

ANNEX\*  
Text of the draft Convention on the formation of  
contracts for the International Sale of Goods

PART I. SUBSTANTIVE PROVISIONS

CHAPTER I. SPHERE OF APPLICATION

*Article 1. Scope*

(1) This Convention applies to the formation of contracts of sale of goods between parties whose places of business are in different States:

- (a) When the States are Contracting States; or
- (b) When the rules of private international law lead to the application of the law of a Contracting State.

(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the offer, any reply to the offer, or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the proposed contract is to be taken into consideration.

(4) This Convention does not apply to the formation of contracts of sale:

- (a) Of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
- (b) By auction;
- (c) On execution or otherwise by authority of law;
- (d) Of stocks, shares, investment securities, negotiable instruments or money;
- (e) Of ships, vessels or aircraft;
- (f) Of electricity.

(5) This Convention does not apply to the formation of contracts in which the preponderant part of the obligations of the seller consists in the supply of labour or other services.

(6) The formation of contracts for the supply of goods to be manufactured or produced is to be considered as the formation of contracts of sale of goods unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(7) For the purposes of this Convention:

- (a) If a party has more than one place of business, the place of business is that which has the closest relationship to the proposed contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

\* Originally issued as A/CN.9/142/Add.1 on 18 November 1977.

<sup>25</sup> A/CN.9/128, para. 172.

(b) If a party does not have a place of business, reference is to be made to his habitual residence.

#### Article 2. *Autonomy of the parties*

(1) The parties may agree to exclude the application of this Convention.

(2) Unless the Convention provides otherwise, the parties may agree to derogate from or vary the effect of any of its provisions as may appear from the negotiations, the offer or the reply, the practices which the parties have established between themselves or from usages.

(3) Unless the parties have previously agreed otherwise, a term of the offer stipulating that silence shall amount to acceptance is not effective.

### CHAPTER II. GENERAL PROVISIONS

#### Article 3. *Form*

(1) A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirements as to form. It may be proved by any means, including witnesses.

(2) Paragraph (1) of this article does not apply to a contract of sale where any party has his place of business in a Contracting State which has made a declaration under article (X) of this Convention. The parties may not derogate from or vary the effect of this paragraph.

#### Article 4. *Interpretation<sup>a</sup>*

(1) Communications, statements and declarations by and conduct of a party are to be interpreted according to his intent where the other party knew or ought to have known what that intent was.

(2) If the preceding paragraph is not applicable, communications, statements and declarations by and conduct of a party are to be interpreted according to the understanding that a reasonable person would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had in the same circumstances, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

#### Article 5. *Fair dealing and good faith<sup>b</sup>*

In the course of the formation of the contract the parties must observe the principles of fair dealing and act in good faith.

#### Article 6. *Usage*

For the purposes of this Convention usage means any practice or method of dealing of which the parties knew or ought to have known and which in international trade is widely known to and regularly observed by parties to contracts of the type involved in the particular trade concerned.

#### Article 7. *Communications*

(1) For the purposes of this Convention an offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally to him or delivered by any other means to him, his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

(2) Paragraph (1) of this article does not apply to an offer, declaration of acceptance or any other indication of intention if any of them is made in any other form than in writing where any party has his place

<sup>a</sup> The Working Group on the International Sale of Goods noted that article 4 had no equivalent in the draft Convention on the International Sale of Goods.

<sup>b</sup> The Working Group on the International Sale of Goods noted that article 5 had no equivalent in the draft Convention on the International Sale of Goods.

of business in a Contracting State which has made a declaration under article (X) of this Convention. The parties may not derogate from or vary the effect of this paragraph.

### CHAPTER III. FORMATION OF THE CONTRACT

#### Article 8. *Offer<sup>c</sup>*

(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance.

(2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

(3) A proposal is sufficiently definite if it indicates the kind of goods and fixes or makes provision for determining the quantity and the price. Nevertheless, if a proposal indicates the intention to conclude the contract even without making provision for the determination of the price, it is considered as proposing that the price be that generally charged by the seller at the time of the conclusion of the contract or, if no such price is ascertainable, the price generally prevailing at the aforesaid time for such goods sold under comparable circumstances.

#### Article 9. *Time of effect of offer*

The offer becomes effective when it reaches the offeree. It is withdrawn if the withdrawal reaches the offeree before or at the same time as the offer even if it is irrevocable.

#### Article 10. *Revocability of offer*

(1) The offer is revoked if the revocation reaches the offeree before he has dispatched his acceptance.

(2) However, an offer cannot be revoked:

(a) If the offer indicates that it is firm or irrevocable; or

(b) If the offer states a fixed period of time for acceptance; or

(c) If it was reasonable for the offeree to rely upon the offer being held open and the offeree has acted in reliance on the offer.

#### Article 11. *Termination of offer by rejection*

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.

#### Article 12. *Acceptance*

(1) A declaration or other conduct by the offeree indicating assent to an offer is an acceptance. Silence shall not in itself amount to acceptance.

(2) Subject to paragraph 3 of this article, acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. It is not effective if the indication of assent does not reach the offeror within the time he has fixed or if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed provided that the act is performed within the period of time laid down by the second and third sentences of paragraph 2 of this article.

(4) This article does not apply to the acceptance of an offer in so

<sup>c</sup> Ghana and the Union of Soviet Socialist Republics expressed formal reservations to the second sentence of paragraph (3) of this article.

far as the acceptance is allowed otherwise than in writing where any party has his place of business in a Contracting State which has made a declaration under article (X) of this Convention. The parties may not derogate from or vary the effect of this paragraph.

*Article 13. Additions or modifications to the offer*

(1) A reply to an offer containing 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 which contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance unless the offeror objects to the discrepancy without delay. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

*Article 14. Time fixed for acceptance*

(1) A period of time for acceptance fixed by an offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by an offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.

(2) If the notice of acceptance cannot be delivered at the address of the offeror due to an official holiday or a non-business day falling on the last day of the period for acceptance at the place of business of the offeror, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

*Article 15. Late acceptance*

(1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror so informs the offeree orally or dispatches a notice to that effect.

(2) If the letter or document containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late

acceptance is effective as an acceptance unless, without delay, the offeror informs the offeree orally that he considers his offer as having lapsed or dispatches a notice to that effect.

*Article 16. Withdrawal of acceptance*

An acceptance is withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

*Article 17. Time of conclusion of contract*

A contract of sale is concluded at the moment that an acceptance of an offer is effective in accordance with the provisions of this Convention.

*Article 18. Modification and rescission of contract*

(1) The contract may be modified or rescinded by the mere agreement of the parties.

(2) A written contract which contains a provision requiring any modification or rescission to be in writing may not be otherwise modified or rescinded. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

(3) This article does not apply to the modification or rescission of a contract in so far as it is allowed otherwise than in writing where any party has his place of business in a Contracting State which has made a declaration under article (X) of this Convention. The parties may not derogate from or vary the effect of this paragraph.

*Article (X). Declarations*

A Contracting State whose legislation requires a contract of sale to be concluded in or evidenced by writing may at the time of signature, ratification or accession make a declaration to the effect that the provisions of this Convention, in so far as they allow the conclusion, modification or rescission of the contract, offer, acceptance or any other indication of intention to be made otherwise than in writing shall not apply if one of the parties has his place of business in the declarant State.