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LEGAL ENGLISH  
IN INTERNATIONAL BUSINESS

# 国际经贸法律英语

◆ 陈建平 编著

浙江大學出版社

# **国际经贸法律英语**

## **Legal English in International Business**

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# 前 言

随着我国加入 WTO, 社会急需大批国际经贸法律人才, 而懂经贸、懂法律、又懂外语的“三通”人才, 则更是成了社会的紧缺人才。我们编写《国际经贸法律英语》一书正是以培养“三通”人才为定位目标, 使学生能在专业英语的语境中较为系统地学习国际贸易、国际投资、知识产权、国际金融等专业领域中的经贸法律知识, 并在掌握专业知识的同时, 强化专业英语技能。

本书内容主要涉及国际经济法。由于国际经济法的渊源主要是国际公约、国际惯例及调整涉外经济关系的国内立法, 因此, 本书重点介绍国际贸易、国际投资、知识产权、国际金融及国际商事仲裁等领域中的重要国际公约、国际惯例及我国的相关民商事法律。通过学习, 不仅能了解这些领域中的基础法律知识和经贸业务知识, 而且还能熟悉相关国际经贸法律的英文专业术语、基本概念及其语义、语用的特殊性及其变化规律, 进一步提高专业英语技能。

本书分五个部分, 共 20 个单元, 主要介绍联合国国际货物买卖合同公约、国际贸易术语解释通则、国际货物运输法、国际货物保险法、票据法、跟单信用证统一惯例、反倾销法、合同法、国际投资的法律形式、TRIMs 协议、解决投资争端国际中心、多边投资担保机构、保护工业产权巴黎公约、专利法、商标法、版权法、反不正当竞争法、国际货币基金组织、世界银行、国际商业借贷及国际商事仲裁等内容。每个单元配有多项练习, 旨在复习和检验本单元所学的专业知识, 强化专业英语技能。

本书在编写上具有以下特色:

1. 在内容体系上, 注重将英语语言、经贸业务及法律专业知识融为一体。以往的法律英语、经贸英语教材中的文章大多选自西方国家出版的杂志、书刊, 这些文章一般有较强的时效性, 不到几年, 内容已趋于陈旧, 而且此类文章也大多不具有法律英语的风格和文体。而本书的编写则主要以有关国际组织制订的涉及国际经贸领域的相关国际公约、国际惯例, 以及我国的相关民商事法律作为原始素材, 在作者对国际经贸业务和经贸法律的理解和体会的基础上, 把庞杂、冗长、繁多的经贸法律及经贸惯例, 按一定体系, 将其内容提炼、改

编成课文形式,所介绍的信息具有较强的稳定性,文章也基本上保持了法律语言的文体、风格,使读者在法律英语的语境中较为系统地学习国际贸易、国际投资、知识产权、国际金融、国际商事仲裁等方面的实务及相关法律专业知识,提高专业英语技能。

2. 在结构编排上,注重各个部分、各个单元的相对独立性。每个部分由若干单元组成,分别介绍各自领域中的专业知识,以便于教师合理组织课堂教学,也有助于学生系统地学习相关领域中的经贸法律知识。

3. 每一单元附有较为详细的课文注释。课文注释主要介绍各单元的专业背景知识,并对相关专业词汇、难词及难句进行中文解释,以帮助学生更好地理解文章内容。此外,每一单元还配有多项练习,便于学生复习和检验本单元所学的专业知识,强化专业语言技能。

4. 本教材还配有《学习指南》,内有参考译文、习题全解、经贸法律术语和套语详解、经贸法律英语的语言与文体分析、经贸函电与法律文书写作以及案例分析等内容,以利于学生更好地学习国际经贸法律英语,也便于教师备课和组织课堂教学。

本书可作为高等院校英语专业、商务英语专业、经贸英语专业、法律专业、国际贸易及国际金融等专业的商务英语、经贸英语及法律英语教材,还可作为涉外经济部门的法律英语、经贸英语的培训教材或自学参考书。

在本书的编写、出版过程中,宁波大学外语学院的领导和同事们给予了大力支持和帮助,在此谨表衷心的感谢。

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。(编者通讯地址:宁波大学外语学院,邮编 315211)

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# **Part One**

## **International Trade Law**





# Unit 1

## The United Nations Convention on Contract for International Sale of the Goods<sup>1</sup>

### 1. Offer<sup>2</sup>

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<sup>3</sup> 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.

### 2. Invitation for Offer<sup>4</sup>

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<sup>5</sup>, 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.

### 3. Withdrawal and Revocation of an Offer<sup>6</sup>

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.

#### 4. Acceptance<sup>7</sup>

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<sup>8</sup>. Nevertheless, if certain additional or different terms in a reply to an offer do not materially alter<sup>9</sup> 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.<sup>10</sup>

## **5. Obligations of the Seller**

### **A. 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.

### **B. 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.

[REDACTED]

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<sup>11</sup>, 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 not have been unaware, provided that the right or claim is based on industrial property or other industrial property, (a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; (b) in any other case, under the law of the State where the buyer has his place of business. Nevertheless, the seller's obligation is not governed if, at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

## **6. Remedies for Breach of the Contract by the Seller<sup>12</sup>**

If the seller fails to perform any of his obligations under the contract, the buyer may act as follows:

- (1) The buyer may require performance by the seller of his obligations;
- (2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitute a fundamental breach of the contract<sup>13</sup>;
- (3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair;
- (4) The buyer may declare the contract avoided if the seller's failure to perform any of his obligations under the contract amounts to a fundamental breach of the contract, or in case of non-delivery, if the seller does not deliver the

- goods within the additional period of time fixed by the buyer;
- (5) If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time<sup>14</sup>;
  - (6) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery;
  - (7) If the seller delivers a quantity of the goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate;
  - (8) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

## **7. Obligations of the Buyer**

The buyer must pay the price of the goods and take delivery of them as required by the contract. If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight. The buyer must pay the price on the date fixed by or determinable from the contract without the need for any request or compliance with any formality on the part of the seller. The buyer's obligation to take delivery consists in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery, and taking over the goods.

## **8. Remedies for Breach of Contract by the Buyer**

- If the buyer fails to perform any of his obligations under the contract,
- (1) the seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement;
  - (2) the seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations;
  - (3) the seller may declare the contract avoided if the failure by the buyer to per-

form any of his obligations under the contract amounts to a fundamental breach of contract; or if the buyer does not perform his obligations within the additional period of time fixed by the seller, or if he declares that he will not do so within the period so fixed;

- (4) the seller is not deprived of any right he may have to claim damages by exercising his right to other remedies;
- (5) no period of grace may be granted to the buyer by a court or arbitral tribunal<sup>15</sup> when the seller resorts to a remedy for breach of contract.

## **9. Passing of Risks**

Loss of or damages to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk. The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. Nevertheless, if at the time of the conclusion of the contract the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller. In other cases, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of the contract by failing to take delivery.

## **10. Anticipatory Breach<sup>16</sup>**

A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of a serious deficiency in his ability

of performance or in his creditworthiness, or his conduct in preparing to perform or in performing the contract. A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

## **11. Installment Contract<sup>17</sup>**

In the case of the contract for delivery of goods by installments, if the failure of one party to perform any of his obligations in respect of any installment constitutes a fundamental breach of the contract with respect to that installment, the other party may declare the contract avoided with respect to that installment. If one party's failure to perform any of his obligations gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future installments, he may declare the contract avoided for the future, provided that he does so within a reasonable time. The buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

## **12. Damages**

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. The party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages, such as the loss of profit, or the difference between the price fixed by the contract and the current price at the time of avoidance of the contract under different circumstances.

The party who relies on a breach a contract must take reasonable measures to mitigate the loss, including the loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

Furthermore, if a party fails to pay the price or any other sum that is in



arrears, the other party is entitled to interest on it, without prejudice to any claim for other damages<sup>18</sup>.

### **13. Exemption**

A party who is not liable for any failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control<sup>19</sup> and he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences. The exemption has effect for the period which the impediment exists.

A party may not rely on a failure of the other party to perform to the extent that such failure was caused by the first party's act or omission.

### **14. Effects of Avoidance**

Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provisions of the contract for the settlement of disputes or any other provisions of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.

A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.

The buyer must account to the seller for all benefits which he has derived from the goods or part of them if he must make restitution of the goods or part of them.

### **15. Preservation of the Goods<sup>20</sup>**

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to