

English Contracts

for Foreign Trade

and Economic Cooperation



对外经贸

英文契约实务

李兵 著

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。辽宁大学出版社

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前 言

21 世纪是经济全球化的时代，随着我国对外贸易与经济合作的快速发展，对外经贸英文契约得到越来越多的使用。与国内合同不同的是，对外经贸合同的每一条款都必须以两种或两种以上的语言签订，两种文本在很多情况下具有同等的法律效力。因此，研究对外经贸英文契约的特点、格式、规范、用词、范例、中英互译，对于理解和掌握这类合同的内容和写法，对于在国际经贸实践中的具体运用，具有重要意义。

本书分为上下两编。上编为对外经贸英文契约概述和常用条款，主要讲述了有关品质、数量、价格、包装、交货、保险、支付、检验、索赔、仲裁、不可抗力等条款。下编为对外经贸契约的不同种类和常用范例，包括了货物售卖、货物购买、经销代理、加工贸易、补偿贸易、国际租赁、劳务出口、技术贸易、合资经营企业、合作经营企业、国际工程承包等几大类常用的对外经济贸易与合作方面的合同。

本书可适用于从事对外经济、贸易、金融、法律、翻译、谈判、交流工作的人员，也适于在校和自学的学生及其他专业人员使用。本书是作者多年研究和教学工作的积累，但由于本人水平和时间有限，缺点错误在所难免，敬请广大读者不吝指教。

作 者

2005 年 10 月

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上编 对外经贸英文契约概述与常用条款

第一章 概 述

契约，也称合同。“契”，即意思相投或相合；“约”是用语言或文字互订共守的条件。契约或合同，意思是愿意订立共同遵守的条件，合作共事。《中华人民共和国民法通则》第85条规定：“合同是当事人之间设立、变更、终止民事关系的协议”。《中华人民共和国合同法》第二条规定：“合同是平等主体的自然人、法人、其他组织之间设立、变更、终止民事权利义务关系的协议”。

对外经贸合同是我国和外国平等主体的自然人、法人、其他经济组织之间设立、变更、终止民事权利义务关系的协议。《中华人民共和国合同法》第126条规定：“涉外合同的当事人可以选择处理合同争议所适用的法律，但法律另有规定的除外。涉外合同的当事人没有选择的，适用与合同有最密切联系的国家的法律。”

一、对外经贸英文契约的种类

（一）按繁简程度不同分：

1. 正式合同 Contract
2. 协议书 Agreement
3. 确认书 Confirmation
4. 备忘录 Memorandum
5. 订单 Order 等。

（二）按具体业务分，常用的合同有：

1. 商品买卖合同 Sales Contract
2. 商品购买合同 Purchase Contract
3. 经销代理合同 Sales Agency Contract
4. 加工贸易合同 Processing and Assembling Contract
5. 补偿贸易合同 Compensation Trade Contract
6. 国际租赁合同 International Leasing Contract
7. 劳务出口合同 Labor Export Contract
8. 技术贸易合同 Technology Trade Contract

9. 合资经营企业合作合同 Equity Joint Venture Contract
10. 合作经营企业合作合同 Contractual Joint Venture Contract
11. 国际工程承包合同 International Construction Contract 等。

二、一般构成形式

1. Title 合同名称
2. Preamble 前文
 - 1) Date of Signing 订约日期（可在末尾）
 - 2) Signing Parties 订约当事人
 - 3) Each Party's Authority 当事人的合法依据（可省略）
 - 4) Place of Signing 订约地点（可在末尾，可省略）
 - 5) Recitals^① or Whereas Clause 订约缘由（可省略）
3. Body 本文
 - 1) Definition Clause 定义条款（买卖合同中，常省略）
 - 2) Basic Condition 基本条款（体现合同的性质和特点）
 - 3) General Terms and Conditions 一般条款（规定一般原则与作法）
 - A. Duration 合同有效期
 - B. Termination 合同终止
 - C. Force Majeure 不可抗力
 - D. Assignment 合同转让（买卖合同中，常省略）
 - E. Arbitration 仲裁
 - F. Governing Law 适用法律
 - G. Jurisdiction 诉讼管辖（买卖合同中，常省略）
 - H. Notice 通知手续（买卖合同中，常省略）
 - I. Entire Agreement Clause 完整条款（与涉及的现行合同条款的关系）（买卖合同中，常省略）
 - J. Amendment 合同的修改
 - K. Others 其他
4. Witness Clause 立证结尾条款
 - 1) Concluding Sentence 结尾语（包括合同份数，使用文字，效力等）
 - 2) Signature 签名
 - 3) Seal 盖印

① recitals n. （契约中）陈述（或证明）事实的部分

三、对外经贸英文契约的语言特点

1. 大多使用正式或法律用语。

1) Party A shall repatriate the patient to China and bear the cost of his passage to Beijing.

甲方应将病人遣返中国，负责病人回到北京的旅费。

repatriate vs send back

2) The Chairman may convene an interim meeting based upon a proposal made by 1/3 of the total numbers of directors.

董事长根据董事会 1/3 董事的提议，召集临时董事会议。

convene vs call, interim vs temporary

3) more examples: assist vs helprender vs give, title vs ownership (所有权), construe vs explain, require vs ask, notify vs inform or tell, assign vs transfer etc.

2. 多用成对成双的同义词。

1) This Contract is made and entered into by and between ABC Co. and XYZ Co.

ABC 公司和 XYZ 公司双方签订本合同。

by and between

2) The amendments to or alterations of this Contract become effective only after they are signed by both parties and approved by the original approving authorities.

本合同的修改，只有在双方签字并经原审批主管部门批准后才能生效。

amendments to or alterations of

3) more examples: null and void (失效), transferable or assignable, manufactured and assembled, furnish and provide etc.

3. 多用比较自然、明确、直接、有力的主动语态，少用委婉、间接、晦涩的被动语态。

Workers shall observe the rules and regulations of the company.

工人应遵守公司的规章。

The rules and regulations of the company shall be observed by workers.

公司的规章应被工人遵守。

4. 多用现在时态，少用将来时态。

Licensee may terminate this Contract 90 days after a written notice thereof is sent to Licensor upon the happening of one of the following events;

- 1) Licensor becomes insolvent or a liquidator of Licensor is appointed;
- 2) The patent described in Article 2 is not issued within 30 days from signing this Contract; and
- 3) Licensor fails to perform its obligations under this Contract.

当有下列事件之一发生, 被许可人在提前 90 天向许可人发送书面通知后, 可以终止本合同。

- 1) 许可人无力偿还债务, 或许可人的破产清算人已被指定。
- 2) 第二条规定的专利在签约之日起 30 天内尚未发布;
- 3) 许可人未能履行其合同义务。

5. 多用下列词语。

- 1) here + suffix, here = this

hereafter = after this time, in the future (今后, 此后)

hereby = by (means of, reasons of) this (特此)

herefrom = from this (由此)

herein = in this (此中, 于此)

hereinabove = above this part of this contract, etc. (在上文)

hereinbefore = in a preceding part of this contract, etc. (在上文)

hereinafter = later in this contract, etc. (在下文)

hereinbelow = below in this contract, etc. (在下文)

hereinto = into this (到这里面)

hereof = of this (于此, 在本件中)

hereto = to this (对此, 至此)

heretofore = until now (迄今为止)

hereunder = under this (在下面)

hereon/hereupon = at this point, in consequence of this (关于这个, 于是)

herewith = with this (同此, 与此, 附此)

- 2) there + suffix, there = that

thereafter = after that, afterwards (此后, 后来)

thereby = by that means, by that reason (由此, 因此)

therefor = for that (为此, 因之)

therefore = for that reason (因此, 所以)

therefrom = from that (从那里)

therein = in that, in that particular (在那里, 在那点上)

thereinafter = later in the same contract, etc. (以下, 在下文)

thereinbefore = in a preceding part of the same contract, etc.

thereof = of that, from that source (由此, 因此)

thereon / thereupon = on that (在其上, 关于那)

thereto = to that, in addition to that (至彼, 其外, 此外, 又)

thereunder = under that (在其下)

therewith = with that (从此, 与此)

therewithal = in addition, besides (此外, 除此之外)

3) where + suffix, where = what / which

whereas = considering that, (鉴于, 既然)

whereby = by what, by which (凭, 由是)

wherefore = for what, for which (为此, 因此)

wherein = in what, in which (在那里, 在那点上)

whereof = of what, of which (关于它, 关于)

whereon = on what, on which (在其上)

whereto / whereunto = to what, to which (向那里, 对那个)

whereupon = upon which (因此, 于是)

wherewith = with what, with which (用以)

4) shall (not will or should) 常用于表示法律上可以强制执行的义务。

译为“应, 应该, 必须”等。

will 语气比 shall 弱, 强制力也比其差, 译为“将, 愿, 要”等。

should 在合同中只表示语气较强的假设“万一”, 极少用于表示“应该”。

This Contract shall become effective upon and from the date on which it is signed.

本合同应于签字之日开始生效。

This Contract shall be written in English in two copies.

本合同应以英语写出, 一式二份。

5) WITNESS 证明 (第三人称单数 witnesses, or witnesssth)。

This Agreement, made this 14th day of May, 2000 between ABC Trading Co. of London (hereinafter referred to as ABC) of the one

part and CBA Corporation of Qingdao (hereinafter referred to as CBA) acting on its own behalf and on behalf of BCA Company Ltd (hereinafter referred to as BCA) of the other part

WITNESSES THAT :

本协议以伦敦 ABC 贸易公司 (以下称 ABC) 为一方, 与青岛 CBA 公司 (以下称 CBA) 本身并代表 BCA 有限公司 (以下称 BCA) 为另一方, 于 2000/5/14 签订, 证明:

- 6) IN WITNESS WHEREOF 作为所协议事项的证据, 兹证明。

IN WITNESS WHEREOF, the parties have executed this Contract in duplicate by their duly authorized representatives on the date first above written.

作为所协议事项的证据, 双方授权代表于上面首次写明的日期正式签署本合同一式二份。

- 7) NOW THEREFORE 兹特 (接 WHEREAS 条款之后引出具体协议事项的常用开头词语)。

NOW THEREFORE, it is hereby agreed and understood as follows:
兹特协议和谅解如下:

- 8) IN CONSIDERATION OF 以……为约因; 以……为报酬

NOW THEREFORE, in consideration of the premises^① and mutual covenants^② set forth herein and in order to be legally bound hereby, the parties hereto agree as follows:

兹以上述各点以及在此相互约定的各种条款为约因, 并为了具有法律约束力, 缔约各方特此同意如下:

IN CONSIDERATION OF the exclusive rights granted and the Technology conveyed hereunder, XXX Co. shall pay to YYY Company the total purchase price in the amount of USD100,000 payable in the following lump-sum fixed payments.

作为对于给予独家权利和转让技术的报酬, XXX 公司应付给 YYY 公司购买总值 100,000 美元, 并按下列规定整笔支付。

- 9) NOW THESE PRESENTS WITNESS 兹特立约为据。

PRESENTS = THE PRESENT WRITINGS 当前所述。

① premise n. (合同用语) 上述各点

② covenant n. 合同, 契约, 契约条款

10) IN THE PRESENCE OF 以……为见证人。

四、对外经贸英文契约的一般表达方式

1. 采用大小标题，分章节、条款、项目书写。
2. 使用 ANNEX 附录，SCHEDULE 一览表、计划表等详列某些必要的细节作为合同的组成部分，使合同既简洁，又详尽全面。
3. 使用定义条款界定反复出现的用语。
4. 某些需要强调的部分用大写以醒目。
5. (用简称)简化反复出现的重要词语，使其表达准确、简洁。
6. 数字小写加大写以免错误。如

USD5,300 (Say US Dollars Five Thousand Three Hundred only).

第二章 名称与前文、品质、数量、价格条款

对外经贸英文契约依据不同的种类，其构成条款也不尽相同。自本章起到第六章，以对外经贸契约中最常用的买卖合同为范例，讲述对外经贸合同常用条款的构成与形式。其他对外经贸合同中一些专门的条款，在本书的下编中将结合各种具体的合同范例加以进一步的学习。

一、合同名称与前文条款

1. This Sales Contract is made by and between the Sellers and the Buyers whereby the Sellers agree to sell and the Buyers agree to buy the under-mentioned goods according to the terms and conditions stipulated below:

兹经买卖双方同意由卖方出售，买方购进下列货物，并按下列条款签订本销售合同：

2. This Contract is made this 15th day of April, 2010 by and between ABC Corporation (hereinafter referred to as the Seller), an American Corporation having its principal office at Market Street 128, New York, USA, who agrees to sell, and XYZ Company (hereinafter referred to as the Buyer), a Chinese company having its principal office at Jinger Road 11, Jinan, Shandong, P. R. China, who agrees to buy the following goods on the terms and conditions as below:

本合同于2010年4月15日由美国ABC公司（以下称卖方），主营业所在美国纽约市场街128号，与中国XYZ公司（以下称买方），主营业所在中国山东济南经二路11号，所签订。现根据下列条款，ABC公司同意售出，XYZ公司同意购买下述商品：

二、品质条款

1. Maker's inspection in the factory to be final.

以制造商工厂检验为准。

2. Goods sold by sample shall be guaranteed by the Seller to be fully equal

to sample upon arrival at destination.

卖方凭样品售货，必须保证货到时的质量同样品完全一致。

3. Fair average quality at the time and place of loading shall be assessed upon the basis of London Corn Trade Association's official F. A. Q. standard.

装运地装货时的平均中等品质，以伦敦谷物贸易协会官方平均中等品质为准。

4. Colors slightly different from samples are permissible.

色泽同样品稍有差别可以接受。

5. Should the goods be found, on their arrival at destination, to be different from the sample, if by that difference their character is not altered, or if they are in merchantable condition though inferior in quality to the sample, the Buyer shall take delivery of the goods on condition that a reasonable allowance to be made on the contract price by subsequent mutual negotiation. Goods must not be returned except by permission of the Seller.

货物到达目的地时，如发现与样品不符，但货未发生质变，或货物质量虽逊于样品，但仍可销售，买方仍应照常提货，但合同价将酌予削减，其数额由双方议定。未经卖方同意，不得退货。

6. Unless otherwise stated, technical and commercial latitude^① in material quality, workmanship, feeling, design, shade, dimension, shrinkage and color, etc. shall always be allowed as a commercial allowance according to the trade customs and /or practices recognized in the country of supply.

若无另行规定，原料品质、工艺、手感、设计图案、灰度、尺寸、皱缩度和颜色等方面的技术和商业的差异幅度可被允许在商业误差之内，只要符合供应国被公认的贸易习惯和/或惯例即可。

7. The goods are subject to inspection, upon their arrival, by the China Commodity Inspection Bureau, whose certificate is to be considered as final and binding upon both parties.

货物到达时，由中国商品检验局检验，其检验证书为最后依据，对双方均具有约束力。

8. Inspection is to be made at the destination by the China Commodity Inspection Bureau, whose certificates of quality and weight shall be final and binding upon both parties.

① latitude n. 纬度，范围，幅度

货物在目的港由中国商品检验局检验，其品质和重量证明书为最后依据，对双方均具有约束力。

三、数量条款

1. 5% more or less at the Seller's (the Buyer's) option.

卖方（买方）可以溢短装 5%。

2. Where the Seller delivers to the Buyer a quantity of goods larger than he has contracted to sell, the Buyer may accept the goods included in the Contract and reject the rest, or he may reject the whole. If the Buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

卖方交付买方的数量，若多于合同所规定的数量，买方可接收合同所定数量，而拒收其余部分，亦可拒收全部货物。若买方接收卖方所交全部货物，则须按合同价格支付全部货款。

3. Where the Seller delivers to the Buyer the goods he has contracted to sell mixed with goods of a different description not included in the Contract, the Buyer may accept the goods which are in accordance with the Contract and reject the rest, or he may reject the whole.

在卖方交付买方合同所订的货物中，若混有与合同规定不符的货物，买方或接收与合同相符的货物而拒收其余货物，或拒收全部货物。

4. Quantity _____, 2% more or less. The Seller has the option of shipping a further 3% more or less on contract quantity, excess or deficiency over the above 2% to be settled at the CIF price on date of B/L and on the quantity thereof. The value shall be fixed by arbitration unless mutually agreed.

数量 _____，允许溢短装 2%。在此基础上卖方享有另外 3% 的增减幅度，其增减部分的价格则按提单所载日的 CIF 价格计算。若买卖双方无法就价格达成协议，则提交仲裁。

5. Any shortage or excess within one percent of B/L weight shall not be taken into consideration.

提单货物重量增减不超出 1%，不予计算。