



英汉国际贸易合同教程

曾一志 [编著]
周述谨

International Trade Contracts



外语教学与研究出版社

FOREIGN LANGUAGE TEACHING AND RESEARCH PRESS



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前言

国际贸易合同是国际贸易活动的重要书证之一。随着中国经济与世界经济接轨的步伐加快,国际贸易活动越来越广泛,涉及的国际贸易合同形式也多种多样。为了使读者能有效、准确地掌握国际贸易合同的有关知识,正确草拟各种形式的国际贸易合同,我们编著了本书。

本书以中英文双语编著,融英语语言、国际贸易知识和国际贸易惯例于一体,阐述详尽、案例丰富。编者们根据多年国际贸易工作实践经验,以真实的合同为蓝本,给出各种贸易活动的合同范本,实用性强。该书适用于贸易英语、国际贸易、国际经济等专业的学生使用,同时对从事外贸、外经、外事和外企工作人员有很强的实用价值。

本书分三个部分,第一部分是对合同概念、种类及其结构的总体介绍;第二部分是对国际贸易合同主要条款的阐述以及专业表达实例和案例分析;第三部分是各种国际贸易合同的范本。英语和中文对照,通俗易懂,编排合理,方便查阅。

为方便学习者学习和理解,本书英文部分增加了词汇表,中文部分增加了翔实的案例分析。

通过本书的学习,读者不仅可以提高英语语言水平,而且可以了解和学习国际贸易的专业知识以及国际贸易惯例,提高贸易合同撰写的正确性和专业性。

由于编者水平有限,本书难免存在谬误和疏漏,恳请读者批评指正。

编者

2012年1月于

四川外语学院成都学院

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Chapter One

Introduction to Contract

I. Concept of Contract

A contract is a binding agreement between two or more parties that is enforceable by law.

The parties are free to enter into an agreement in whatever form they choose. They may enter into any transaction orally, either face-to-face or by telephone. But in practice, most transactions between businesses are entered into by exchanges of letters, email, facsimile transmissions or printed forms of some kind. In order to avoid any uncertainty about what the terms of their agreement are, the parties usually draw up a formal written agreement which is signed by each party in order to authenticate the document. According to relevant Chinese economic laws, the contract of an import or export trade is effective only if it is in written form.

From legal point of view, a valid contract has five essential requirements:

- (1) An agreement concluded through offer and acceptance between the parties;
- (2) Consideration or cause;
- (3) An intention to create legal relations;
- (3) Legal competence of each party;
- (4) Legal formalities.

Offer and acceptance are two indispensable factors for concluding a contract in international trade.

1. Offer

A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. Simply speaking, an offer is actually a proposal of certain trade terms and an expression of a willingness to make a contract according to the terms proposed. Or, an offer is a proposal hoping to enter into a contract with other parties. The party sending the offer is offeror while the party addressed is offeree.

An offer may either be a firm offer made with engagement or a non-firm offer made without engagement. A firm offer is made to one or more specific persons to express the willingness to make a contract under a detailed and definite trade terms within a certain period of time. These trade terms mainly include name of commodity, brand, specifications, quantity, price, packing, payment and shipment, etc. The certain period of time in an offer is known as its validity. A non-firm offer is an offer without engagement. It has no term of validity. It is made with reservation and often bears such wording: "This offer is subject to our final confirmation."

Once the firm offer is unconditionally accepted by the offeree within its validity, it cannot be revoked or amended and is binding on both offeror and offeree, while the non-firm offer has no binding force upon the offeror. Therefore, a firm offer can encourage an offeree to make decision and thus conclude a business. A non-firm offer is more flexible to the offeror as he can make decision whether to close business according to the market situation. However, offerees often pay little attention to non-firm offers, which does not help the conclusion of business.

2. Acceptance

An acceptance is in fact an unreserved assent of the buyers or the sellers, who after mutual negotiations are willing to enter into a contract in accordance with terms and conditions agreed upon. Like an offer, an acceptance is an indispensable link in concluding a deal and signing a contract. It is stipulated in the laws of some countries that only offer and acceptance are the two required elements, failure of which will result in no contract. In international trade practice, an acceptance should abide by the following requirements:

(1) An acceptance must be absolute and unconditional. It should be an unreserved assent to all the terms put forward in the offer. In principle, if any additions, modifications or limitations to the offer are made, it becomes a counter-offer instead of an acceptance.

(2) An acceptance can be made by an act performed by an offeree, such as one relating to the dispatch of the goods or payment of the price.

(3) An acceptance must be clearly expressed by the offeree's verbal or written statement. Silence or inactivity is by no means an acceptance.

(4) An acceptance must be made by offeree within the valid period of an offer. As a rule, an acceptance goes into effect immediately as soon as it reaches the offeror.

II. Classification of Contract

At the very moment when an offer is accepted, the transaction is completed and a contractual relationship between the seller and buyer is concluded. However, according to international trade practice, the seller and buyer still have to sign a written contract or a confirmation, binding on both parties, to further define their rights and obligations respectively. In international trade, contracts vary in both names and forms. The names that often appear are contract, confirmation, agreement and memorandum. According to the different trade forms, the contract can be classified into different types as follows:

1. Sales or Purchase Contract
2. Contract for Technology Transfer
3. Contract for Joint Venture or Joint Production
4. Contract for Compensation Trade
5. Contract for International Engineering Projects
6. Agency Agreement
7. Processing Trade Contract
8. Contract with Different Trade Forms
9. Contract for Credits and Loans
10. Contract for International Build-Operate-Transfer
11. Contract for International Leasing Affairs

III. Structure of Contract

No matter what name and what type the contract is, a formal business contract usually consists of three parts: preamble, main body, and witness clauses.

1. Preamble

Preamble is a preliminary statement to introduce the general reasoning of the agreement, the principle of reaching the agreement, or the scope of authority. It usually includes title, contract number, date and place of signing the contract, name and address of parties concerned and preface or recitals, etc.

The contract number, as an identification code, is useful for filing and reference for implementation of the contract, which is usually written at the beginning of the contract.

The date of signing the contract is the time that the contract comes into force, which can be written at the beginning of the contract or at the end of it. The date of signing the

contract is usually put at the beginning of the contract when parties concerned sign the contract at the same time. The date will be usually put at the end of the contract if parties concerned sign the contract on different date, in which case, the latest date is the one that the contract comes into force.

The place of signing the contract will be related to the governing of the law. However, it can be ignored if the parties concerned sign the contract at different place.

The parties concerned in a contract must have legal capacity and cannot be minors or persons not mentally competent. The parties concerned must not be the same party but two or more parties with qualification of legal representative. The name of the parties concerned must be written in full to indicate its legal identity. However, the abbreviation of the party's name can be used in the body of the contract.

The address of the parties concerned must be specific and in detail. This address must be permanent but not temporary and should not be the address of its branch or subordinate. The address of the parties concerned will be used for communication by letters, identifying the parties and when the litigation comes, choosing relative litigating authority.

Preface is the paragraphs at the beginning of the contract that usually summarizes the agreement or provides background information related to the deal. Preface is not a mandatory part of any contract, and some contracts skip it entirely. But it can assist outsiders who are trying to understand the contract with description of what the parties intend to do in the contract. The preface is often in the form of a "whereas clause" and just for this reason we have called this section "the WHEREAS". The function of a preface is to fill in the background, the hopes, and the general reasoning of the parties. It is not part of the contract. In fact, it is written in front of the words "It is hereby agreed..." Everything after those words is part of the contract. So don't put any important terms in the preface unless you clearly repeat them in the body of the contract. The value of a whereas-clause is that it may be helpful in interpreting the contract if trouble arises later.

Sample 1:

SALES CONTRACT

Contract No.: _____

Signing Date: _____

The Buyer: _____

The Seller: _____

This contract is made by and between the Buyer and the Seller, whereby the Buyer agrees to buy and the Seller agrees to sell the undermentioned commodity according to the terms and conditions stipulated below:

Sample 2:

CONTRACT

No.: _____

Date: _____

Place: _____

The Seller: _____

Address: _____

Tel: _____

Fax: _____

The Buyer: _____

Address: _____

Tel: _____

Fax: _____

The End User: _____

Address: _____

Tel: _____

Fax: _____

This contract is made by and through the Buyer, the Seller and the end user, whereby the Buyer agrees to buy and the Seller agrees to sell the undermentioned goods subject to the terms and conditions as stipulated hereinafter:

Sample 3:

SALES CONFIRMATION

No.: _____

Date: _____

Place: _____

The Buyer: _____ Address: _____

The Seller: _____ Address: _____

The undersigned Seller and Buyer have agreed to close the transactions according to the terms and conditions stipulated below:

Sample 4:

COOPERATION AGREEMENT

THIS AGREEMENT, effective the 1st day of September, 2009, is made by and between _____, a Minnesota limited liability company of America and _____, a Chinese corporation.

Sample 5:

AGREEMENT FOR SELLING AGENCY

[Name of Manufacturer] whose registered office is at _____ (hereinafter referred to as the Manufacturer), grants to [Name of Agent] whose registered office is at _____ (hereinafter referred to as the Agent), the executive agency for the following products (hereinafter referred to as the Product).

The Agent will have preference for representative of new products in the territory defined below (hereinafter referred to as the Territory): _____.

Sample 6:

GENERAL AGENCY AGREEMENT

THIS AGREEMENT dated the _____ day of _____ is made BETWEEN:
_____, a company incorporated under the laws of _____, and having its registered address at _____ (hereinafter called “Principal”); and
_____, a company incorporated under the laws of _____, and having its registered office at _____ (hereinafter called the “General Agent”).

2. Body of the Contract

Main body is the core of a contract. It mainly includes basic clauses and general terms and conditions of the contract, reflecting duties and obligations of both parties. Generally speaking, the basic clauses are: the name of the commodity, quality, quantity, price, packing, shipment, terms of payment, insurance and so on. Usually for purchase or sales confirmation or short form contracts, only these basic clauses are included. Detailed contracts also include general terms and conditions as inspection, claim, arbitration, force majeure, applicable law, breach and cancellation of contract, etc. which may vary on different occasions and be printed overleaf. The commonly used clauses in a contract will be introduced separately in the next chapter.

3. Witness Clauses

The witness clauses, as final clauses of a contract, usually include contract validity, language validity, copies, signature, seal, and so on.

Usually, the parties concerned in a contract will stipulate that the contract comes into effect when it is signed and sealed. The legal language used for composing the contract should be determined. If two or more languages are adopted, the prevailing language should also be determined in case of discrepancy between or among the different versions. Original copies of the contract should be determined by specifying the number of copies. Usually, each party keeps one original copy of the contract.