

- 高等院校商务专业系列丛书
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现代实用商务英语丛书
Modern Practical Business English

丛书主编\张立玉 主审\罗建生

商务合同写作及翻译

Tips and Techniques in Writing and Translating Commercial Contracts

编著 吕昊 刘显正 罗萍

全国优秀出版社
武汉大学出版社

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内 容 简 介

随着现代商务活动的日益频繁,人们对商务合同的写作及翻译的要求越来越迫切,越来越需要。本着培养这方面的专业人才的目的,也为了更好地从事各种商务领域活动,本书从实用的角度详细介绍了商务合同方面的基本知识,帮助读者了解商务合同写作及翻译的技巧,向广大师生提供了丰富的合同形式和形式多样的翻译练习。本书不仅可以作为普通高校相关教材,也可作为公司培训和相关从业人员的常备参考书。

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自中国加入 WTO 以来,国外著名跨国集团公司、金融机构、工商企业纷纷抢滩中国市场,在中国设立分支机构、分公司及合资企业,引发了新一轮对高素质复合型外经贸人才的需求:要求他们具备良好的英语听、说、读、写、译及对外交流、沟通的能力,同时熟知外经贸专业知识及国际贸易惯例。所有这些对高等院校在人才培养方面提供了新的挑战。如何充分利用现有教育资源,培养大批社会急需的复合型外经贸人才是我们所面临的重大研究课题。

目前,许多高等院校关于如何利用翻译技巧,准确处理商务资料,处理不同信息,进行商务谈判的书籍较少;从文化的角度向读者介绍商务沟通技巧,不同民族商务活动的差异、作用、影响等的实用书籍也不多;此外,随着现代商务活动国际化程度的不断提高,目前全国从事商务领域活动,包括财贸、金融、商务、经济、法律、外交等部门的专业人员和从业人员也越来越多,因此,综合目前的形势,为满足广大教师、学生、从业人员的需要,我们有责任为其提供一套全方位的、综合性强的现代商务英语丛书。张立玉同志主编的《现代实用商务英语丛书》在此做了成功的尝试。

本套丛书分为八分册:《商务跨文化交际》、《商务英语英汉口译》、《商务英语选读》、《国际商务英语初级口语》、《国际贸易结算》、《国际贸易进出口实务》、《国际市场营销技术》、《商务合同写作及翻译》。本套丛书的内容涵盖了当今国际商务最新观点、最新动态。它可以满足读者所需要了解的在全球背景下商务活动的最新进展状况,并提供和帮助读者做好准备迎接新世纪国际商务业态的新挑战。

本丛书的作者均在高等学校、研究单位或公司工作,具有丰富的教学、研究和实践经验,其中有的同志在商贸界享有盛名,颇有建树,且编著过相关书籍。在编著该套丛书过程中,作者花了近两年的时间做了大量的市场调查和案头工作,力求使理论性、实用性、可读性有机结合。

该套丛书内容新颖、概念清晰,理论性和实用性强,通俗易懂、层次分明,其读

者对象虽定位于高等学校商贸英语专业的学生,但对于外贸工作人员、商务管理人员、外企文员等,也大有裨益。相信该套丛书的出版,定会受到读者的欢迎。

A stylized handwritten signature in black ink, likely belonging to the author or a reviewer.

2003年12月16日

随着中国加入 WTO 及经济全球化进程的加快,国际交流日益频繁和普遍,国际之间的各种商务活动日益增多,从事商务领域活动,包括财贸、金融、经济、法律、外交等部门的专业人员和从业人员亦越来越多。然而,关于如何准确处理商务信息,进行商务谈判,从事各种商务活动的实用书籍不多。为了满足当前社会经济发展的需要,也为了满足高等院校师生及从业人员的需要,我们结合近年来国际商务(贸)活动发展趋势及具体案例,从现代商务结合国际贸易的基本原则,从实用的角度向读者推出了《现代实用商务英语丛书》。

本套丛书分为八分册,依次为:《商务跨文化交际》、《国际市场营销技术》、《国际贸易结算》、《国际商务英语初级口语》、《商务英语选读》、《商务英语英汉口译》、《国际贸易进出口实务》、《商务合同写作及翻译》。

《商务跨文化交际》力求在叙述、讨论和任务布置时融入情感因素,强调其在商务跨文化交流中的作用,旨在使读者意识到情感因素的重要性并能将其下意识运用于今后的实际工作中。

《国际市场营销技术》涵盖了营销基本概念、市场分析、营销调研、市场细分、目标市场选择和定位、营销计划、营销组合等各基本层面的知识和方法。

《国际贸易结算》重点介绍了有关国际贸易结算方面的基本理论、基本知识和基本技能,以及相关的国际贸易惯例和游戏规则。

《国际商务英语初级口语》将外贸业务的基本环节和内容有机结合起来,集知识性、科学性、娱乐性于一体,图文并茂、重点突出、内容新颖、简明扼要、易学易懂。

《商务英语选读》选材新颖,内容涉及日常商务活动的文化、贸易谈判、金融、信息、国际贸易等。不仅具有知识性、实用性,而且内容丰富,练习精当,趣味性强,具有强烈的时代气息。

《商务英语英汉口译》强调实践的重要性,全书始终贯彻以“操练”为主,所选编的语言材料,体现了商务口译工作的基本要求以及中国加入 WTO 后与国际接轨的时代特征。

《国际贸易进出口实务》重点介绍了进出口贸易的整个流程,读者可以了解

一笔交易从发生到发展再结束的整个过程。

《商务合同写作及翻译》介绍了我国当前常用的几大类涉外商务合同写作的理论要点和范例,并列举了法律规范以及翻译技巧和常用术语表达。

由于商务英语具有极强的实践性、操作性,本套丛书在编写过程中,一方面力争使语言精炼、通俗易懂,同时体系完整,知识系统而全面;另一方面尽可能用图示方法辅以文字说明来准确阐明国际商务的操作程序,以加深和巩固学习者的理解及记忆。

编撰本套丛书是一种新尝试,因编写人员能力有限,难免在编写中出现一些疏漏或错讹之处,恳请读者和同仁予以批评指正。

张立玉

2003年12月于武昌珞珈山

前 言

《商务合同写作及翻译》是“现代实用商务英语丛书”之一。随着现代商务活动国际化程度的不断提高,目前全国从事商务领域活动,包括财贸、金融、商务、经济、法律、外交等部门的专业人员也越来越多,而关于如何准确处理商务信息、进行商务谈判、从事各种商务活动的实用书不多。为了满足当前社会经济发展的需要,也为了满足大专院校师生及从业人员的需要,本书从实用的角度向读者介绍了商务合同方面的基本知识,帮助读者了解商务合同写作及翻译的技巧,从而熟悉商务实践的技能、策略以及相关的现实商务活动。

《商务合同写作及翻译》分为三个部分共 15 章及 5 个附录。第一部分有 5 章,主要涉及合同写作的基本常识和技巧,注重的是合同写作的理论知识的介绍。第二部分有 10 章,分别从货物购买、货物销售、劳务进出口、合作经营、合资经营、补偿贸易、加工装配、寄售代理、设备引进和技术转让等方面来论述英语合同的翻译,注重的是合同翻译的实践操作的介绍。此外,每章课后配有大量翻译练习及详细的解答,以供学生学习和练习。第三部分共有 5 个附录,每个附录即一个标准的中英文对照的常用合同,以便参考。

本书可供普通高校、高等职业学校以及高等专科学校英语专业、法律专业和经贸专业学生使用,亦可用作具有同等英语水平的其他专业学生和从业人员的学习参考书。

当然,限于我们的学识,本书可能还有不尽如人意之处,甚至存在各种差错。在此,我们恳请专家、学者、教师和学生及广大读者提出宝贵意见。

作者对为本书编写、出版、发行而提供各种帮助的单位和个人,表示衷心的感谢。

编 者

2004 年 12 月 15 日

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Part 1 The Basics of Contract

Chapter 1 Contract and Its Formation

Section 1 Commercial Contract & International Commercial Contract

Commercial contracts usually refer to contracts of daily businesses and contracts involving economic constructions such as mining construction, railway construction and tapping of natural resources, etc. These contracts are so many that we have to take only one of them as an example to describe—contract for sale(s) of goods to distinguish commercial from international commercial contracts.

1.1 Commercial Contract for the Domestic Sales of Goods

A domestic sales of goods and/or services may create a commercial contract between enterprises, other organizations, or individuals in one country. The buyer and seller may know each other's standing or the legal system operating in that country. Their contract shall be governed by and construed in accordance with the law of their country. All disputes arising from or in connection with the contract shall, if possible, be firstly settled amicably through friendly negotiation. In case no settlement can be reached thereby the dispute may, if either party so requires, be resolved by arbitration. The award made by the arbitration commission shall be final and binding upon both parties. The arbitration fees, unless otherwise awarded, shall be borne by the losing party.

1.2 Commercial Contract for the International Sales of Goods

On the other hand, a contract of international commerce between the parties coming from different countries may arise from an international sales of goods and/or services.

The features of an international sales of goods and/or services reflect the reality that although the principles derive from the general law of contract there are important differences. First the buyer and seller are normally located in different countries. They may know nothing of each other's standing nor of the legal system operating in the country of the other party. This factor is important in the event that there is a dispute that finally requires a third-party settlement, for instance, by a court or arbitrator, in accordance with the law governing the contract between the parties. Related problems arise with respect to the enforcement of judgments in another country. Parties to a contract should insert a dispute settlement clause in the contract of sales. The wider problem of which law should govern the international contract should also be addressed in the contract of sales so as to avoid entanglement in conflict-of-law disputes.

In the case of goods, factors which distinguish export sales from domestic trade include compliance with government regulations controlling movement of goods across frontiers such as export and import controls, health and inspection requirements and customs duties.

Next, like a domestic sales of goods, an international sales involves decisions as to method of payment and the insurance and carriage of the goods. However, an export sale has traditionally had the additional complexity that it could take weeks from the time when a western seller delivers goods to a carrier until the goods are delivered to the buyer in China. During that time neither party to the contract of sales has actual possession of the goods and the questions of who bears the risk during that period and when property in the goods passes need to be addressed.

1.3 Relevant Transport Document

In the International Sales of Goods, the transport document called a "bill of lading" is a device which was developed to deal with these problems in the case of port-to-port sea shipment and is still widely used where goods are exported under a contract of carriage by sea between the buyer or seller with the sea carrier. However, the advent of containerization as a system for transportation of goods has meant that the seller is likely to deliver its goods to an inland freight-forwarder as opposed to delivering them to the side of a ship or airport. The containerized goods may then travel to the buyer by road, rail and sea or air along with goods covered by other sales transaction. This combined form of transport is known as "multimodal". The goods are under the control of the freight-forwarder who may in turn have contracts with the various carriers.

This development has meant that the transport documents used in the case of carriage by sea since the 16th century have required modifications to ensure that, in the context of modern transport systems, the documents can continue to perform, as appropriate, the functions of providing a receipt for the goods, constituting the contract of carriage as well as serving as a document of possessory title to the goods and for arranging payment. The problem is compounded because faster transport systems have reversed the problem solved by the bill of lading, how to protect each side when the goods are at sea for lengthy periods. Today, goods frequently arrive before the traditional transport document—the bill of lading—is received by the buyer so as to enable delivery of the goods by the carrier.

1.4 Electronic Data Interchange

The latest development which has potential impact on the traditional paper-based system for international sales of goods is the advent of electronic data interchange which enables the parties to conclude a sale by an “electronic handshake”. This may seem to solve the problem of what to do in cases where the goods arrive ahead of the papers, such as the bill of lading, which establishes the right to take delivery of the goods, but creates the problem of how, in an electronic system, property in the goods can still be transferred or the goods paid before arrival.

See the following cases where electronic data are interchanged.

Case 1: COMMODITY CXXX 200M/TONS \$ 295 CIF ROTTERDAM IRREVOCABLE SIGHT LC PROMPT SHIPMENT VALID SUBJECT REPLY HERE 31/7

Case 2: YC17/7COMMODITY CXXX WE ACCEPT 300 M/TONS \$ 295 = BASIS CIF ROTTERDAM PAYMENT IRREVOCABLE SIGHT LC PROMPT SHIPMENT NET SHIPPED WEIGHTS BESIDES USUAL SHIPPING DOCUMENTS WE REQUIRE PHYTOSANITARY CERTIFICATE CERTIFICATE OF ORIGIN AND WEIGHT LIST BASED ON WEIGHTS SHIPPED FROM CHINESE PORT BEIJING SOUND SEAWORTHY BAGS Rgds.

1.5 Payment for the Goods

Payment for the goods presents a special problem because buyer and sellers are dealing in goods that are moving between different countries with different monetary systems and must contend with barriers of time and geography. Neither party has actual possession of the goods and yet each wished to be sure that the contract would be performed. The seller, having delivered the goods as required in the contract of sales, wishes to be as-

sured of payment as soon as possible. A buyer who agrees to pay before taking delivery of the goods will want some assurance that it will get the goods in accordance with the terms of the contract.

Without some device to deal with the different wishes of the parties they have two choices. The seller can require cash in advance and thus put the risk on the buyer that the goods will not be delivered in accordance with the contract; or the buyer can place the risk on the seller by requiring delivery of the goods before payment is made. Neither of these options is satisfactory and hedging against disaster by taking out insurance against loss or damage is no real answer where the parties are interested in satisfactory performance of the contract.

Accordingly, another device was developed to allow for payment before arrival of the goods, namely the "documentary letter of credit" (It'll be discussed later in Chapter 3). This technique has been developed by the banking system to allow for payment to be made before the goods are received by the buyer. The banking system's solution is built around the legal fiction that a "bill of lading" (or equivalent document such as a combined transport document) represents the goods. (This legal fiction allows a bank to treat the presentation to it of a bill of lading or another acceptable transport document as if it were presented with the goods and once certain conditions are satisfied, to make payment on behalf of the buyer.)

1.6 Contractual Relations Involved in the International Transactions

New technology requires the development of new legal regimes to reflect the interest of all the parties concerned. It can be concluded, however, that under either the paper system or the paperless system there will probably be the following contractual relations:

- (1) Principal contract of sales between buyer and seller;
- (2) Contract of carriage between consignor and carrier or freight-forwarder;
- (3) Contract of insurance between insurer and insuree;
- (4) Contract between the buyer and the bank which issues a documentary credit or its electronic equivalent;
- (5) Contracts between the seller with the bank(s) for payment under the terms of the documentary credit or electronic equivalent.

Supplementary contracts with other parties involved in the transaction will also be concluded. Examples are the contract between buyer and a third party for pre-shipment

inspection of the goods to ensure they meet the contract specifications, and contracts for carriage by road, rail and sea between the freight-forwarder and the carriers in cases where the freight-forwarder does not operate its own transport network.

In the case of international sale of services or mixed goods and services transactions, the subject matter—supply of a service—often means that the entity supplying the service needs to access the market of the “host” country. This may require either a temporary or more permanent presence in the foreign market. For example, a lawyer may be able to supply legal advice to a foreign client by fax that means that the service as opposed to the service provider is delivered in the “host” state. In other cases, a client may require a lawyer’s temporary presence at negotiations in a foreign jurisdiction. Where lawyers are eligible to practice in a foreign jurisdiction, potential business may make it worth establishing an office there.

Of course, establishment of some form of commercial presence (投资) in a foreign market also occurs in the case of trade in goods. Whether it is goods or services or a combination of both, the enterprise involved has a choice of a number of options ranging from agency, franchise, branch office, partnership, subsidiary company or joint venture. In these cases government controls over foreign establishment, investment, operations as well as remission of profits can operate to inhibit foreign service providers establishing a presence in another market. Government rules requiring compliance with local standards, employment of local staff and transfer of technology may also be involved.

The range of contractual relations is essentially the same as in the case of an international sale of goods transaction set out above supplemented by contractual relations flowing from the establishment of a commercial presence in the foreign country.

Section 2 Formation of Contract & the CISG

Under the common law there must be offer and acceptance, consideration and an intention to create legal relations to establish the basic ingredients of a contract. The CISG (Convention on International Sales of Goods) regime contains somewhat different rules from the common law.

2.1 Offer and Acceptance

The rules as to what constitutes an offer are not really different. An offer must be