

Article 53

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

INTRODUCTION

1. Article 53 states the principal obligations of the buyer and serves as an introduction to the provisions of Chapter III. As the Convention does not define what constitutes a “sale of goods”, article 53, in combination with article 30, also sheds light on the matter.¹ The principal obligations of the buyer are to pay the price and take delivery of the goods “as required by the contract and this Convention”. From this phrase, as well as from article 6 of the Convention, it follows that, where the contract provides for performance of the contract that departs from the rules of the Convention, the parties’ agreement prevails.

OTHER OBLIGATIONS OF THE BUYER

2. According to the Convention, the contract may impose on the buyer obligations other than paying the price and taking delivery,² such as an obligation to provide security for payment of the price, an obligation to supply materials needed for the manufacture or production of the goods (see article 3 (1)), an obligation to submit specifications regarding the form, measurement or other features of the goods (article 65) or obligations relating to the marketing of the goods, such as a re-export prohibition.³

ILLUSTRATIONS FROM CASE LAW

3. Because it merely sets out the obligations of the buyer—which are treated more fully in subsequent provisions—article 53 has raised no particular difficulties for tribunals. There have been numerous decisions citing article 53 in cases involving judgments requiring the buyer to pay the price.⁴ On the other hand, few decisions have referred to article 53 in connection with judgments requiring the buyer to take delivery of the goods⁵ or, more generally, in relation to the buyer’s breach of the obligation to take delivery of the goods.⁶

BURDEN OF PROOF

4. The Vienna Convention does not deal expressly with the burden of proof. According to most court decisions, this is a matter which is governed by the Convention and has to be settled by application of a general principle on which the Convention is based (article 7 (2)).⁷ According to one of the principles developed in case law, the party relying on the legal consequences attaching to a provision of the Convention has to prove that the legal requirements of the provision have been met.⁸ It follows from this principle that the seller has to prove that the buyer must pay the price and also what that amount is.⁹ However, in cases where the buyer claims a reduction or discount, the buyer bears the burden of proving that it is entitled to reduce the initial contract price.¹⁰ If a buyer who is sued by the seller for payment of the price claims in defence that it has settled the price, the burden is on the buyer to prove settlement, as several decisions have noted.¹¹

Notes

¹ CLOUT case No. 652 [Tribunale di Padova, Italy, 10 January 2006]; CLOUT case No. 904 [Tribunal cantonal du Jura, Switzerland, 3 November 2004]; Tribunale di Padova, Italy, 25 February 2004, *Giurisprudenza italiana*, 2004, 1405, available in Italian on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 608 [Tribunale di Rimini, Italy, 26 November 2002], available in Italian on the Internet at www.unilex.info, English translation available on the Internet at www.cisg.law.pace.edu; Kantonsgericht Schaffhausen, Switzerland, 25 February 2002, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 480 [Cour d’appel de Colmar, France, 12 June 2001]; Tribunal de grande instance de Colmar, France, 18 December 1997, available on the Internet at www.cisg-france.org; Tribunal cantonal de Vaud, Switzerland, 11 March 1996, available on the Internet at www.cisg.law.pace.edu.

² See articles 61 (1) and 62.

³ CLOUT case No. 154 [Cour d’appel de Grenoble, France, 22 February 1995], English translation available on the Internet at www.cisg.law.pace.edu (on this decision see the Digest for article 64, paragraph 6, note 17 *infra*).

⁴ Oberlandesgericht Saarbrücken, Germany, 12 May 2010, *Internationales Handelsrecht*, 2010, 202, available in German on the Internet at www.globalsaleslaw.org; Landgericht Stuttgart, Germany, 29 October 2009, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; Tribunal de commerce de Versailles, France, 12 March 2010, available in

French on the Internet at www.cisg-france.org, available in English on the Internet at www.cisg.law.pace.edu; Rechtbank Rotterdam, the Netherlands, 3 February 2010, available on the Internet at www.cisg.law.pace.edu; Landgericht Stuttgart, Germany, 11 November 2009, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Rechtbank Rotterdam, the Netherlands, 1 July 2009, available in Dutch on the Internet at www.cisg-online.ch; Cour de cassation, Belgium, 19 June 2009, available on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu; United States District Court, Southern District of New York, United States, 29 May 2009 (Doolim Corp. v. 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⁷ See the Digest for article 7.

⁸ See the Digest for article 7, paragraph 13.

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¹⁰ Oberlandesgericht Saarbrücken, Germany, 12 May 2010, *Internationales Handelsrecht*, 2010, 202, available on the Internet at www.globalsaleslaw.org (the court differentiated between this case and that where the price is determined on the basis of the amount of the orders, the seller thus bearing the burden of proving the amount of the price); cf. Landgericht Kassel, Germany, 15 February 1996, *Neue Juristische Wochenschrift—Rechtsprechungsreport*, 1996, 1146, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (the buyer alleged that it was authorized to deduct a discount for settlement of the price within a certain period; since the seller had been unable to prove the contrary, the court allowed the reduction).

¹¹ See CLOUT case No. 906, [Kantonsgericht Nidwalden, Switzerland, 23 May 2005], *Internationales Handelsrecht*, 2005, 253; Juzgado Sexto de Primera Instancia del Partido de Tijuana, Mexico, 14 July 2000, available in Spanish on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 273, [Oberlandesgericht München, Germany, 9 July 1997], available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu.