



中德货物销售示范合同 文本及使用说明

■ 中国对外经济贸易合同条款研究会 编

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中国对外经济贸易出版社

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中国对外贸易运输总公司

前 言

中国与联邦德国自 1972 年建交以来,双边经贸合作关系一直平稳、健康地发展,两国贸易额不断增长。特别是中国实行改革开放以来,两国经贸关系更加广泛深入地发展,不仅贸易额迅猛增长,而且经贸合作领域扩展到投资、财政、金融、技术援助、技术引进等方面。目前,德国是中国在欧洲最大的贸易伙伴,同时,中国也是德国在发展中国家最大的经济贸易伙伴。两国经贸关系有着良好的发展前景。为了进一步促进中德两国经贸关系持续均衡有序地发展,改进两国企业间现行使用的贸易合同,规范企业的贸易行为,使双边经贸活动体现平等互利、公平合理的原则,中德经济合作混委会决定成立一个联合法律工作小组,专门制订中德双边贸易示范合同,包括中德货物销售示范合同和中德技术转让示范合同,此外,联合法律工作组还定期开展中德经贸法律合作与交流活

动。

在中国,由对外经济贸易部批准成立的中国对外经济贸易合同条款研究会负责中德双边贸易示范合同的起草、研究和对外磋商;该研究会由负责进出口贸易的相关部门、进出口贸易公司、专家、学者等各方面代表组成。在德国,由联邦经济部授权成立了专门的工作机构与中方共同进行中德贸易示范合同的编制和商谈,其成员包括德国的工业协会、跨国企业、专业律师、研究机构等各方面代表。自 1993 年至 1995 年,经过双方近两年的共同努力和友好合作,中德双方于 1995 年 4 月完成中德货物销售示范合同的制订工作,并向两国企业界宣布这一成果。随后,中德双方又继续开始中德技术转让示范合同的制订工作。目前,这项工作仍在进行之中。

中德货物销售示范合同的制订,是以中德两国现行法律、法规以及两国缔结或参加的国际条约、协定为依据,采纳现行的国际贸易惯例,并考虑两国贸易的特殊性及贸易实践中的通常做法。在上述制订示范合同的法律依据中,由于中德两国都加入了《联合国国际货物销售合同公约》,该公约便成为制订中德货物销售示范合同的最主要的法律依据。在所采纳的现行国际贸易惯例中,国际商会制订的《跟单信用证统一惯例》(1993 年修订)和《国际贸易术语解释通则》(1990 年修订)被直接引入中德货物销售示范合同之中,作为解释合同相关条款的依据。在制订过程中,中德双方还分别征求了两国贸易公司、企业和有关专家、学者的意见,并在相当程度上考虑了两国贸易实践中的习惯做法。因此,中

德货物销售示范合同具有理论和实践的基础,既符合国际贸易发展趋势,也反映了现实需要。此外,该示范合同是中德双方法律专家和贸易实务专家共同编制、协商的结果,因此,采用该示范合同将有利于双方企业按照相对稳定的同一法律标准履行合同;在一旦出现合同争议的情况下,能为双方当事人提供迅速、简便的解决办法,合理地保护双方当事人的利益。

在使用中德货物销售示范合同时,应注意以下几点:

1. 该示范合同不是标准合同或格式合同,它是采用条款集的形式对合同条款进行编撰,即对合同的某些条款或某些条款的内容规定了多种选择,其目的既是为了使示范合同尽可能适用于各种交易条件下的货物买卖,也是为了使其尽可能满足当事人对合同权利义务的不同要求和约定。因此,使用者参照该示范合同编制自己的标准合同或格式合同时,应根据需要恰当地选择这些条款或条款的内容,也可以视需要对它们进行补充或修改。

2. 该示范合同不是具体的交易合同,它是为制订具体的交易合同提供参考范本。由于示范合同本身是任意性的合同文本,故当事人参照该示范合同制订具体的交易合同时,可以根据具体交易情况对示范合同的相关条款予以保留或删除,也可以进行相应的补充或修改,或者,根据需要自行拟定新的条款。

3. 该示范合同在文字表述上采用正式的合同语言,而不出现解释性的语言表述;在体例编排上只对合同正文内容进行编撰,而未编入可能涉及的合同附件。中德双方商定,各自组织专家撰写该示范合同的使用说明,在各自编写的使用说明手册中可以视需要列明必要的合同附件,如信用证格式,保函格式等。

4. 该示范合同以英文编撰,并以英文文本作为权威有效的正式文本。经商定,中德双方可以自行组织人员翻译该示范合同的本国语言译本,但若译本相互之间或译本与英文文本之间发生抵触,则以英文文本为准。

5. 该示范合同虽然是为中德贸易而编制的合同范本,但使用者可不受此局限。鉴于该示范合同是依据国际公约和国际贸易惯例编制的,因此,在与其他国家和地区的公司、企业进行货物买卖交易时,如无例外情况或特殊要求,当事人也可以参考使用该示范合同。但在与日本、韩国进行贸易时,由于中日、中韩之间已经分别制订了双边货物销售示范合同,故当事人仍应参照使用这些专门制订的双边贸易示范合同。

为了便于中国的公司、企业使用中德货物销售示范合同,为了使中方合同当事人正确理解该示范合同的各项条款规定,我们组织参加该示范合同编制的人员翻译了中德货物销售示范合同的中文译本,撰写了该示范合同的使用说明,并汇编出版这本包括中德货物销售示范合同中、英文文本及使用说明的小册子,亦可称之为使用手册。我们希望各公司、企业在使用过程中如发现问题,

随时向中国对外经济贸易合同条款研究会反映情况,并提出改进意见。我们也欢迎广大读者和使用者与我们共同研究和探讨对外经济贸易合同的理论与实践问题。

本书中,关于中德货物销售合同的使用说明由周晓燕、孙晓民撰写;中德货物销售示范合同中文译本由陈贵华、路焘翻译,周晓燕审核。在本书编写过程中曾得到李海雁同志的帮助,在此特表感谢。

由于编译者水平有限,不当之处在所难免,敬请读者批评指正。

中国对外经济贸易合同条款研究会

1998年2月

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Sino-German Standard Contract Commission

MODEL TERMS OF CONTRACTS FOR SALE OF GOODS

For Sales Between
Chinese and German Firms and Corporations

Contract Number:

Date of Signing of Contract:

Place of Signing of Contract:

Seller:

Address:

Country of Incorporation:

Telex:

Fax:

Buyer:

Address:

Country of Incorporation:

Telex:

Fax:

The Buyer and the Seller, through friendly negotiation, have signed this Contract on a basis of [] FOB or [] CFR or [] CIF or [] FCA or [] CPT or [] CIP and agreed to the terms and conditions stipulated below.

1. Name of Commodity:

2. Specifications/Quality:
[] As detailed in an Annex to this Contract (if required under the specific case)
3. Units:
4. Quantity:
[with () % more or less both in amount and quantity allowed at [] the Seller's or [] the Buyer's option]
5. Unit Price FOB/CFR/CIF/FCA/CPT/CIP: _____
6. Total Amount:
If the delivered quantity is more or less than () % of the quantity as defined in item 4, the price shall be adjusted correspondingly.
7. Country of Origin and Country of Manufacture:
8. Shipping Mark:
9. **Shipment**
- 9.1 Time of Shipment: _____
- 9.2 Port of Shipment: _____
- 9.3 Port of Unloading: _____
- 9.4 "On-deck" shipment [] is, or [] is not allowed.
- 9.5 Transshipment [] is, or [] is not allowed.
- 9.6 Partial shipment [] is, or [] is not allowed.
- 9.7 [] Container shipment
- 9.8 Final destination: _____
- 9.9 Freight Forwarder/Agent at port of unloading:

10. Terms of Payment

Seller's Bank Account: _____

Buyer's Bank Account: _____

10.1 Method of Payment

(1) Letter of Credit

☐ 10.1.1 (This Paragraph shall be ☐ maintained or ☐ deleted)

☐ () percent of the total contract price, i. e. _____ shall be paid by the Buyer to the Seller not later than 30 days after Date of Effectiveness against presentation to the Buyer of an irrevocable letter of guarantee issued by _____ (Bank's name) in the amount of _____ in favour of the Buyer. The L/G shall be valid until

☐ () days after delivery date, in case of partial shipment delivery date of the last shipment

☐ date of arrival of the last shipment in the port of unloading

☐ () months after the date of arrival of the goods at the port of unloading

The amount of L/G shall be reduced automatically and proportionally in accordance with the shipments made by the Seller.

☐ 10.1.2 Sight Payment

The Buyer shall,

☐ () days prior to the first day of the time of shipment (the date of shipment) specified in this Contract,

☐ within () days after the signing of this Contract,

establish in favour of the Seller an irrevocable letter of credit available by

- ☐ sight payment,
- ☐ negotiation,

issued by _____ (Bank's name), by

- ☐ telex,
- ☐ SWIFT,
- ☐ mail,
- ☐ brief telex and mail

in the amount of _____

the contents of which shall be in conformity with the terms of this Contract, and the letter of credit shall be valid for presentation of documents in the locality of the beneficiary _____ months after issuing date of the letter of credit.

The statement "this credit is subject to Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publications No. 500" shall be contained in the letter of credit.

☐ 10.1.3 Deferred Payment

The Buyer shall,

- ☐ () days prior to the first day of the time of shipment (the date of shipment) specified in this Contract,
- ☐ within () days after the Signing of this Contract,

establish in favour of the Seller an irrevocable letter of credit available by

- ☐ acceptance
- ☐ deferred payment
- ☐ negotiation

- after ☐ sight
☐ the date of B/L or Airway Bill, or Railway
 Consignment Note, or Multimodal Transport
 Document
☐ presentation of documents

issued by _____ (Bank's name), by

- ☐ telex,
☐ SWIFT,
☐ mail,
☐ brief telex and mail

in the amount of _____

the contents of which shall be in conformity with the terms of this Contract, and the letter of credit shall be valid for presentation of documents in the locality of the beneficiary _____ months after issuing date of the letter of credit.

The statement "this credit is subject to Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publications No. 500" shall be contained in the letter of credit.

(2) Collection

☐ 10.1.4 Document Against Payment (D/P)

After shipment, the Seller shall present a sight bill of exchange drawn on the Buyer together with the required documents to the Buyer through a bank. The Buyer shall effect the payment immediately upon the presentation of the bill of exchange and the required documents.

[] 10.1.5 Document Against Acceptance (D/A)

After shipment, the Seller shall present bill of exchange drawn on the Buyer, payable _____ days after sight together with the required documents to the Buyer through a bank for acceptance. The Buyer shall accept the bill of exchange immediately upon the first presentation of the bill of exchange and the required documents and shall effect the payment on the maturity date of the bill of exchange.

(3) Remittance

[] 10.1.6

The Buyer shall

[] within _____ days after the receipt of the required documents,

[] within _____ days after the date of the Bill of Lading,

pay the invoice value of the goods to the Seller's account with a bank designated by the Seller by means of

[] T/T (Telegraph Transfer),

[] M/T (Mail Transfer),

[] D/D (Demand Draft).

10.2 Documents Required

The following documents shall be prepared by the Seller and submitted to the Buyer:

1. Bill of exchange drawn on

[] _____ (bank's name, on L/C basis)

[] the Buyer (on collection basis)

2. Transport document (select one of the following):

[] 1.) clean on board ocean bill of lading made out to [] order,
or

[] to order of _____ and blank endorsed

marked freight

☐ prepaid/paid, or

☐ to collect

notifying ☐ consignee, or

☐ _____

☐ 2.) non-negotiable sea waybill made out to _____

marked freight ☐ prepaid/paid, or

☐ to collect

notifying _____

☐ 3.) multimodal transport document

☐ 4.) air transport document (airway bill/air consignment note)

☐ 5.) railway transportation document

☐ 6.) courier and post receipts

3. Other document(s)

1.) commercial invoice

2.) ☐ insurance policy

☐ insurance certificate

3.) quality inspection certificate/inspection
report/analysis certificate issued by

4.) ☐ certificate of origin

☐ FORM A (GSP)

5.) packing list

6.) weight list

7.) ☐ notice of shipment

☐ shipping advise

Documents 1 to 7 in _____ originals and _____ copies

4. Other documents (if required) :

10.3 Banking Charges

Depending upon the method of payment selected pursuant to Clause 10.1 above, the Buyer shall bear all banking charges incurred in the country of

- ☐ L/C issuing bank (in case of payment by L/C),
- ☐ Collecting bank (in case of payment by D/P or D/A)
- ☐ Remitting bank (in case of payment by remittance),

and the Seller shall bear all banking charges incurred outside such country, unless otherwise agreed by the parties.

11. Terms of Delivery

11.1 Packaging

All goods shall be packed to prevent damage from dampness, rust, moisture, erosion and shock, and shall be suitable for

- ☐ sea transport, on deck/not on deck
- ☐ multimodal transport
- ☐ container transport.

The Seller shall be liable for any damage and loss of the goods attributable to inadequate or improper packaging.

The measurement, gross weight, net weight of each package and any necessary cautions such as "Do not Stack Upside Down", "Keep Away From Moisture", "Handle With Care", "Hook-on Point" shall be stencilled on the surface of each package with fadeless pigment, whenever necessary.

11.2 Terms of Shipment

11.2.1 If shipment is made under the terms of CFR or CIF, the Seller shall, not later than () days before the time of shipment, inform the Buyer by Telex or Fax of the name, nationality, age and other details of the carrying vessel as well as the contract number of each shipment. The shipment shall not be effected without the confirmation from the Buyer with respect to the acceptability of the vessel, provided that the Buyer shall not unreasonably withhold such confirmation. The Buyer shall confirm the vessel by Telex or Fax within 3, latest 5 working days, otherwise the vessel shall be regarded as confirmed.

11.2.2 If shipment is made under the term of FOB, the Buyer shall book shipping space in accordance with the time of shipment stipulated in this Contract. The Seller shall, at least () days before the date of shipment stipulated in this Contract, advise the Buyer by Telex, Fax of the contract number, the name of the commodity, the quantity, the total amount, the package numbers, the total weight and volume and the date when the goods should be ready for shipment at the port of shipment. The Buyer shall, at least () days before the scheduled date of arrival of the vessel at the port of shipment, notify the Seller of the name of the vessel, the scheduled arrival date and the contract number for the Seller to effect shipment. In case the carrying vessel or the date of arrival has to be changed, the Buyer or its shipping agent shall advise the Seller in time, however not later than () days prior the scheduled date of arrival, to make necessary arrangement. Should the vessel fail to arrive at the port of shipment within () days after the arrival date advised by the Buyer, the Buyer without prejudice to any other claims of Seller under this Contract and the provisions of the Incoterms shall bear all actual expenses, including the storage expenses and interest charges, calculated from the () day thereafter.

The Seller shall be liable for any dead freight or demurrage, should they fail to have the quantity of the goods ready for loading in time as stipulated, if the carrying vessel has arrived at the port of shipment as advised.