

Case 95: CISG 1(1)(b); 3(1); 9(1) and (2); 11; 78; 100(1)

Switzerland: Civil Court of Basel-Stadt; P4 1991/238

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The Austrian seller sued the Swiss buyer for the purchase price of fibre. In support of its suit, the seller argued that a sales contract had been concluded between the parties on the basis of an order sent by the Swiss buyer and a written confirmation sent by the seller.

The court found that the letter of confirmation sent by the seller and the subsequent omission of any reaction by the buyer reflected a usage as to the formation of contracts in the sense of article 9(1) CISG; that the parties had impliedly made that usage applicable to their contract since they knew or ought to have known the binding nature of such confirmations under both Austrian and Swiss law; and that there was no evidence of any other particular rules or usages prevailing in the trade of fibre. Furthermore, the court found that the exchange of confirmations was consistent with the practice which the parties had established between themselves and which was binding pursuant to article 9(2) CISG.

The court ordered the buyer to pay the purchase price with interest at the rate of 9%, i.e. the rate set out in the general terms of the letter of confirmation, which was found to be consistent with the applicable Austrian law, even though it was 3,5% higher than the Austrian discount rate.