Chapter V
Terms of Contracts

In most Chinese contract books, the terms of contract are discussed in the context of contents of the contract. From a majority point of view, however, the terms of contract and the contents of contract are not the synonym. For example, according to one argument, the contents of contract should be viewed from two aspects: civil legal relations and intrinsic structure. In civil legal relations aspect, the contents of contract refer to the contractual relationship created between the parties, which represent the rights and obligations that the parties have respectively. With regard to intrinsic structure, the contents of contract are simply the terms of contract because the contents are displayed by the terms.\(^1\) A few contract scholars tend not to make such distinctions and they deem the two to have the same meaning. For example, in one contract law book in China, the contents of contract are defined as the terms of contract or the specific provisions of the rights and obligations of the parties to the contract.\(^2\)

The Contract Law seemingly makes no attempt to distinguish the contents of contract from the terms of contract. Instead, the Contract Law provides that the contents of a contract shall be agreed upon the parties, and shall include

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in general certain terms. For purposes of discussion, this Chapter will mainly deal with 4 major issues: the terms generally included in a contract, interpretation of contract, standard terms, and disclaimers.

1. Terms Generally Included in a Contract

What are the terms that a contract shall normally have? Under Article 12 of the Contract Law, the contents of a contract shall be agreed upon by the parties and in general include the following terms: (a) name and domicile of the parties; (b) subject matter of the contract; (c) quantity; (d) quality; (e) price or remuneration; (f) time limit, place and method of contract; (g) liability for breach of contract; and (h) methods for dispute settlement.\textsuperscript{3} Obviously, the language of Article 12 has an emphasis on the choice by the parties with regard to the contents of contract.

First, under Article 12 of the Contract Law, the contents of a contract shall be determined and agreed upon by the parties. In the eyes of many Chinese contract law scholars, Article 12 typically implicates the principle of freedom of contract as specified in Article 4 of the Contract Law. Thus, when making a contract, the parties are empowered to decide what they want to be covered in the contract. Second, the terms listed in Article 12 are regarded to be suggestive (or optional) because the tone of Article 12 is not mandatory. This would mean that the parties may or may not use all of them and may also add other terms if necessary for their specific need. Third, the parties may agree afterwards to change the terms and any post agreement so made would be used to replace the responding terms already in the contract.

An important implicit of Article 12 is that there is no requirement that certain terms be included in the contract in order for the contract to be valid. The terms listed in Article 12 are intended to provide the guidance for the parties to decide the contract contents. Consequently then, any missing term in a contract may not necessarily render the contract invalid nor adversely affects the conclusion of the contract.\textsuperscript{4} In addition, the terms may vary in different contracts and the parties are free to make their own decision on a case-by-case basis. But the liberal approach taken in Article 12 seems to make somewhat difficult the interpretation of a contract, particularly when certain key terms are not clear or not included in the contract.

\textsuperscript{3} See the Contract Law, art. 12.
\textsuperscript{4} In the US, for a sale of goods contract to be valid the quantity term is a must. But this would not be the case in China under the Contract Law.