

CISG

You have been purchasing widgets from Widget Supply Company for years without any problems. Unfortunately, a dispute arises between you and the supplier so you contact PVW Law to help resolve.

If such dispute is between two parties that each have their place of business in the United States, we would turn to the Uniform Commercial Code to help interpret the sales agreement between the parties and otherwise help “fill in the gaps.” The Uniform Commercial Code (also known as the UCC) is a standard set of laws that has been adopted in 49 states. Each state may have adopted a slight variation of the standard version of the UCC; however, throughout the United States (except Louisiana), the rules would be very similar.

However, what if the place of business for one of the parties is not in the United States? In this case, we would likely need to turn to the United Nations Convention on Contracts for the International Sale of Goods (also known as the Vienna Sales Convention or CISG) to help us interpret the agreement and resolve the dispute. The CISG is an international treaty that provides for a uniform set of laws governing the sale of goods. The CISG has been ratified by 70 countries (such countries account for almost three-quarters of all world trade). Countries that have ratified the CISG are referred to within the treaty as “Contracting States.” A list of Contracting States may be found at <http://cisgw3.law.pace.edu/cisg/countries/cntries.html>. The CISG establishes a set of rules governing certain aspect of the making and performance of commercial contracts between sellers and buyers of goods who have their places of business in different countries. By adopting the CISG, a country promises to the other Contracting States that it will treat the CISG as part of its own set of laws.

The purpose of the CISG is to make it easier and more economical to buy and sell raw materials, commodities and manufactured goods in international commerce. Predictability in the law helps reduce the cost of negotiating and entering into such agreements. However, in international transactions, there is often doubt about which country’s law controls. The sales law of one country often differs from that of another country. Fear of the unknown often prevents a party from accepting the “foreign” laws of the other party. Where there is doubt about the rules that apply, and a divergence as to the impact each set of rules would have on the agreement, the parties cannot be sure of their rights and obligations. Such uncertainty makes it more difficult to negotiate the original agreement and resolve any later disputes. The CISG attempts to reduce this uncertainty.

The CISG, like the UCC, contains rules governing the making and interpretation of contracts for the sale of goods. It also contains rules governing the obligations of each of the parties and remedies for failure to comply with such obligations. The CISG, like the UCC, does not deprive sellers and buyers of the freedom to mold their contracts to their own specifications. Generally, the parties are free to modify the rules established by the CISG (or even agree that the CISG does not apply at all).

The CISG can be characterized as “generally consist” with the UCC, but there are some differences. For example, the following differences arise during contract negotiations:

1. Revocable Offers –

The CISG treats offers as irrevocable more readily than does the UCC.

2. "Battle of Forms" –

Under the CISG, a reply to an offer that purports to be an acceptance, but has additions, limitations or other modifications is generally considered by the CISG to be a rejection and counteroffer. The UCC, on the other hand, tries to avoid this “battle of forms”, and allows an expression of acceptance to be operative, unless the acceptance states that it is conditioned on the offeror consenting to the additional or different terms contained in the acceptance.

Article 19 of the CISG provides as follows:

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

Under the CISG, additional or different terms in an acceptance prevent a contract from arising unless the terms are not material and the offeror does not object to them. For example, under the UCC, the addition of an arbitration provision in an acceptance would not keep a contract from forming between the parties. There may be a question as to whether the arbitration provision was material and should be included in the final interpretation of the contract; however, a binding contract would exist. Under the CISG, it is likely that there would not be a contract.

3. Writing Requirement –

Under the UCC's statute of frauds, oral contracts selling goods for a price of \$500 or more are generally not enforceable (with the exception of professional merchants performing their normal business transactions or any custom-made items designed for one specific buyer). The CISG frowns on such formalities. Unless otherwise specified by a Contracting State, the CISG does not require that a sales contract be reduced to writing and may be proved by any means, including witnesses. Some Contracting States have not adopted this approach. For example, China, the Russian Federation and Argentina require the contract to be in writing even if the CISG is used to govern the understanding of the parties.

Even though the UCC and CISG are very similar in many respects, there are still differences that may have a material impact on your transaction. We therefore recommend that you execute a written agreement for the sale/purchase of goods, with such writing specifically addressing which law to apply.

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