

# 合同以及贸易纠纷的解决

**Contracts and dispute resolution**

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# 什么是合同？

## What is a contract?

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在受到法律的保护之下，协议双方在同意价格的前提下提供商品或者服务。

*A business agreement for supply of goods or performance of work at a fixed price, which is enforceable by law.*

# 合同应该定义哪些内容？

## What should the contract define?

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**产品/服务的质量定义：** 对所提供商品或服务进行准确地描述。  
*Product/service specification: an accurate description of the goods or services being supplied.*

**通用的贸易条款：** 准确罗列有关需要的文件、运输及付款细节。  
*General terms and conditions: details of documentation, delivery and payment.*

**纠纷解决的方法：** 当事情发展出现问题的时候如何办？  
*Dispute resolution: What happens when things go wrong?*

# 羊毛工业中订立合同时所应该注意的事项

## Contracts in the wool industry

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- 技术指标 Specifications
- 价格基础 Price basis
- 付款协议 Payment arrangements
- 单证/文件的要求 Documentary requirements
- 运输/交货要求细节 Shipping/delivery details
- 索赔程序 Claims procedures
- 争议解决方法 Dispute resolution process
- 适用法律 Applicable law

# 争议与纠纷的解决

## Dispute resolution

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- 适用的法律与法律部门  
Courts of law
- 仲裁方法与部门  
Arbitration

# 国际毛纺织组织(IWTO)的角色(1)

## Role of the International Wool Textile Organisation (IWTO)

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- 国际毛纺织组织的规则 – 蓝皮书  
IWTO rules and regulations – the Blue Book
- 国际毛纺织组织协议 – 仲裁协议  
IWTO agreements – the IWTO Arbitration Agreement

# 国际毛纺织组织(IWTO)的角色(2)

## Role of the International Wool Textile Organisation (IWTO)

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- 国际毛纺织组织的通用条款

“所有与本合同有关的争议应该按照国际毛纺织组织（**IWTO**）的仲裁协议并且由有能力机构进行仲裁...（” **X**”）

- “X” = IWTO在销售国的国家委员会、商会或者是任何得到认可仲裁机构。

- IWTO model clause:

*'Any dispute or difference arising out of this contract shall be settled by arbitration in accordance with the IWTO Arbitration Agreement and the competent body to conduct the arbitration pursuant to its Arbitration Regulations shall be . . . ('X')*

- *'X' = the relevant IWTO National Committee, Chamber of Commerce or other competent body of the country of the seller.*

# 标准羊毛合同

## Model contracts

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- 澳大利亚 - 新西兰 - 中国标准羊毛合同 (**2000**)  
Australia - New Zealand - China Model Wool Contract (2000)
- 国际贸易商会 (**ICC**)  
International Chamber of Commerce (ICC)



# 澳中羊毛贸易纠纷的背景

## Background to Australia China wool industry dispute case study

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- **1996年羊毛贸易纠纷总额高达一亿美金**  
1996 disputed contracts totalled nearly \$100 million
- **对澳毛不准确的描述**  
Poorly described goods.
- **中间商人过多（主要以贸易商为主而非最终用户）**  
Many intermediaries involved (traders rather than producers and users).
- **买方对质量的索赔**  
Buyers claimed quality disputes.
- **供货方抱怨对方毁单或缺少配额时不履行合同**  
Suppliers claimed renegeing when prices fell post contract or in case quota was unavailable.
- **供货方为了报复供应质量不符的货物**  
Suppliers retaliated by covering price risk through 'lower quality' deliveries.

# 澳大利亚 - 新西兰 - 中国标准羊毛合同(1)

## Australia - New Zealand - China Model Wool Contract

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### 主要特点 (Features)

#### 1. 简单明了、只有一张纸的合同

Simple one-page contract.

#### 2. 合同的结构包括

Structure:

- 合同  
contract
- 贸易条款（参考）  
terms and conditions (reference doc.)
- 技术指标格（参考）  
specification guidelines (reference doc.).

# 澳大利亚 - 新西兰 - 中国标准羊毛合同(2)

## Australia - New Zealand - China Model Wool Contract

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### 主要特点 (继续)

(Features)

### 3. 非常有效地改进了购毛形式并且根据客观检测内容有效地减少贸易纠纷

Greatly improved product specifications (and reduced quality disputes) based on objective measurements.

### 4. 仲裁的规定

Arbitration:

- 国际仲裁专家组  
international 'expert' panels
- 中国国际贸易仲裁委员会的基础  
CIETAC based.

# 国际贸易商会（**ICC**） - 1

## International Chamber of Commerce (ICC)

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- 成立于**1919**年 - 仲裁庭成立于**1923**  
(Set up in 1919 - Arbitration Court in 1923.)
- 成为国际仲裁机构  
(International Court of Arbitration.)

# 国际贸易商会（**ICC**） - 2

## International Chamber of Commerce (ICC)

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（继续）

- **UCP**（海关程序与信用证统一规则）  
UCP (Uniform Customs and Practice for D/Cs)
  - **(2002年 eUCP)**  
eUCP in 2002
  - **2006年**与中国签订的新的信用证条款  
(New procedures for D/Cs with China 2006.)
- **国际贸易条款（CIF、FOB）**  
Incoterms (e.g. CIF, FOB)
  - **2000年**条款是标准羊毛合同依据  
(Incoterms 2000 basis for China Model Wool Contract.)

# 国际商会有关仲裁标准条款

## ICC Standard Arbitration Clause

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“所有与合同直接或间接有关的争议均应该在国际商会（**ICC**）有关的国际仲裁规则指引下最终得以仲裁。根据有关的条款该仲裁事宜或由一个或由多个指定的仲裁人员执行仲裁。”

*‘All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.’*