

**Case 1516: CISG 8; 18(1); 18(2)**

Austria: Supreme Court (Oberster Gerichtshof)

1 Ob 215/12t

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The manager of a company which cooperated with the defendant on a regular basis had knowledge of the possible need of the defendant for insulating material and ordered it from a company in Romania — i.e. the claimant. The material together with a bill addressed to the defendant was delivered to this latter and within the following two months the defendant used a large part of the material. In the court proceedings it was uncontested that the delivery of the material was an offer to the defendant. The court had to decide whether the offer was accepted and the contract concluded.

The Supreme Court held that an offer can be accepted by conduct of the offeree indicating assent (Article 18(1) CISG). Whether such conduct amounts to an acceptance is to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances (Article 8 CISG). In the case at hand, the court stated that the use of the material was to be qualified as acceptance. Furthermore, the court noted that the relevant conduct took place within the period of time requested by Article 18(2) CISG. In this case the acceptance becomes effective at the moment the act is performed.