

International Sales Terms

Ostendorf

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by

Patrick Ostendorf


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Preface

International sales law is both a complex and consistently evolving area of law: The United Nations Convention on Contracts for the International Sale of Goods (CISG) has since long become a well-accepted and widely used piece of uniform sales law. A multitude of other international instruments sponsored both by private and public institutions are contributing to the ongoing harmonization of international sales law and related areas as well. Nevertheless, domestic laws of individual states – that are regularly unknown territory from the perspective of at least one of the parties to an international sales contract – still play a substantial role both with regard to gaps left behind by the international instruments as well as in relation to the validity and enforceability of contractual terms and conditions. Against this background, international sales contracts entail from a legal point of view both risks and opportunities: Risks, because international commercial contracts are giving rise to specific legal problems and pitfalls that do not exist on the domestic level. Opportunities, given that the existence of a (genuine) international link of a commercial (sales) contract provides the parties in contrast with a purely domestic transaction and based on the widely accepted principle of party autonomy with the opportunity to determine substantial parts of the applicable legal framework themselves. However, in order to both avoid risks and benefit from opportunities, a general understanding of international sales law and an awareness of existing differences between domestic legal systems and their impact on standard sales terms are of the essence. This book tries to identify both opportunities and risks from the perspective of a commercial seller: The annotated international sales terms suggested in this book are tailored for a specific governing law (CISG/Swiss law) that appears to be both flexible as well as accessible for lawyers and businesspeople from a variety of different legal backgrounds. At the same time, it is the aim of this book to illustrate the interaction between standard contractual clauses contained in international sales contracts and the governing law (to the inclusion of other relevant jurisdictions) in a broader sense.

The fourth edition of this book contains inter alia additional (alternative) model clauses, an enlarged section of English contract and sales law due to its ongoing popularity in international trade and takes more recent reforms of the Swiss Code of Obligations (in particular with regard to the statute of limitations) duly into consideration. Furthermore, a variety of more recent developments had to be considered: The International Chamber of Commerce (ICC) has again published new Rules of Arbitration (2021) as well as a new generation of Incoterms (Incoterms © 2020). The withdrawal of the United Kingdom from the EU (the “Brexit”) has triggered ongoing uncertainty as regards the future cooperation between the EU and the UK in civil and commercial matters including sales transactions given that the respective EU Regulations, in particular the Brussels Ia Regulation do no longer apply in this regard. These developments may however not only reinforce the standing of the CISG, but also increase the importance of other international conventions such as the Hague Convention on Choice of Court Agreements 2005 (to which the United Kingdom has become a member since 1 January 2020) that are reaching beyond the geographical scope of EU law.

Finally, and once again, a multitude of new publications on the subject of international sales contracts as well as new case law applying the CISG had to be duly taken into consideration.

Preface

This book could not have been written without the experience that I gained during my work as a lawyer (now as an of counsel) with a specific focus on international sales and distribution law at Orth Kluth Rechtsanwälte in Berlin and Düsseldorf and the ongoing fruitful exchange and discussion with both colleagues and clients. I should also like to thank my editor at C.H. Beck, Dr Frank Lang, for his ongoing valuable support.

This book is based on the materials that were available to me up to 28 February 2022.

Patrick Ostendorf



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