


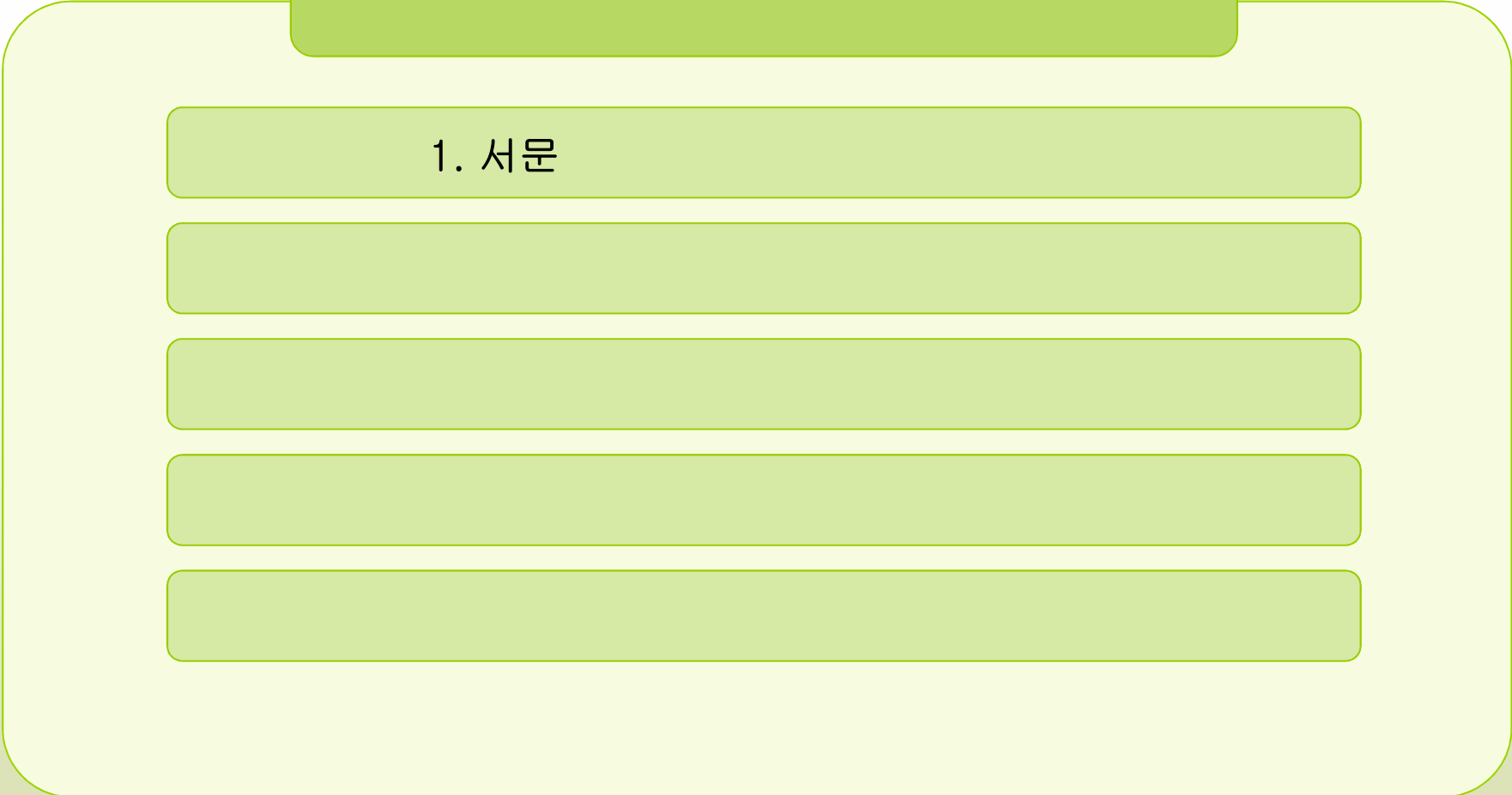

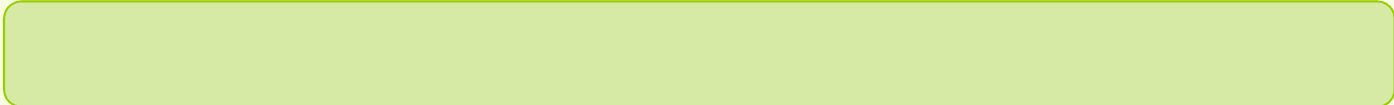

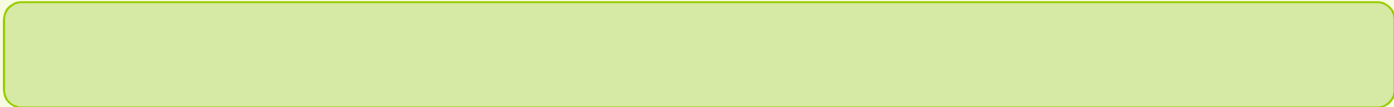
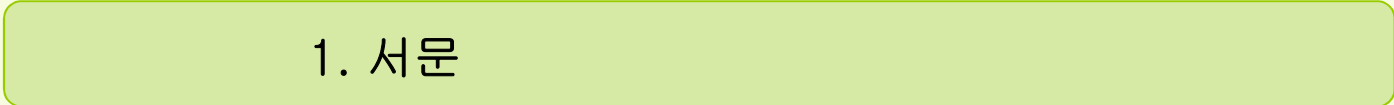

## 제3장 매매계약



유 하상



1. 서문



## 3-1. Nature of Contract

■ p.72-73

The law of contracts occupies a position of prime importance in its application to the field of business.

Contracts are the medium through which our exchange economy functions.

Stated in broad terms, such phrases of business as employment, selling, buying, use of credit, transportation, shifting of risk, storing, and manufacturing are accomplished through the use of contracts.

Most of our forms of business organization – partnerships, corporations, business trusts, and the various forms of cooperatives– owe their very existence to these instrumentalities called contracts.

Occupy : 차지하다. 점령하다.

Medium : 중간, 매체, 매개, 수단

Function : 기능, 역할을 하다.

Instrumentalities : 도움, 덕분, 수단, 방편, 대행기관

Owe : 의무를 지다. 빚을 지다. 덕택이다

## 3-1. Nature of Contract

### ■ 서문

A contract is a legally binding Agreement made between two or more competent parties and has for its object the creation of an Obligation.

A contract is an agreement resulting in an obligation enforceable at law; that is to say, a contract results from a combination of two ideas of agreement and obligation.

A contract must be distinguished from an agreement. A contract has its origin in agreement, but all agreements are not contracts.

An agreement as thus defined has a wider meaning and includes transactions of other kinds than a contract as we commonly use the term.

Competent : 책임의, 유능한, 자격이 있는  
that is to say, : 다시 말하자면, 즉.  
Transactions : 거래, 업무, 계약

## 3-1. Nature of Contract

### ■ 서문

If you make an appointment with a business acquaintance for the purpose of discussing a contemplated business transaction, you have entered into an agreement, but such an agreement is not a contract.

If you fail to keep the appointment, you have failed to fulfill your part of the agreement.

Your business acquaintance may have been injured in that he might have used to advantage the time set aside for you.

However, if he should bring a suit, he could not recover a judgment.

In making the appointment you did not assume a legal duty.

The failure to keep a business appointment is a breach of business ethics, but it is not a breach of a legal duty .

acquaintance : 지식, 아는 사람,  
 for the purpose of :~을 목적으로  
 Contemplated : 찬찬히 보다, 관찰하다. 계획하다. 기대하다  
 Fulfill : 약속, 의무를 이행하다. 완수하다  
 set aside : 파기하다, 무효로 하다  
 bring a Suit : 소송을 일으키다 recover :소송에서 이기다  
 Assume: 임무, 책임을 떠맡다.  
 Breach : 깨뜨림, 약속을 위반함, 어김

## 3-1. Nature of Contract

### ■ 서문

If you enter into an agreement to work for A for six months at an agreed wage, and after entering into the agreement you refuse to work, A can bring a suit and recover a judgment.

Such an agreement creates a legal obligation on the part of both parties to the agreement.

on the part of : ~을 대신하여, ~의 쪽에서는

## 3-1. Nature of Contract

### ■ 서문

As has already been remarked, a contract is basically a relationship resulting from a voluntary agreement between persons.

To this relationship the law attaches legal rights and corresponding legal duties.

Suppose A places with tailor B an order for a suit of clothes. the price to be \$300 and delivery to take place on that day fortnight.

A and B have between them made a contract binding in law; and their mutual relationship regarding it may be stated analytically thus:

A (a) has acquired the right to have the suit made by the time named, and (b) has made himself liable for the price agreed upon; while B (a) has taken upon himself the duty to supply A's want, and (b) will acquire a just claim to the \$300 when the work is done.

remark: 주의하다, 주목하다. 말하다.

Voluntary: 자발적

Corresponding : 대응 상응

fortnight. : 2주일

Analytically : 분해적, 분석적으로

liable for the price agreed upon : 합의한 대로 가격을 지불할 의무

taken upon (on) oneself : 책임을 지다, 떠맡다. 과감하게 ~을 하다.

just claim : 정당한 청구권, 정당한 요구

## 3-1. Nature of Contract

### ■ Agreement on General Terms and Conditions of Business p.81

#### 1 . COMMENCEMENT

This Agreement entered into this 1st July, 2010 by and between THE REPUBLIC OF KOREA AIR FORCE LOGISTICS COMMAND and having its principal place of business at Keumsa-Dong Dong-Gu Daegu KOREA (hereinafter referred to as the "Purchaser") and:-----, a company organized and existing under the laws of the principality of THE UNITED STATES OF AMERICA and having its principal place of business at -----(hereinafter refer to as the "Seller")

#### 2 . WHEREAS CLAUSE

WITNESSETH THAT: WHEREAS, the Seller is a company with extensive experience in the distribution of military commodity and is willing to grant to the Purchaser the right to utilize the Commodities (as hereinafter defined) during the military operation of the REPUBLIC OF KOREA

THE REPUBLIC OF KOREA AIR FORCE LOGISTICS COMMAND 한국 공군 군수사령부

1) Heading(두서) : 계약 당사자(상호, 주소, 회사형태, 설립준거법), 체결일자, 체결지),



## 3-1. Nature of Contract

### ■ Agreement on General Terms and Conditions of Business p.81

#### 3. DEFINITION

(A) "Seller" is the foreign corporation which is properly organized and existing under the laws of the UNITED STATES OF AMERICA and which has made in its own name this contract with the REPUBLIC OF KOREA AIR FORCE LOGISTICS COMMAND for supply of the commodities ordered by the REPUBLIC OF KOREA AIR FORCE LOGISTICS COMMAND and which has the full and legal capacity for performing all the contractual obligations at its own account and responsibility.

(B) "Purchaser" is the REPUBLIC OF KOREA AIR FORCE LOGISTICS COMMAND, which is authorized to purchase foreign commodities from the Seller for effecting defense procurement under the laws of the Republic of Korea and in accordance with the rules and procedures made and enforced by the Ministry of National Defense and other government authorities concerned.

요구

## 3-1. Nature of Contract

### ■ Agreement on General Terms and Conditions of Business p.81

#### 4. LIQUIDATED DAMAGES

If the Seller fails to deliver any or all of the Commodities within the time period(s) specified in the Agreement, the Purchaser shall deduct from the Contract Price, as liquidated damages, a sum equivalent to one point five per mill (0.15%) of the price of the delayed Commodities for each day of delay until actual delivery up to a maximum deduction of 10% of the price of the delayed Commodity. Once the maximum is reached, the Purchaser may decide termination of this Agreement.

#### 5. DELIVERY TERMS

Delivery terms of this Agreement shall follow the FCA condition, which mandates the Seller to process export license obtainment procedures at his/her own expense and endeavor. The commodity shall be transported to the specified warehouses on the continental UNITED STATES of the Carrier.

## 3-1. Nature of Contract

### ■ Agreement on General Terms and Conditions of Business p.81

#### 6. PAYMENT TERMS

(A) Payment shall be made within seven business days from the date on approval report of technical inspection conducted by the Purchaser's maintenance specialist.

(B) Total payment amount shall be calculated in accordance with the FCA condition as states on article 6.

(C) The purchaser has a right to hold the payment of the price, in case there are the lacks about defective items, a different kind of items and receipt items, and pay the price after deducting liquidated damages for delayed delivery about delayed shipping Commodity

#### 7. PACKING/MARKING

(A) Except in cases where any special instructions are given in this contract, the commodity shall be packed in export standard packing. And such packing shall ensure safe arrival of the commodity at the intended place of destination.

(B) Such packing shall also be done free of any loss or damage which may arise from the characteristics of the commodity and from the normal handling, shifting, stevedoring, etc. thereof at the airport and/or the port of shipment and discharge, or any other place(s). And where the freight is charged on the measurement of cubic size of the commodity, such packing shall be done free of any wasted freight space.

## 3-1. Nature of Contract

### ■ Agreement on General Terms and Conditions of Business p.81

(C) One (1) copy of the detailed packing list must be packed or enclosed in each of above-mentioned packages. Where it is impracticable to pack or enclose the detailed packing list in such a special transit pack as barrel or drum all the details provided in the preceding paragraph (B) shall be stenciled on the outside of such a special transit pack.

(D) In cases where the packages ought to be stowed and packed in the container(s), the Seller shall do the packing of such liable for any losses of damages which may arise from insufficient or inadequate packing and sealing of such the container(s) whether packed and sealed by the Seller or by the carrier. And one (1) copy of the detailed packing list of each container shall be put enclosed inside such each container.

(E) The marking of package(s) or container(s) shall be sufficiently detailed to make speedy and easy identification of the consignment and shall be correctly and legibly placed by the Seller before shipment of the commodity.

요구

## 3-1. Nature of Contract

### ■ Agreement on General Terms and Conditions of Business p.81

#### 8. PERFORMANCE BOND

(A) Ten percent of total contract prices shall be made as the performance bond within fifteen calendar days from the validation (as stated in the article 21) of this Agreement.

(B) Performance bond shall be established in forms of cash deposit or stand-by letter of credit, which are issued by banks proven its financial stability by confidential international credit rating agencies such as MOODY'S, STANDARD & POOR or FITCH IBCA.

(C) Performance bond shall not be amended, modified or cancelled without prior consent of the Purchaser, and be valid until the warranty expiration (as stated in the article 14)

## 3-1. Nature of Contract

### ■ Agreement on General Terms and Conditions of Business p.81

(D) Performance bond in form of stand-by letter of credit shall be payable at counters of the purchaser nominated primary Korean banks upon the request in the event of crucial breach of contract terms (stated in the article 11). In addition, cash formed performance bond shall not be refundable, in case of crucial breach of contract terms.

(E) Currency for the performance bond shall be the currency of the UNITED STATES OF AMERICA.

(F) For delayed delivery schedule granted by the purchaser, validity of the performance bond shall be consequently extended. Upon such extension, the Seller shall instantly notify the Purchaser through the bank. Article 11 shall be applied for the Seller's failure for the performance bond extension.

요구

