For example, in most jurisdictions, decisions by appellate courts are binding on lower courts in the same jurisdiction and on future decisions of the same appellate court, but decisions of lower courts are only non-binding persuasive authority. Interactions between common law, constitutional law, statutory law and regulatory law also give rise to considerable complexity. However *stare decisis*, the principle that similar cases should be decided according to consistent principled rules so that they will reach similar results, lies at the heart of all common law systems.

Common law legal systems are in widespread use, particularly in England where it originated in the Middle Ages, and in nations or regions that trace their legal heritage to England as former colonies of the British Empire, including the United States, Malaysia, Singapore, Bangladesh, Pakistan, Sri Lanka, India, Ghana, Cameroon, Canada, Ireland, New Zealand, South Africa, Zimbabwe, Hong Kong, and Australia.

Main Differences Between the Two Legal Systems

The common law is based on court decision or precedents whereas the civil law's grounds for deciding cases are found in codes, statues, and prescribed texts. The way in which the common law spread around the world is different from how the civil law was distributed. Those nation in which the common law developed are Australia, Canada, India, Ireland, New Zealand, and the United States. Most European continental nations and Latin American nations are civil law nations.

Common law is a matrix of case law and statutes; it uses the jury system and the doctrine of supremacy to limit the actions of the government. The common law adopts adversarial procedure[6] while the civil law uses inquisitorial procedure[7]. The adversarial system (or adversary system) of law is the system of law that relies on the contest between each advocate representing his or her party's positions and involves an impartial person or group of people, usually a jury or judge, trying to determine the truth of the case. As opposed to that, the inquisitorial system has a judge (or a group of judges who work together) whose task is to investigate the case. The adversary procedure requires the opposing sides to bring out pertinent information and to present and cross-examine witnesses. This procedure is observed primarily in countries in which the Anglo-American legal system of

common law predominates.

Under the adversary system, each side is responsible for conducting its own investigation. In criminal proceedings, the prosecution represents the people at large and has at its disposal the police department with its investigators and laboratories, while the defense must find its own investigative resources and finances. Both sides may command the attendance of witnesses by subpoena. If the defendant is indigent, his attorney's opportunities for a broader investigation are limited by the provisions of the jurisdiction in which the trial is conducted. In criminal law under the adversary system, the accused need not be present in grand jury indictment proceedings (no longer conducted in Great Britain and recommended by some authorities for eventual abolition in the United States). If an indictment is handed down by the grand jury, its proceedings are available to the defendant. Under civil law the adversary system works similarly, except that both plaintiff and respondent must prepare their own cases, usually through privately engaged attorneys.

In any adversary trial, the opposing sides present evidence, examine witnesses, and conduct cross-examinations[8], each in an effort to produce information beneficial to its side of the case. Skillful questioning can often produce testimony that can be made to take on various meanings. What seemed absolute in direct testimony can raise doubts under cross-examination. The skills of the attorneys are also displayed at the time of summation, especially in a jury trial, when their versions of what the jury has heard may persuade the jury to interpret the facts to the benefit of the side that is most persuasive.

In adversary proceedings before juries the judge functions as moderator and referee on points of law, rarely taking part in the questioning unless he or she feels that important points of law or fact must be made clearer. In a bench trial (without a jury) the judge makes findings of fact as well as of law. Since a witness called by the opposing party is presumed to be hostile, cross-examination does permit leading questions. A witness called by the direct examiner, on the other hand, may only be treated as hostile by that examiner after being permitted to do so by the judge, at the request of that examiner and as a result of the witness being openly antagonistic and/or prejudiced against the opposing party.

The main purposes of cross-examination are to elicit favorable facts from the witness, or to impeach the credibility of the testifying witness to lessen the weight of unfavourable testimony. Cross-examination frequently produces critical evidence in trials, especially if a witness contradicts previous testimony. The advocate Edward Marshall-Hall built his career on cross-examination which often involved histrionic outbursts designed to sway jurors. Most experienced and skilled cross-examiners, however, refrain from caustic or abrasive cross-examination so as to avoid alienating jurors.

Cross-examination is, arguably, the main purpose of a trial. Though the closing argument is often considered the deciding moment of a trial, effective cross-examination wins trials.

An inquisitorial system is a legal system where the court or a part of the court is actively involved in investigating the facts of the case, as opposed to an adversarial system where the role of

the court is primarily that of an impartial referee between the prosecution and the defense. Inquisitorial systems are used in some countries with civil legal systems as opposed to case law systems. Also countries using case law, including the United States, may use an inquisitorial system for summary hearings in the case of misdemeanors such as minor traffic violations. In fact, the distinction between an adversarial and inquisitorial system is theoretically unrelated to the distinction between a civil legal and case law system. Some legal scholars consider "inquisitorial" misleading, and prefer the word "nonadversarial".

The inquisitorial system applies to questions of criminal procedure as opposed to questions of substantive law; that is, it determines how criminal enquiries and trials are conducted, not the kind of crimes for which one can be prosecuted, nor the sentences that they carry. It is most readily used in some civil legal systems. However, some jurists do not recognize this dichotomy and see procedure and substantive legal relationships as being interconnected and part of a theory of justice as applied differently in various legal cultures.

In some jurisdictions, the trial judge may participate in the fact-finding inquiry by questioning witnesses even in adversarial proceedings. The rules of admissibility of evidence may also allow the judge to act more like an inquisitor than an arbiter of justice.

Although international tribunals intended to try crimes against humanity, such as the Nuremberg Trials and the International Criminal Court, have generally used a version of the adversarial system, they have also incorporated some key features of the inquisitorial system, such as the use of professional career judges, and in the case of the International Criminal Court, the use of a pre-trial examining or investigative division.

Notes

1. Civil Law System　民法法系

民法法系又称罗马法系、法典法系、大陆法系、罗马日尔曼法系，是与英美普通法系并列的当今世界两大重要法系之一，覆盖了当今世界的广大区域，德国、法国、中国、日本等均为大陆民法系地区。民法法系是指以古罗马，特别是以19世纪初《法国民法典》和《德国民法典》为传统产生和发展起来的法律的总称。以古罗马法为发端，并以罗马法在中世纪意大利的复兴和神圣罗马帝国中的继受为源流，在近代法国民法和德国民法的基础之上发展形成。始终与罗马法有密切关系，以法典为主要渊源。由于该法系的影响范围主要是在欧洲大陆国家，特别是法国和德国，且主要法律的表现形式均为法典，所以又称为大陆法系、罗马-德意志法系、法典法系。属于这一法系的除了欧洲大陆国家外，还有曾是法国、德国、葡萄牙、荷兰等国殖民地的国家及因其他原因受其影响的国家。

2. Roman law　罗马法

罗马法一般泛指罗马奴隶制国家法律的总称，存在于罗马奴隶制国家的整个历史时期。它既包括从罗马国家产生至西罗马帝国灭亡时期的法律，以及皇帝的命令、元老院的告示、成文法和一些习惯法在内，也包括公元7世纪中叶以前东罗马帝国的法律。

3. the Code of Justinian 《查士丁尼法典》

东罗马帝国皇帝查士丁尼一世下令编纂的一部汇编式法典，是罗马法的集大成者。法典内容为东罗马帝国时期的皇帝敕令，以及权威的法学家对于法律的解释。《查士丁尼法典》颁布后，又陆续颁布了《查士丁尼法学总论》《查士丁尼学说汇编》和《查士丁尼新律》3 部分，作为《查士丁尼法典》的续编，最后完成于公元 530 年左右。

4. natural law 自然法

在法学中，自然法的学说指在自然状态中固有的正义法则，以及（或者）在解决冲突的自然过程中显现的规律（具体化为习惯法）。

5. Common Law System 普通法系

又称英美法系。是指以英国普通法为基础发展起来的法律的总称。它首先产生于英国，之后扩大到曾经是英国殖民地、附属国的许多国家和地区，包括美国、加拿大、印度、巴基斯坦、孟加拉、马来西亚、新加坡以及非洲的个别国家和地区。到 18 世纪至 19 世纪时，随着英国殖民地的扩张，英国法被传入这些国家和地区，英美法系终于发展成为世界主要法系之一。英美法系的主要特点是以判例法为主要形式。

6. adversarial procedure 抗辩程序

英美法系的诉讼程序以原告、被告及其辩护人和代理人为重心，法官只是双方争论的“仲裁人”而不能参与争论，与这种抗辩式程序同时存在的是陪审团制度，陪审团主要负责作出事实上的结论和法律上的基本结论（如有罪或无罪），法官负责作出法律上的具体结论，即判决。

7. inquisitorial procedure 讯问程序

大陆法系的诉讼程序以法官为重心，突出法官职能，具有讯问程序的特点，而且，多由法官和陪审员共同组成法庭来审判案件。

8. cross-examinations 交叉询问

由一方当事人向另一方当事人所提供的证人提出的诘问，一般是在提供证人的一方首先向自己的证人提问后进行的，交叉询问是意图使证人改变、限定、修正或撤回提出的证据。在交叉询问中允许进行诱导性提问，询问证人的当事人通常比对方当事人有更大的自由。在任何情节上不对证人进行询问，一般就暗示接受证人对该情节的举证。一项证据已经或将要被给予的效力不同于证人所陈述的效力，那么在交叉询问中必须就此证据的效力同证人见面，以使他能够作出承认、否认或解释。英美法系关于证人质证几乎就是交叉询问的同义词。大部分证据包括证人证言、被害人陈述、被告人供述、当事人陈述以及书证、物证均可以交叉询问来进行质证。交叉询问被一些英美法学者视为专业性很强的法庭技术。要求律师有高明的技巧和丰富的经验。

Study Questions

1. Try to define Roman law and natural law.
2. Briefly describe the main features of civil law system and common law system.
3. What are the main differences between two legal systems?
4. What are the main differences between adversarial procedure and inquisitorial procedure?

UNIT 2 Introduction to United Nations Convention on Contracts for the International Sale of Goods[1]

Key Concepts

offer	invitation for offer	acceptance	anticipatory of the contract
fundamental breach of the contract	preservation of the goods		

Learning Objectives

1. Understand the concept of offer and acceptance.
2. Understand the differences between withdrawal of an offer and revocation of an offer.
3. Understand the obligations of the seller and the buyer.
4. Understand remedies of the breach of the contract by the seller and the buyer respectively.

Offer[2]

An offer means a proposal for concluding a contract addressed to one or more specific persons. The offer shall be sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly[3] fixes or makes provisions for determining the quantity and the price. So an effective offer shall be in line with the minimum requirements of this convention. An offer becomes effective when it reaches the offeree.

Invitation for Offer[4]

A proposal other than one addressed to one or more specific persons is to be considered merely

as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal. In practice, catalogues of the goods, price list, public announcement of auction or tender, prospectus[5], commercial advertisements, etc, are usually taken as invitation for offer. In some countries, if the contents of the commercial advertisement are sufficiently definite, and it is made to the public as an offer, it shall constitute an offer. For instance, the commercial advertisement states that it constitutes an offer, or the goods under this advertisement will be sold to those who are the first to pay cash, or open L/C.

Withdrawal and Revocation of an Offer[6]

Withdrawal means that the offeror takes the offer back, making it void, before it reaches the offeree and becomes effective. While revocation means that the offeror revokes it so as to make it void after the offer reaches the offeree, and becomes effective. Withdrawal or revocation has great significance in international trade. The offeror may withdraw or revoke the offer if he makes a mistake in the offer, or due to the fluctuation of the market price. An offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance. An offer can not be revoked if it states a fixed time for acceptance or otherwise, that it is irrevocable, or if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer. An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

Acceptance[7]

An acceptance means a statement made by or other conduct of the offeree indicating assent to an offer. Silence or inactivity does not amount to acceptance. An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time. An oral offer must be accepted immediately unless the circumstances indicate otherwise. The offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time.

A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitute a counteroffer[8]. Nevertheless, if certain additional or different terms in a reply to an offer do not materially alter[9] the terms of the offer, the reply shall constitute an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. Additional or different terms relating to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

If a notice of acceptance can not be delivered at the address of the offeror on the last day of the

period because that day falls on an official holiday or a non-business day at the place of the offeror, the period is extended until the first business day which follows. If its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror informs the offeree that he considers his offer as having lapsed. An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this convention. [10]

Obligations of the Seller

Delivery of the Goods and Handing over of Documents

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods as required by the contract. The seller must deliver the goods at the time required by the contract, or in any other case, within a reasonable time after the conclusion of the contract. If the seller is not bound to deliver the goods at any other particular place, he shall hand the goods over to the first carrier for transmission to the buyer, provided that the contract involves carriage of the goods. If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance. If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract.

Conformity of the Goods and Third Party Claims

The quantity, quality and descriptions of the goods delivered by the seller shall be in conformity with those required by the contract. The goods are contained or packaged in the manner required by the contract. The seller is liable in accordance with the contract for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time. The seller is also liable for any lack of conformity which is due to a breach of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time limit is inconsistent with a contractual period of guarantee.

The seller must deliver goods which are free from any right or claim of a third party[11], unless the buyer agreed to take the goods subject to that right or claim. The seller must deliver the goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could