Index

Acceptance
by conduct 91, 97
intention 91
mirror image rule 95
notice to offeror 91, 92, 93
of goods 95, 265, 267
of offer 23, 76, 86
by silence 91
withdrawal of 90
Action for the price. See Specific Relief; Remedies
Additional period of time 196, 205–10
Additional Terms 95
Adequate assurance. See Suspension of performance
Agency 28
Agreed Remedies. See Remedy limitations; Liquidated damages
Aliud. See Conformity requirements
nondelivery versus nonconforming delivery 207–8, 221
Anticipatory repudiation 184–89
adequate assurances 184
avoidance 144
becomes apparent 185, 187–89
notice of 186
grounds for 185–86
Arbitration
application of the CISG 4, 11, 13, 38, 48, 55–56, 64, 74
conflict of laws rules 25, 26, 74–75
specific relief 376–77
Asymmetric information 45, 213, 218, 223, 224, 225, 226
Attorneys’ fees 77, 352–54

Autonomous interpretation 15, 18
Avoidance of contract
and exemption from liability 332–33
and price reduction 361, 362, 364–66
consequence of 193–95, 339
declaration of 199–200
fundamental breach 195, 196–97
ipso facto avoidance 198
non-conforming delivery 210
non-delivery 208, 210, 211
notice of 197–98
relationship to cure 200–4
restitution following 334
Bailment for services 46
substantial part of the materials 47
Barter 55–60
Basis of the bargain. See Conformity requirements
Battle of the forms 94–98
material alteration 96
qualified mirror image rule 95–96
standard terms 98, 102–3
Breach of contract
avoidance 193
fundamental breach 186, 197
risk of loss 288–89, 290
suspension of performance 186, 193
Burdens of proof
and the CISG’s general principles 263, 264
awareness of nonconformity 180–81
breach of warranty 234, 263, 264, 265–67
damages 347, 348, 355, 378, 379
exemption from liability 335, 336
internationality of the contract 32
nonconformity 267
Index

Burden of proof (cont.)
  proof proximity principle 267, 268
  risk of loss 286, 289, 290
  rule and exception principle 264, 266

Carrier 155

CISG
  application. See Scope of the CISG
  drafting history 4–9, 15, 18
  interpretation 10–11, 15, 17–19
  foreign case law 12–15
  official language versions 10, 11, 174
  CISG Advisory Council 11, 72, 154, 169, 297, 304, 305, 306, 330, 349, 351, 392
  Claims to goods 253, 255
  CLOUT database 19
  Commercial impracticability 294, 303
  Conclusion of contract. See Formation of contract
  Conflict of laws rules. See Private international law

Conformity requirements
  aliud 200, 221
  basis of the bargain 215
  burden of proof 262–65
  compliance with regulatory standards 225, 226, 243
  defects in title 253, 362
  description of goods 217–18, 219
  fitness for ordinary purposes 222, 223, 228–32
  fitness for a particular purpose 232, 233
  models and samples 236–38
  opinion 218
  adequate and usual packaging 243–46
  standard of conformity 214
  Consequential damages 340–42, 344, 346–47
  Consideration 76, 110, 112, 113
  Consignments. See Framework agreements
  Consumer goods 44, 45, 65 n.118
  Contract of carriage 144, 284, 285, 287
  Contracting State defined 1
  Counteroffer
    Battle of the forms 95
    material alteration of terms 95, 96
    rejection of offer 95
  Course of dealing 193, 120, 121, 128, 129
  Course of performance 128, 129
  Cure
    and fundamental breach 200, 202, 203
    avoidance of contract 202
    price reduction 361
    refusal by buyer 201
    repair as 201, 204
    requirements 200–1
  Currency of payment. See Payment
  Current price 377, 383

Custom 120, 122
  Cutoff period 178–79
  contrast with statute of limitations 210

Damage exclusions
  contracting for 395
  effectiveness controlled by domestic law 395
  issue of validity 396

Damages
  burden of proof 347–48
  buyer’s notice of nonconformity 168, 170–71, 175, 182
  buyer’s notice of defective title 253
  calculation 339, 340, 345
  consequential 346, 350
  current price 377, 383
  election of remedy 378–79
  exclusions 395, 397
  exemption from liability 294, 315–16
  expectation interest 340, 345, 367, 368
  foreseeability limitation 340, 341, 344, 360
  incidental 346
  lost profits 348–50
  lost volume seller 331–52
  market price 345, 383
  specific relief 369–70
  substitute transaction 377, 378–79

Declaration of avoidance. See Avoidance

Default rules. See Consents and gap filling
generally 3–4
  majoritarian defaults 4, 245, 369
  standard for evaluating 4
  transaction costs 3, 7–8, 36, 102

Delivery
  and receipt 157, 158, 159
  defective 317, 318
  delivery terms 123–24, 276–78
  and taking over the goods 157, 178, 385
  Destination contract 156
  Diplomatic history 6–7, 10, 49, 73, 78, 150, 253, 361 n.35, 362
  Distribution contracts. See Framework agreements
  Disclaimers of conformity requirements
    and the UCC’s disclaimer provisions 260, 261
    and domestic law 259–61
    contractual allocation and legal effect 260
    the CISG’s coverage 257–58
  Documents 155, 160–61
  Duress 158, 159

Electricity 44

Estoppel 21, 22, 72, 73

© in this web service Cambridge University Press
www.cambridge.org
Examination of goods 163–68 
demand for 164 
and payment 164 
for giving notice of nonconformity 168–70 
timeliness of 169–70 
Excuse of the CISG. See Opting out of the CISG 
Excuse of late notice 174–75 
of performance of the contract 203–95 
Exemption from liability generally 203–94 
avoidability of consequences of impediment 225–27 
burden of proof 335–36 
consequence of 332–34 
continuing effectiveness of liquidated damages clause 335, 399 
defective delivery 316, 318–20 
failure of third party to perform 327–30 
force majeure 335, 336 
foreseeability of impediment 295, 320 
standard 321 
case law 332 
hardship as impediment. See Hardship, impediment 295–97 
impediment beyond control 297–99 
impediment 295, 296 
remedies available on 332, 333, 335, 399 
types of impediments 295, 296 
Extrinsic evidence 149–50, 216 
Fitness for ordinary purposes. See Conformity requirements 
Fitness for particular purpose. See Conformity requirements 
Force majeure. See Exemption from liability 
Foreign case law 14–15 
Foreseeability 
ilimitation on recoverable damages 340–41 
of loss 240 
of impediment 320–21 
standard of 340, 342 
Formation of contract 
acceptance by conduct or silence 92, 111, 191 
conclusion of contract 62, 76, 87 
hypotheticals 87–90 
offer and acceptance 86, 108–9 
with open price term 105, 107–8 
Framework agreements 62–63 
Fraud 79 
Fundamental breach 196 
and right to cure 203–4 
contrasted with perfect tender rule 193, 195 
definition 196 
ground for avoidance 196 
Gaps and gap-filling 20–21, 119, 135, 147 
General principles underlying the CISG 
generally 20–21 
and hardship 308, 309, 313 
governing burden of proof 285, 286, 267, 268, 289, 347, 348 
proposed principles 
adequate remedy 400 
allocating burden of proof 266, 267, 268, 289 
estopped 21, 72 
freedom of contract 400 
full compensation 353 
good faith 131–32 
mitigation of harm 21 
Good faith 
application of 307, 308 
promotion of uniformity in the CISG’s application 307, 308 
Goods 
consumer goods 44, 45 
definition of 44 
excluded from the CISG 44, 45, 46 
software 49, 54–55 
Goods to be manufactured 
sales 47–48, 60, 157 
substantial part of the materials 47–49 
Handing over of documents 160, 161 
Handing over of the goods 155, 156, 160, 161, 178, 277, 284, 285 
Hardship 
coverage under the CISG 304–6 
in relation to Article 79’s exemption from liability 306–7 
in relation to Article 7(2) 304, 308 
in relation to the PICC 307, 308, 309 
scope of 302–3 
Hold up 14, 112, 113, 185, 314 
Homeward trend 17, 19, 169, 174, 297 
Hybrid transactions. See Scope of the CISG 
Impediment. See Exemption 
Implied terms 
generally 119
Implied terms (cont.)

-course of dealing. See course of dealing
-course of performance

-good faith 131, 133, 145
-trade usage. See Trade usage
-Impossibility 295, 296, 304, 333
-Impracticability 294, 303
-Incidental loss 339, 349, 353, 378, 384

-Lack of conformity. See Conformity requirements

-Liquidated damages 335, 376, 396, 397, 398
-Litigation costs 352, 353, 354
-Lost profits. See Remedies
-Lost volume seller. See Remedies

-Material alteration of terms. See Battle of the forms
-Majoritarian default rules. See Default rules
-Merger clauses
-parol evidence rule 153, 154

-Mistake 79, 297
-Mitigation
-damage versus non-damage remedies 281 n.37
-reduction of price 350
-revision 356
-specific relief 370
-Models and samples. See Conformity requirements

-Modification of contract
-good faith requirement 112–14, 134
-no oral modification 117–18
-Multimodal transportation 269, 284, 285

-Nachfrist period
-distinguished from modification 206
-fixing of time for performance 205, 206
-nonperformance within fixed time 207
-right to avoid the contract 207, 209, 210

-Nonconformity. See Conformity requirements
-Non-delivery 207–8

-Notice of nonconformity
-consequence of failure to give sufficient 175–76
-cut-off period 178–79
-exceptions to requirement 173–80
-excuse for not giving 181–82
-specificity 170–71, 173
-time within which 168

-Offer
-Battle of the forms 94–95, 98
-counteroffer 95, 96, 97, 102
-elements of offer 87, 88, 105
-lapse of 92, 93–94
-receipt rule 91, 92
-revocation. See Revocation of offer
-standard terms and conditions 98–99, 103–4
-time limit 93–94
-withdrawal 90

-Open terms
-price 107–9
-quantity 87, 147–49

-Oprising in to the CISG 73–74
Packaging

Ordinary purposes. See Conformity requirements
Output contract

Payment

If a contract for the supply of goods is made in more than one place, the place of payment for goods supplied at these places is the place where the goods are supplied. The CISG also permits the parties to agree on a single place of payment, which is called the place of business. See PICC.

Personal injury

Person injury

Performance

Perfect tender rule

Penalty clauses.

enforceability under domestic law 335, 395,

penalty 396, 398

Perfect tender rule 193–94, 195, 201

Performance
generally 155

place of performance 160

right to the goods 92, 389

right to the price 374, 375, 394

Personal injury 75

PICC. See UNIDROIT Principles of International Commercial Contracts

Place of business

agency 77–78

branch office 29–30, 226

multiple locations 29–30

Place of payment 160–61

Preservation of the goods

mitigation requirement 281 n.37

reimbursement of reasonable expenses 281

Price reduction. See Remedies

Private international law

and hardship 305, 313

the CISG’s application 26

uncertainty in result 24, 25

Punitive damages 141, 340

Reasonable time

avoidance 196, 209, 210
cure 201, 202

declaration of reduction in the price 365
delivery 160, 328

examination of the goods 164, 169

Nachfrist period 205, 206, 207, 209

notice of nonconformity 9, 139, 168, 170, 181, 182, 222, 253

receipt of acceptance 91

substitute transaction 379, 581

Receipt

and delivery 157, 158

of goods 157, 158, 385

offers or acceptances 88, 90, 286

other declarations 141, 197, 198, 199, 361, 362

Reduction in the price. See Remedies, price reduction

Rejection

of goods 193, 195

inspection obligation 164

doing so 95

notice 168, 170

rights and duties with respect to rejected goods 280, 281

Reliance 94, 115, 116, 228, 235, 256, 240, 249, 242

Remedies

avoidance. See Avoidance damages and non-damage remedies 338, 339
election of remedies 378–79

foresightability limitation on damages. See Foresightability

general rule for damages 339

lost profits 339, 340, 344–50

lost volume seller 321–22

market price measure of damages 377, 378, 383–84

price reduction

assessment of 368–69

availability of 361

formula 363

versus damages 360, 364–67

protection of expectation interest 240, 345

recovery of consequential damages and incidental loss 339, 346

remedy limitations 395–96

restitution. See Restitution

specific relief 369–70

substitutional measure of damages 377, 378–79

Remedy limitations 395, 396

Repair of goods, as cure 201, 204

Requirements contract 148

Resale 222, 231, 286, 347, 377, 379–80, 382, 395

Packaging

lack of conformity 215, 220, 242–46

applicable standards 244

effect on liability for price 271

Penal evidence rule

contracting for 153–54

merger clause 153–54

derogation from the CISG 153

Particular place 156, 160, 283, 284–85

Particular purpose. See Conformity requirements

Party autonomy 9, 66, 83, 117

Payment

currency 56, 58, 59, 147, 160–61

demand for 59

exemption from liability 331–32

time and place of 161–62

Penalty clauses.

enforceability under domestic law 335, 395, 396, 398

treatment as a matter of validity 335, 396, 399

Perfect tender rule 193–94, 195, 201

Performance
generally 155

place of performance 160

right to the goods 92, 389

right to the price 374, 375, 394

Personal injury 75

PICC. See UNIDROIT Principles of International Commercial Contracts

Place of business

agency 77–78

branch office 29–30, 226

multiple locations 29–30

Place of payment 160–61

Preservation of the goods

mitigation requirement 281 n.37

reimbursement of reasonable expenses 281

Price reduction. See Remedies

Private international law

and hardship 305, 313

the CISG’s application 26

uncertainty in result 24, 25

Punitive damages 141, 340

Reasonable time

avoidance 196, 209, 210
cure 201, 202
declaration of reduction in the price 365
delivery 160, 328

examination of the goods 164, 169

Nachfrist period 205, 206, 207, 209

notice of nonconformity 9, 139, 168, 170, 181, 182, 222, 253

receipt of acceptance 91

substitute transaction 379, 581

Receipt

and delivery 157, 158

of goods 157, 158, 385

offers or acceptances 88, 90, 286

other declarations 141, 197, 198, 199, 361, 362

Reduction in the price. See Remedies, price reduction

Rejection

of goods 193, 195

inspection obligation 164

doing so 95

notice 168, 170

rights and duties with respect to rejected goods 280, 281

Reliance 94, 115, 116, 228, 235, 256, 240, 249, 242

Remedies

avoidance. See Avoidance damages and non-damage remedies 338, 339
election of remedies 378–79

foresightability limitation on damages. See Foresightability

general rule for damages 339

lost profits 339, 340, 344–50

lost volume seller 321–22

market price measure of damages 377, 378, 383–84

price reduction

assessment of 368–69

availability of 361

formula 363

versus damages 360, 364–67

protection of expectation interest 240, 345

recovery of consequential damages and incidental loss 339, 346

remedy limitations 395–96

restitution. See Restitution

specific relief 369–70

substitutional measure of damages 377, 378–79

Remedy limitations 395, 396

Repair of goods, as cure 201, 204

Requirements contract 148

Resale 222, 231, 286, 347, 377, 379–80, 382, 395
Restitution
as remedy 335, 388
of goods and price 394–95
of benefits from use 394–95
on exemption from liability 333, 334, 388
measure of loss 340, 369
place of 390–92
Reservations
continued application of writing requirements (Article 96) 83–86
formation and performance rules (Article 92) 41, 109 n.79
territorial limitation within a Contracting State (Article 93) 32–36
the CISG’s application through private international rules (Article 95) 38–43
Revocation of offer 89, 90, 93, 94
Right to examine the goods
consequence of failure to timely examine 175–76
duty of examination 164–65, 166, 169
place of examination 166
time within which examination is to occur 164
Risk of loss
act or omission of seller 270, 271, 273
burden of proof 286, 289–90
consequences of passage 269
effect of breach 280, 290–91
goods sold in transit 286–87
handing over of goods 277, 278, 284, 285
rules 269–70
shipment contracts 283–84
transport to a particular place 284
Rolling contracts 104
Sale, definition of
compared to license 54
Sample. See Conformity requirements, models and samples
Scope of the CISG
apparent internationality 31–32
application in bankruptcy 157–59
Article 1(1) 8, 27
Article 1(1)(a) 25, 27–29
Article 1(1)(b) 26, 36–37
bailments for services 46–47
barter. See Barter
consignments 64–65, 128
consumer contracts 45–46
excluded transactions 44, 45, 56–57
framework agreements 62–63
hybrid transactions 47, 60, 61
requirement of internationality 26–27
setoff and recoupment 20, 76, 273
software sales 51
territorial limits: Hong Kong and Macao 34, 35, 36
Service contracts
preponderance of obligations 47, 55
proportionate value 47, 49
Setoff and recoupment 20, 76
Software. See Scope of the CISG
as goods 51, 52
sales of 51
transactions 50
Specific relief. See Remedies
action for the price 369, 375
exemption from liability 333
limitation on 372
requirements for 369–70
Standard terms and conditions
Battle of the forms 98, 102
conflicting 102
notice of 99
Statute of frauds 83, 86
Statute of limitations 178, 210
String sales 286
Substitute transaction 331, 377, 378, 380, 381, 382
Suspension of performance
grounds for 183, 186
provision of adequate assurance 184
Taking over of the goods 157, 170, 178, 196, 385
Termination of offer. See Revocation of offer; Offer, withdrawal of
of contract 112, 114, 185, 199, 205
Territorial units 34, 35, 36
Third party
exemption for non-performance of 327, 328, 332
claims to goods 253, 254, 255, 362, 363
claims to infringement of industrial or intellectual property 256
rights to goods 82, 224
Title to goods 47, 67, 82, 254, 389
Tort claims
displacement of tort and contract claims 79, 80, 81, 82, 175, 176, 177
the CISG’s application 75
Trade usage
confirmations 125, 126, 127
definition 121
effect of ignorance about 127, 128
Incoterms as 123, 124
local 127, 128
Transaction costs 8, 36, 102, 103, 120, 137, 173, 273, 371
Transportation contracts. See contract of carriage

UNCITRAL
memorandum 5, 8
working groups 5, 15
working methods 5, 6, 7
Unconscionability 9, 59, 79, 117, 259
UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea ("Rotterdam Rules") 155

UNIDROIT Principles of International Commercial Contracts (PICC) 145, 307, 308, 309, 311, 312, 314


Uniform Law of International Sales of Goods (ULIS) 6, 242, 304

Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF) 5

Unjust enrichment. See Restitution
Usage. See Trade usage

Validity of the contract
capacity 9, 79
consideration 76, 110, 112, 113
disclaimers of liability of 258, 259–61
domestic law regulation 83, 117
duress 79, 117, 258
mistake 79, 297

Warehouse receipts 281, 282
Warranties. See Conformity Requirements
disclaimers under the UCC 260, 261
under the Uniform Commercial Code (UCC) 18, 211, 266

Withdrawal
of acceptance 90
of offer 88, 89

Writing requirements
in relation to Article 96 reservation 83, 84–86
the CISG's treatment of 66, 79, 83
domestic law 84–85
Statute of frauds 83, 86