

北京北方工业经济法律咨询中心编著

涉外商务合同实用手册

HANDBOOK ON INTERNATIONAL
COMMERCIAL CONTRACTS



中英对照

Chinese-English Version

中国国际广播出版社

涉外商务合同实用手册

(中英对照)

北京北方经济法律咨询中心编写

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序

我国的对外贸易起步于新中国成立，但其飞跃发展、长足进步的时期却始于十余年前改革开放政策的实行之时。随着改革的深入、对外经济交流的扩大，不仅要求专业外贸人员、专业法律工作者的知识水平要上一个新台阶，而且对过去长期从事国内机关行政管理工作，以及从事国内企业管理工作的干部的传统知识结构也形成了冲击。


中国北方工业公司经过十数年的发展，已成为今天集技、工、贸于一体，在国际上颇具声望的全国最大的工贸进出口公司之一。回顾过去公司在对外贸易及国内外投资领域的经验及教训，熟悉国际惯例及了解主要贸易国家的法律是成功地开拓并占领国际市场的前提条件。《涉外商务合同实用手册》正是北方工业经济法律咨询中心的法律专业人员以其十余年的工作经验，参考国际惯例、各国立法及专家论述而汇集的一本涉外合同专著。

合同，是现代经济活动中不可缺少的工具。在涉外商事领域中，由于跨国经济活动而引起的权利义务关系和经济纠纷，均须以合同为依据，以其作为各方权益的保障手段。《涉外商务合同实用手册》介绍了在涉外商事活动中所常见的几类合同参考格式及其使用说明，为从事涉外商务的机关、企事业单位的管理干部和专业人员提供了有价值的参考资料。该书所涉及的内容仅仅是商务合同的一部分。由于知识水平的局限，作者不可能以偏概全，但

谨以此书向广大读者推荐，愿起到普及合同法律知识，抛砖引玉之功效。

中国北方工业公司

总经理



一九九三年七月三十一日

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目 录

第一章 国际货物买卖合同	(1)
一、国际货物买卖合同参考文本格式(1)	(1)
二、国际货物买卖合同参考文本格式(2)	(10)
三、国际货物买卖合同格式使用说明	(21)
第二章 补偿贸易合同	(67)
一、补偿贸易合同参考文本格式	(67)
二、补偿贸易合同格式使用说明	(78)
第三章 来料加工装配合同	(85)
一、来料加工装配合同参考文本格式	(85)
二、来料加工装配合同格式使用说明	(98)
第四章 国际技术贸易合同	(103)
一、专有技术许可合同参考文本格式(1)	(103)
二、专有技术许可合同参考文本格式(2)	(135)
三、专有技术许可合同格式使用说明	(162)
四、专利许可合同参考文本格式	(181)
五、专利许可合同格式使用说明	(209)
六、商标许可及技术协助协议参考文本	(218)
第五章 国际土木建筑工程承包合同	(236)
一、国际土木建筑工程承包合同参考文本格式	(236)
二、国际土木建筑工程承包合同格式使用说明	(383)
第六章 国际借款合同	(416)
一、国际贷款合同参考文本格式(1)	(416)

二、国际贷款合同参考文本格式(2).....	(475)
三、国际贷款合同格式使用说明	(532)
第七章 中外合资经营企业合同	(552)
一、中外合资经营企业合同参考文本格式	(552)
二、中外合资经营企业章程参考文本格式	(596)
三、中外合资经营企业合同和章程格式使用说明	(624)
四、海外投资企业股东协议参考文本	(640)
第八章 销售代理协议	(674)
一、销售代理协议参考文本格式(1).....	(674)
二、销售代理协议参考文本格式(2).....	(685)
三、销售代理协议格式使用说明	(688)
附录一：《联合国国际货物买卖合同公约》	(707)
附录二：1990年《国际贸易术语解释通则》	(776)
附录三：《跟单信用证统一规则》	(912)

第一章 国际货物买卖合同

一、国际货物买卖合同参考格式(1)

出口合同

合同号:

签约日期:

签约地:

卖方: NORINCO

地址: 中国 北京 日坛南街甲 7 号

电话:

传真:

电传:

买方: BETA First Inc.

地址: 美国 洛杉矶 ×街×号

电话:

传真:

电传:

双方同意按照下列条款由卖方出售、买方购进下列货物:

- (1) 货物名称、规格:
- (2) 数量:
- (3) 单价:
- (4) 总值:

(上述(2)、(3)、(4)条合计)

(5) 交货条件: FOB/CFR/CIF _____, _____。

除非另有规定,“FOB”,“CFR”和“CIF”均应依照国际商会制定的《国际贸易术语解释通则》(INCOTERMS 1990)办理。

(6) 货物生产标准:

(7) 包装:

(8) 唛头:

(9) 装运期限:

(10) 装运港口:

(11) 目的港口:

(12) 保险:

当交货条件为 FOB 或 CFR 时,应由买方负责投保;

当交货条件为 CIF 时,应由卖方按发票金额 110% 投保 _____ 险;附加险: _____。

(13) 支付条款:

13.1 信用证(L/C)支付方式

买方应在装运期前/合同生效后 _____ 日,在 _____ 银行以电传/电信方式开立以卖方为受益人的不可撤销的议付信用证。信用证应在装船完毕后 _____ 日内在受益人所在地到期。

13.2 托收(D/P 或 D/A)支付

货物发运后,卖方出具以买方为付款人的付款跟单汇票,按即期付款交单(D/P)方式,通过卖方银行及 _____ 银行向买方转交单证,换取货物。

货物发运后,卖方出具以买方为付款人的承兑跟单汇票,汇票付款期限为 _____ 后 _____ 日,按即期承兑交单(D/A _____ 日)方式,通过卖方银行及 _____ 银行,经买方承兑后,向买方转交单证。买方按汇票期限到期支付货款。

(14) 单证:

卖方应向议付银行提交下列单证：

(a) 标明通知收货人/受货代理人的全套清洁的、已装船的、空白抬头、空白背书并注明运费已付/到付的海运提单。

(b) 商业发票____份；

(c) 在 CIF 条件下的保险单/保险凭证；

(d) 装箱单一式____份；

(e) 品质证明书；

(f) 原产地证明书。

(15) 装运条件：

15.1 在 FOB 条件下，由买方负责按照合同规定的交货日期洽定舱位。卖方应在合同规定的装船期前____日将合同号、货物名称、数量、金额、箱数、总重量、总体积及货物在装运港备妥待运的日期以电传/传真通知买方。买方应在装船期前____日通知卖方船名、预计装船日期、合同号，以便卖方安排装运。如果有必要改变装运船只或者其到达日期，买方或其运输代理应及时通知卖方。如果船只不能在买方通知的船期后____日内到达装运港，买方应承担从第____日起发生的货物仓储保管费用。

15.2 在 FOB, CFR 和 CIF 条件下，卖方在货物装船完毕后应立即以电传/传真向买方及买方指定的代理人发出装船通知。装船通知应包括合同号、货物名称、数量、毛重、包装尺码、发票金额、提单号码、启航期和预计到达的目的港的日期。如货物系危险品或易燃品，也应注明危规号。

15.3 允许/不允许部分装运或转运。

15.4 卖方有权在____%数量内溢装或短装。

(16) 质量/数量不符和索赔条款

在货物运抵目的港后，一旦发现货物之质量、数量或重量与合同规定的相符，买方可以凭借双方同意的检验组织所出具的检验证书，向卖方索赔。但是，应由保险公司或航运公司负责的损失除

外。有关质量不符的索赔应由买方在货物到港后 30 天内提出;有关数量或重量不符的索赔应在货物到港后 15 天内提出。卖方应在收到索赔要求后 30 天内回复买方。

(17) 不可抗力

卖方对由于下列原因而导致不能或暂时不能履行全部或部分合同义务的,不负责任:水灾、火灾、地震、干旱、战争或其它任何在签约时卖方不能预料、无法控制且不能避免和克服的事件。但卖方应尽快地将所发生的事件通知对方,并应在事件发生后 15 天内将有关机构出具的不可抗力事件的证明寄交对方。如果不可抗力事件之影响超过 120 天,双方应协商合同继续履行或终止履行的事宜。

(18) 仲裁

因履行本合同所发生的一切争议,双方应友好协商解决,如协商仍不能解决争议,则应将争议提交中国国际经济贸易仲裁委员会(北京),依据其仲裁规则仲裁。仲裁裁决是终局的,对双方都有拘束力。仲裁费应由败诉一方承担,但仲裁委员会另有裁定的除外。在仲裁期间,除仲裁部分之外的其它合同条款应继续执行。

(19) 特殊条款:

本合同由双方代表签字后生效,一式两份,双方各执一份。

卖方: NORINCO 公司
授权代表: (签字)

买方: BETA First Inc. 公司
授权代表: (签字)

SALES CONTRACT

Contract No: _____

Conclusion Date: _____

Conclusion Place: _____

The Seller: NORINCO

No. 7A, Yue Tan Nan Jie, Beijing, the People's Republic of China.

TEL: _____; FAX: _____;

TELEX: 22339 CNIC CN

The Buyer: BETA First Inc.

TEL: _____; FAX: _____;

TELEX: _____.

The Seller agrees to sell and the Buyer agrees to buy the undermentioned commodity according to the terms and conditions stated below:

(1) Name of Commodity, Specification	(2) Quantity	(3) Unit Price	(4) Amount
Total Value;			

(5)TERMS OF DELIVERY: FOB/CFR/CIF _____.

The terms "FOB", "CFR" or "CIF" shall be subject to the "International Rules for the Interpretation of Trade Terms"(INCOTERMS1990) provided by International Chamber of Commerce (ICC) unless otherwise stipulated herein.

(6)STANDARD OF PRODUCTION;

(7)PACKING;

(8)SHIPPING MARK;

(9)TIME OF SHIPMENT;

(10)PORT OF SHIPMENT;

(11)PORT OF DESTINATION;

(12)INSURANCE;

If the term of delivery is on FOB or CFR basis, insurance shall be effected by the Buyer.

If the term of delivery is on CIF basis, insurance shall be covered by the Seller for 110% of the invoice value against _____;

Additional insurance _____.

(13)TERMS OF PAYMENT;

13. 1. Letter of Credit

The Buyer shall, _____ days prior to the time of shipment/after the Contract came into effect, open an irrevocable Letter of Credit by Telex/Mail in favour of the Seller in _____ Bank. The L/C shall expire _____ days after the completion of loading of the shipment in the locality of the beneficiary.

13. 2. Collection (D/P or D/A)

13. 2. 1 After shipment, the Seller shall draw a sight bill of exchange on the Buyer and deliver the documents through Seller's bank and _____ Bank to the Buyer against payment, i. e D/P. The B

uyer shall effect the payment immediately upon the first presentation of the bill(s) of exchange.

13. 2. 2 After shipment, the Seller shall draw a bill of exchange, payable ____ days after ____ on the Buyer and deliver the documents through Seller's bank and _____ Bank to Buyer against acceptance (D/A ____ days). The Buyer shall make payment on the maturity date of the bill of exchange.

(14) DOCUMENTS REQUIRED:

The Seller shall present the following documents to the negotiating bank;

(A) Full set of clean on board ocean Bills of Lading and blank endorsed marked freight prepaid/to collect;

(B) Commercial Invoice ____;

(C) Under the term of CIF, Insurance Policy/Insurance Certificate;

(D) Quality Certificate;

(E) Packing List ____;

(F) Certificate of Origin.

(15) TERMS OF SHIPMENT:

15. 1. On the FOB basis, the Buyer shall book shipping space in accordance with the date of shipment stipulated in the Contract. The Seller shall ____ days before the date of shipment stipulated in the Contract advise the Buyer by Telex/Fax of the Contract number, the name of commodity, quantity, total amount, package numbers, total weight, and volume and the date from which goods is ready for loading at the port of shipment. The buyer shall ____ days before the date of shipment stipulated in the Contract, notify the Seller of name of the vessel, the estimated date of loading and the Contract number for the Seller to effect shipment. In case the carrying vessel of the date of arrival has to be

changed, the Buyer or its shipping agent shall advise the Seller in time. Should the vessel fail to arrive at the port of shipment within ____ days after the arrival date advised by the Buyer, the Buyer shall bear the storage expense calculated from the ____ days thereafter.

15. 2 . On the FOB, CFR and CIF basis, The Seller shall, immediately upon the completion of the loading of the goods, give a shipping notice to the Buyer by Telex/Fax. The notice includes the Contract number, name of goods, quantity, gross weigh, measurement, invoiced value, bill of lading number, sailing date. The IMCO number of the inflammable and dangerous goods, if any, shall also be indicated.

15. 3. Partial shipment and the transshipment are/are not allowed.

15. 4. With ____% more or less both in amount and quantity allowed at the Seller's option.

(16) QUALITY/QUANTITY DISCREPANCY AND CLAIM:

In case the quality and/or quantity/weight of the goods found by the Buyer are not in conformity with the Contract after arrival of the goods at the port of destination, the Buyer may lodge claim with the Seller supported by survey report issued by an inspection organization agreed by both parties, with the exception, however, of those claims for which the insurance company and/of the shipping company are to be held responsible. Claim for quality discrepancy should be filed by the Buyer within 30 days after arrival of the goods at the port of destination, while for quantity/weight discrepancy claim should be filed by the Buyer within 15 days after arrival of the goods at the port of destination. The Seller shall reply to the Buyer no later than 30 days after receipt of the claim requirement.

(17) FORCE MAJEURE:

The Seller shall not be held responsible for failure or delay to per-

form all or any part of the Contract due to flood, fire, earthquake, drought, war, or any other events which could not be predicted at the time of the conclusion of the Contract, and could not be controlled, avoided or overcome by the Seller. However, the Seller shall inform the other party of its occurrence in written as soon as possible and thereafter send a certificate of the Event issued by the relevant authority to the other party but no later than 15 days after its occurrence.

If the Force Majeure Event last over 120 days, both parties shall negotiate the performance or the termination of the Contract.

(18) ARBITRATION:

All disputes arising from the Contract, should be settled through friendly negotiations. Should no settlement be reached through negotiation, the case shall then be submitted for arbitration to the China International Economic and Trade Arbitration Commission (Beijing) and arbitration rules of this Commission shall be applied. The award of the arbitration shall be final and binding upon both parties. The arbitration fee shall be borne by the losing party unless otherwise awarded by the arbitration organization. During the course of the arbitration, the Contract shall be performed except for the part under arbitration.

(19) SPECIAL PROVISIONS:

IN WITNESS THEREOF. THIS Contract shall come into effect immediately after it is signed by both parties in two original copies; each party holds one copy.

THE SELLER: _____

THE BUYER: _____