

Article 62

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

OVERVIEW

1. Article 62 entitles the seller to require the buyer to perform its obligations. This remedy is generally recognized in civil law systems, whereas common law systems generally allow for the remedy (often under the designation “specific performance”) only in limited circumstances.¹ Article 62 parallels article 46, which also provides this remedy for a buyer who suffers a breach of contract by the seller.² Within the section on the seller’s remedies, the right to performance of the buyer’s obligations is set forth at the beginning of the various remedies available to the seller, mirroring the position occupied by the buyer’s parallel remedy for breach of contract by the seller.³

2. Article 62 is frequently implemented or cited by judges and arbitrators in that it enables the seller to require payment of the price of the goods sold.⁴ On the other hand, as shown in case law, it is very rare that a seller takes legal action to claim specific performance of the obligation to take delivery of the goods⁵ or that court decisions cite article 62 in connection with the obligation to take delivery.⁶ Most often, the seller prefers, when faced with a buyer who refuses to take delivery of the goods, to avoid the contract and claim damages.

GENERAL CONDITIONS RELATING TO THE SELLER’S RIGHT TO REQUIRE PERFORMANCE

3. As can be seen from the provision, the seller’s right to require performance applies to all the buyer’s obligations. The seller has to have suffered a breach of contract,⁷ but the nature and extent of the breach are immaterial.

4. The right to require performance under article 62 is subject to two kinds of limitations: the first is set forth in article 62 itself; the second results from article 28.

5. Under article 62, a seller is deprived of the right to require the buyer to perform its obligations if it has “resorted to a remedy which is inconsistent” with requiring performance. Cases of inconsistency are varied. Inconsistency exists, *inter alia*, in the event of avoidance (article 64)⁸ or, where an additional period of time has been fixed for performance by the buyer (article 63 (1)), during that period (article 63 (2)). Similarly, a seller who sold goods which had to be preserved by the seller as provided for in article 88 is deprived of the right to require the buyer to take delivery of them.

6. The second limitation derives from article 28 of the Convention, under which a court is not bound to order specific performance in the seller’s favour, even if that would otherwise be required under article 62, if the court would not do so under its domestic law in respect of similar contracts not governed by the Convention.⁹

IMPLEMENTATION

7. In order to be able to rely on its rights under article 62, a seller has to “require” performance of the buyer’s obligations. Accordingly, there must be a clear demand by the seller that the buyer fulfil the obligation at issue.¹⁰ No prior notice of the breach or other particular formality on the part of the seller is necessary.

8. The seller’s right to require the buyer to perform its obligations is not confined by the Convention to a particular period of time.¹¹ This right is subject to the normal periods of limitation imposed by applicable national law or, insofar as it applies, by the Convention on the Limitation Period in the International Sale of Goods.

Notes

¹For further comments on the matter, see the Digest for article 28, paragraph 1.

²See the Digest for article 46.

³*Ibid.*

⁴Okresný súd Komárno, Slovakia, 12 March 2009, available in Slovak on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu; Okresný súd Komárno, Slovakia, 24 February 2009, available in Slovak on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 1020 [Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce, Serbia, 28 January 2009]; Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce, Serbia, 5 January 2009, available in Serbian on the Internet at www.cisg.law.pace.edu, available in English on the Internet at www.cisg.law.pace.edu; Polymelous Protodikeiou ton Athinon (Multi-Member Court of First Instance of Athens), Greece, 2009 (docket No. 4505/2009), available in

English on the Internet at www.cisg.law.pace.edu; Okresný súd Bratislava III, Slovakia, 22 May 2008, available in Slovak on the Internet at www.cisg.law.pace.edu, available in English on the Internet at www.cisg.law.pace.edu; Zhèjiāng shěng gāojí rénmin fāyuàn (High People's Court of Zhejiang Province), People's Republic of China, 24 April 2008, available in Chinese on the Internet at aff.whu.edu.cn/cisgchina, available in English on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Karlsruhe, Germany, 14 February 2008, *Internationales Handelsrecht*, 2008, 53, available in German on the Internet at www.cisg.law.pace.edu, available in English on the Internet at www.cisg.law.pace.edu; Okresný súd Banská Bystrica, Slovakia, 7 March 2008, available in Slovak on the Internet at www.cisg.law.pace.edu, available in English on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Köln, Germany, 14 January 2008, *Internationales Handelsrecht*, 2009, 62, available in German on the Internet at www.cisg-online.ch; 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⁵ See Zhèjiāng shěng gāoji rénmin fǎyuàn (High People's Court of Zhejiang Province), People's Republic of China, 24 April 2008, available in Chinese on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; Amtsgericht Hamburg-Altona, Germany, 14 December 2000, *Praxis des Internationalen Privat- und Verfahrensrechts* (IPRax), 2001, 582, available in German on the Internet at www.globalsaleslaw.org; Landgericht Hamburg, Germany, 5 November 1993, available in German on the Internet at www.globalsaleslaw.org; cf. CLOUT case No. 133 [Oberlandesgericht München, Germany, 8 February 1995], available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (see full text of the decision).

⁶ Polimeles Protodikio Athinon, Greece, 2009, English abstract available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998], *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1999, 186, available in German on the Internet at www.globalsaleslaw.org; CLOUT case No. 217 [Handelsgericht des Kantons Aargau, Switzerland, 26 September 1997], *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1998, 78, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; Arbitration Court of the International Chamber of Commerce, January 1997 (Arbitral award No. 8786), *ICC International Court of Arbitration Bulletin*, vol. 11, No. 2, 2000, 70, available in English on the Internet at www.unilex.info.

⁷ See article 61 (1): "If the buyer fails to perform any of his obligations"

⁸ See the commentary on the draft Convention prepared by the UNCITRAL secretariat in regard to draft article 58, paragraph 10.

⁹ See the Digest for article 28.

¹⁰ For a similar assertion, see the Digest for article 46.

¹¹ For a comparable observation concerning the implementation of article 46, see the Digest for article 46.