

貿易規約彙編

陳約誠編譯



TRADE REGULATIONS
EXPLAIN

萬源財經事業公司

貿易規約彙編

陳約誠編譯

萬源財經事業公司

萬源財經 專業智囊

- ☐ 貿易契約範例大全
- ☐ 商用英漢辭典
- ☐ 應用貿易英文
- ☐ 商用英文範例大全
- ☐ 出入口實務之疑難雜症
- ☐ 出入口實務大全
- ☐ 如何做出入口業
- ☐ 貿易保險必讀
- ☐ 貿易理論問答
- ☐ 信用證實務大全
- ☐ 貿易信用證須知
- ☐ 商業書信應用須知
- ☐ 商業談判163
- ☐ 權變領導
- ☐ 管理心理30解
- ☐ 企業的人性面
- ☐ 管理者格言錄
- ☐ 現代管理中的七S結構
- ☐ 驚變中的世界經濟
- ☐ 貿易規約彙編

萬源財經圖書
各地書店有售

萬源財經 專業智囊

- ☐ 銀行實務百問百答
- ☐ 金融實務百問百答
- ☐ 銀行實務技巧
- ☐ 銀行實務須知
- ☐ 銀行經營管理
- ☐ 銀行會計實務大全
- ☐ 國際金融須知
- ☐ 外匯實務百問
- ☐ 外匯實務入門
- ☐ 金融市場透視
- ☐ 貨幣投資須知
- ☐ 股票投資指南
- ☐ 股票投資百解
- ☐ 如何投資期貨
- ☐ 會計實務管理
- ☐ 市場情報處理
- ☐ 日本市場透視
- ☐ 松下精神
- ☐ 何謂動態經濟

萬源財經圖書
各地書店有售

F 71.
C 112

篇 次

國際商會規約譯析	1
國際商會的貿易條件	1
Ex Works	8
FOR.....FOT	11
FAS	17
FOB	21
C & F	27
CIF	33
Freight or Carriage Paid to	41
Ex Ship	45
Ex Quay	49
Delivered at Frontier	53
Delivered	62
FOB Airport	69
買賣雙方義務及風險費用劃分表	75
美國貿易規例譯析	81
美國的對外貿易定義	81
EX	86
F. O. B	88
F. A. S	106
C. & F.	111
C. I. F.	115
Ex Dock	123

國際法學會契約規則	127
其他貿易規約解釋	151
貿易索賠規例一覽	159
索賠對象的判定	159
運輸索賠	162
保險索賠	173
買賣索賠	189
國際商務仲裁規例	219
仲裁的意義	219
商務仲裁的優點	219
國際商務仲裁有關公約及規則	220
仲裁條款與提付仲裁協議書	222
仲裁機構與仲裁地點	224
仲裁的方法與手續	226
仲裁的效力	229

國際商會規約譯析

第一節 國際商會的貿易條件

國際商會一九五三年修訂的貿易條件 (Incoterms 1953) 所解釋的貿易條件，共有下列九種：

- (1) Ex Works (ex factory, ex mill, ex plantation, ex warehouse, etc.)
- (2) FOR (free on rail)…… (named departure point)
FOT (free on truck)…… (named departure point)
- (3) FAS (free alongside ship)…… (named port of shipment)
- (4) FOB (free on board)…… (named port of shipment)
- (5) C&F (cost and freight)…… (named port of destination)
- (6) CIF (cost, insurance, freight)…… (named port of destination)
- (7) Freight or Carriage Paid to…… (named point of destination)
(Inland Transport only)
- (8) Ex Ship…… (named port of destination)
- (9) Ex Quay (duty paid)…… (named port)

國際商會於一九六七年補充解釋下面兩種貿易條件：

- (10) Delivered at Frontier…… (named place of delivery at frontier)
- (11) Delivered…… (named place of destination in the country of importation) Duty Paid

至一九七六年又再補充下面一種貿易條件：

- (12) FOB Airport…… (named airport of departure)

在解釋上述各條件內容之前，擬先就國際商會制定這個解釋規則的基本性格加以說明。FOB、CIF 等用語起源很早。幾世紀來一直廣泛使用，可說是已定型的貿易條件。但因各國貿易習慣不同，各國進出口商之間對於這些術語的解釋，難免有出入，而導致誤會發生爭執。國際商會為克服

這項困難，乃出面制定了這項國際統一解釋規則，期能有助於貿易的圓滑進行。國際商會制定這項解釋規則是把 FOB、CIF 等這些用語視為已確立的定型貿易習慣，並且希望將這些定型的貿易習慣予以國際規則化。所以其所作的解釋，不僅僅是將這些貿易條件當作價格條件，表示價格的構成，並且將買賣雙方的義務，貨物風險的移轉界限，以及賣方應向買方提出的單證等，都予以條款式的規定。所以國際商會的貿易條件，實不能單純地視為一種價格條件，這是我們在採用這種規則時不能不加以注意的一點。

下面先就其「引言」部分加以介紹，至於其解釋的各種條件內容則於下面各節再加分別說明。

Introduction

1. The purpose of "Incoterms" is to provide a set of international rules for the interpretation of the chief terms used in foreign trade contracts, for the optional use of business men who prefer the certainty of uniform international rules to the uncertainties of the varied interpretations of the same terms in different countries.

2. Frequently parties to a contract are unaware of the differences of trading practice in their respective countries. The existing diversity of interpretation is a constant source of friction in international trade, leading to misunderstandings, disputes and references to the courts with all the waste of time and money that these entail. It was with the object of making available to traders a means of overcoming the worst causes of this friction that the International Chamber of Commerce published in 1936 a set of international rules for the interpretation of trade terms. These rules were known as "Incoterms 1936". It is now felt necessary to revise the original edition of "Incoterms" in order to provide an up-to-date set of rules broadly in line with the current practice of a majority of the business men engaged in international trade.

3. The chief difficulties met with by importers and exporters are of three kinds. First, uncertainty as to the law of what country will be applicable to their contracts, second, difficulties arising from inadequate information and, third, difficulties arising from diversity in interpretation. These handicaps to trade can be much reduced by the use of "Incoterms".

Basis of Revision

4. In drawing up this set of rules the Chamber's Committee on Trade Terms worked on the following basis:

- a) These rules aim at defining the liabilities of parties as clearly and precisely as possible;
- b) These rules have been based upon the greatest common measure of practice now current in international trade, in order to obtain the widest possible adoption of them. At the same time, "Incoterms 1936" was used as the starting point of the revision, in order that international traders who are familiar with "Incoterms 1936" may change over to the use of "Incoterms 1953" with the minimum of inconvenience.

Some have urged that "Incoterms" should incorporate desirable improvements on current practice. In the opinion of the Chamber's Committee, there are two objections to this policy (aa) what practical merchants have evolved over the years as convenient is always likely to be better than theoretical improvements, and (bb) the prime consideration is to get one set of international rules agreed and widely adopted. If that could be achieved it would be a great step forward, and on the basis of it thereafter improvements may gradually be accepted.

- c) Where there are major differences in current practice, the principle

has been adopted that a contract-price settled on the basis of "Incoterms 1953" will provide for minimum liabilities on the part of the seller, leaving it to the parties to provide in their contracts for greater liabilities than there are in this set of rules, if they wish to do so.

In this connection, attention is specially invited to the provisions for insurance which are stated in clause A. 5 of the CIF contract.

Provision for the Custom of the Particular Trade or Port

5. On some points, it has been found impossible to give an absolutely definite ruling. In that case, the Rules have left the matter to be decided by the custom of the particular trade or port. Every endeavour has been made to limit such references to custom to the absolute minimum, but it has been impossible to avoid them altogether.

Special Provisions in Individual Contracts

6. Special provisions in the individual contract between the parties will override anything provided in the Rules.

7. Parties may adopt "Incoterms 1953" as the general basis of their contract, but may also specify particular variations of them or additions to them, such as may be suited to the particular trade or the circumstances of the time or their individual convenience. For instance, some merchants require a CIF supplier to provide war risk insurance as well as marine insurance. In that case, the purchaser may specify "Incoterms 1953 CIF plus war risk insurance". The seller will then quote his price on that basis.

Variations of the C & F and CIF Contracts

8. Merchants should be extremely cautious in using, in their contracts of sale, variations of the terms C. & F. and C.I.F. such as C.

& F. and C.I.F. Cleared and Customs Duty Paid or similar expressions. The addition of a word or even a letter to C. & F. and C.I.F. may sometimes have an entirely unforeseen result, and the character of the contract may be changed. Merchants may find that a court will refuse to recognize certain variations as being C. & F. or C.I.F. contracts at all. It is always safer in such cases explicitly to state in the contract what obligations and charges each party is meant to assume.

“Incoterms” and the Contract of Carriage

9. Merchants adopting these Rules in their contracts should keep clearly in mind the fact that they refer solely to the relationship between seller and buyer, and that none of the provisions affect, either directly or indirectly, the relations of either party with the carrier as defined in the contract of carriage.

Definition of Bill of Lading

10. As used in these Rules the term “bill of lading” is a shipped bill of lading, issued by or on behalf of the carrier, and is evidence of a contract of carriage as well as proof of delivery of the goods on board the vessel.

11. A bill of lading may be either freight prepaid or freight payable at destination. In the former case the document is usually not obtainable until freight has been paid.

Merchants wishing to use these Rules
should specify that their contracts will
be governed by the provisions of
“Incoterms 1953”.

(中譯)

引 言

1. 「國際商會貿易條件」旨在為對外貿易契約中所使用的一些主要條件，提供一

套國際性的解釋規則，以供那些對在不同國家間的同一條件喜愛具有統一國際規則而不喜愛有不同解釋的業者選擇採用。

2. 經常可以發現到契約的當事人不明瞭他們各自國家間貿易實務的差異。現存解釋的紛歧往往是國際貿易上發生爭執的來源，導致誤解、糾紛，甚至訴訟，為此浪費了無數的時間和金錢。為了使貿易商有所憑藉以克服這種爭執的最大原因，國際商會於一九三六年頒行一套解釋貿易條件的國際規則。這些規則即衆所熟知的「1936年國際商會貿易條件」。現在已覺得「國際商會貿易條件」初版有加以修訂的必要，俾能提供一套與大多數從事國際貿易業者在目前實務大致相符的最新規則。

3. 進口商和出口商所面臨的最主要困難有三點：第一點，他們的契約應該適用那一國家的法律，沒有確定。第二點，因資料不全而引起的困難。第三點，因解釋紛歧而引起的困難。這些對貿易的障礙，可藉「國際商會貿易條件」的採用而大為減少。

修訂的基礎

4. 在草擬這套規則時，國際商會的貿易條件委員會是以下面作根據而進行：

- a) 這些規則目的在儘可能清楚而精確地確定當事人的義務；
- b) 這些規則是以現行國際貿易實務上最普遍的做法為基礎，俾能獲得業者最廣泛的採用。同時，是以「1936年國際商會貿易條件」作為修訂的起點，俾能使已熟悉「1936年國際商會貿易條件」的貿易業者，可以在最少麻煩的情況下，改用「國際商會貿易條件」。

某些人士曾極力主張，「國際商會貿易條件」應該納入目前實務上有待改進的事項。根據國際商會委員會的意見，對於這種主張有兩項反對的理由，(1) 從事實務的業者經多年的推展而認為方便的，似乎總比根據理論而設想的改進要好，(2) 根本的考慮是要建立一套經一致同意且被廣泛採用的國際規則。如果這個能夠達成，那將是向前邁進了一大步，並以此為基礎，以後的改進可望漸次被接受。

c) 根據「1953年國際商會貿易條件」所定的契約價格，原則上是採用規定賣方最低限度的義務，如果在目前實務上有較大的差異，當事人可在其契約中規定比這套規則所定為大的義務，如他們希望這樣做的話。

在這方面，請特別注意 CIF 契約「賣方的義務」第 5 項所述有關保險的規定。

有關特定貿易或港口習慣的規定

5. 在某些要點上，已經發現不可能給予一個絕對確定的規則。在那種情況下，這些規則是不加以規定而聽任由特定貿易或港口的習慣來決定。這種參照習慣的事項，雖已盡力加以限制到最少量，但要全部避免實際上並無可能。

個別契約中的特別規定

6. 當事人間的個別契約中的特別規定，可以廢棄這些規則中所規定的任何事項。

7. 當事人可以採用「1953年國際商會貿易條件」作為他們契約的一般基礎，但也可以特約加以變更或追加，這樣就可以適合特定的貿易或那時的环境或他們個人的方便。例如，有些業者要求 CIF 契約的供應商提供兵險以及海上保險。在這種場合，購貨人可以訂明「1953年國際商會貿易條件 CIF 加保兵險」。賣方即以此為基礎報出他的價格。

C&F 及 CIF 契約的變體

8. 業者在他們的契約中，使用 C&F 及 CIF 條件的變體，例如 C&F 及 CIF Cleared 及 Customs Duty Paid，或其他類似用語時，應特別小心。增加一個字或甚至一個字母於 C&F 及 CIF，有時可能有完全意想不到的後果，並且契約的特性可能因而改變。業者可能會發現到法院將完全不承認某些變體為 C&F 或 CIF 契約。在這種場合，在契約中明白地載明各當事人預定負擔那些責任和費用，總比較安全。

「國際商會貿易條件」與運送契約

9. 業者在他們的契約中採用這些規則時，應該清楚地記住下列事實：這些規則僅僅涉及買方和賣方間的關係，而對於買賣任何一方與運送人依運送契約而確定的關係，這些規則沒有一項規定可予直接或間接地影響。

提單的定義

10. 在這些規則中所使用的「提單」一語，是指由運送人或代運送人所簽發的裝運提單，並且是運送契約的證明以及貨物交付到船上的證據。

11. 提單可以是運費先付的，也可以是運費在目的地到付的。在前一場合，該單證通常須在運費付訖後才可以取得。

業者如希望採用這些規則，則應聲明其契約將受「1953年國際商會貿易條件」規定的拘束。

第二節 Ex Works (ex factory, ex mill, ex plantation, ex warehouse, etc.)

(一) 本條件內容

(英文)

A. Seller must

1. Supply the goods in conformity with the contract of sale, together with such evidence of conformity as may be required by the contract.

2. Place the goods at the disposal of the buyer at the time as provided in the contract, at the point of delivery named or which is usual for the delivery of such goods and for their loading on the conveyance to be provided by the buyer.

3. Provide at his own expense the packing, if any, that is necessary to enable the buyer to take delivery of the goods.

4. Give the buyer reasonable notice as to when the goods will be at his disposal.

5. Bear the cost of checking operations (such as checking quality, measuring, weighing, counting) which are necessary for the purpose of placing the goods at the disposal of the buyer.

6. Bear all risks and expense of the goods until they have been placed at the disposal of the buyer at the time as provided in the contract, provided that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

7. Render the buyer, at the latter's request, risk and expense, every assistance in obtaining any documents which are issued in the country of delivery and/or of origin and which the buyer may require for the purposes of exportation and/or importation (and, where necessary, for their passage in transit through another country).

B. Buyer must

1. Take delivery of the goods as soon as they are placed at his disposal at the place and at the time, as provided in the contract, and pay the price as provided in the contract.

2. Bear all charges and risks of the goods from the time when they have been so placed at his disposal, provided that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

3. Bear any customs duties and taxes that may be levied by reason of exportation.

4. Where he shall have reserved to himself a period within which to take delivery of the goods and/or the right to choose the place of delivery, and should he fail to give instructions in time, bear the additional cost thereby incurred and all risks of the goods from the date of the expiration of the period fixed, provided that goods shall have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

5. Pay all costs and charges incurred in obtaining the documents mentioned in article A.7, including the cost of certificates of origin, export licence and consular fees.

(中譯)

A. 賣方的義務

1. 賣方必須提供與買賣契約相符的貨物，如契約另有要求，尚須一併附上相符的證明。

2. 賣方必須在契約規定的時間，將貨物放在指定的交貨地點，或者通常交付該類貨物及裝運買方自備運輸工具的地點，聽候買方處理。

3. 爲使買方能够提取貨物，如該項貨物需要包裝，則賣方必須以自己的費用，備辦該項包裝。

4. 賣方必須就貨物何時可供買方處理一事，給予買方合理的通知。

5. 賣方必須負擔為交付貨物供買方處理所必需的查驗作業（如檢查品質、丈量、過磅、計數）費用。

6. 賣方必須負擔貨物的一切風險及費用，直到貨物在契約所定的期間已經放妥供買方處理時為止。但以該項貨物已經妥善充當於該項契約為條件，那是說，貨物必須明顯地堆放一邊，或能以其他方法確定其為該項契約的貨物為條件。

賣方必須應買方的要求，以買方的風險及費用，給予一切的協助，取得買方為出口及（或）進口（以及必要時，為貨物運送途中通過其他國家）可能需要而由交貨國及（或）產地國所簽發的任何單證。

B. 買方的義務

1. 當貨物依契約所定的時間及地點放妥供買方處理時，買方必須儘速提取貨物，並須依照契約規定支付價款。

2. 買方必須從貨物經放妥供其處理時開始，負擔貨物的一切費用及風險，但以該項貨物已經妥善充當於該項契約為條件。那是說，貨物必須明顯地堆放一邊，或能以其他方法確定其為該項契約的貨物為條件。

3. 買方必須負擔因出口理由而可能徵收的關稅及稅捐。

4. 買方如為自己保留一段期間以便提取貨物，及（或）保留選擇交貨地點的權利時，如未能及時給予指示，則必須負擔因此而發生的附加費用，並從約定期間屆滿的那天開始，負擔貨物的一切風險。但以該項貨物已經妥善充當於該項契約為條件，那是說，貨物必須明顯地堆放一邊，或能以其他方法確定其為該項契約的貨物為條件。

5. 買方必須支付為取得上述「賣方的義務」第7項所提及的單證而發生的一切費用，包括產地證明書、輸出許可證及領事簽證費用。

（二）說 明

1. 這一條件的“Ex”，是指「交貨」的意思。“Ex Works”、“Ex Factory”、及“Ex Mill”三個用語，都可譯成「工廠交貨」，其中“Ex Works”通常是用在鐵工廠、機械工廠、及其他重工業工廠的場合；“Ex Factory”用在輕工業工廠，如成衣廠、皮包廠、鞋廠等場合；“Ex Mill”

則用於紗廠、麵粉廠、鋸木廠、造紙廠等場合。另外“Ex Plantation”是指「農場交貨」，通常用於農產品交易的場合；“Ex Warehouse”，依字面雖譯成「倉庫交貨」，但實際上是專指在倉庫業者的倉庫交貨。上面這五個用語實際上是同一類貿易條件，所不同的只是交貨場所而已。一般將其總稱為“Loco terms”，即「現場交貨」之意。

2. 以這個條件報價或訂約，通常須在貿易條件之後，列明交貨場所的詳細地址，或只列城市名稱，例如：

“Offer T-Shirt No. 6160 2,000 dozen US\$9.00 per dozen Ex Factorydelivery during July.”

（報價圓領衫品號6160二千打，每打美金九元，……工廠交貨，交貨期間為七月間。）

報價時，如只列交貨場所的城市名稱，則報價經接受後，賣方應及時通知買方或其代理人提取貨物的詳細地點，倘未為這項通知，則賣方對於買方未提貨所遭致的損失，不能要求賠償並由賣方自負全部責任。

3. 在國際貿易中，很少採用這種條件。除非買方在輸出國有分支機構、代理人、或派有代表，否則就必須從輸入國前往輸出國辦理提貨，實際上甚少可能。目前××廠商間有採用這種條件出售貨物的，多是因不諳出口手續，而採用這種條件銷售與國內出口商，再由出口商以他種條件轉售與國外進口商。就製造廠商而言，其以這種條件銷售貨物，實際上與其一般內銷業務並無多大區別。

第三節 FOR (free on rail)(named departure point)

 FOT (free on truck)(named departure point)

（一）本條件內容

（英文）

A. Seller Must

1. Supply the goods in conformity with the contract of sale,