

Article 64

(1) The seller may declare the contract avoided:

(a) If the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) If the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.

(2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:

(a) In respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or

(b) In respect of any breach other than late performance by the buyer, within a reasonable time:

(i) After the seller knew or ought to have known of the breach; or

(ii) After the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

OVERVIEW

1. Article 64 defines the conditions under which the seller is entitled to declare the contract avoided. The rules mirror those of article 49 governing the buyer's right to declare the contract avoided for breach by the seller.¹ The effects of avoidance are governed by articles 81 to 84. The seller must declare the contract avoided by means of a notice (article 26). Avoidance under article 64 is available in two cases: first, if the buyer's failure to perform its contractual obligations amounts to a fundamental breach of contract as defined in article 25 (article 64 (1) (a)); and, secondly, if the buyer fails to pay the price or to take delivery of the goods within an additional period of time fixed pursuant to article 63 (article 64 (1) (b)).

2. Avoidance of the contract is a remedy of last resort (*ultima ratio*) that is available when the seller cannot be expected to continue the contract.² Avoidance does not occur automatically but requires notice of avoidance by the seller (article 26). In cases of non-payment of the price, the seller is entitled to avoid the contract at any time after all prerequisites for avoidance have been met. Where the buyer has paid the price, the seller loses the right to avoid the contract if the seller does not exercise it within the time periods specified in article 64 (2).

AVOIDANCE FOR FUNDAMENTAL BREACH
(ARTICLE 64 (1) (a))

3. The first situation in which the seller can avoid the contract under article 64 (1) is where the buyer has committed

a fundamental breach of contract as defined in article 25.³ This requires that the breach of contract cause the seller such detriment as to substantially deprive the seller of what it was entitled to expect under the contract unless the breaching buyer did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result (article 25). One arbitral award noted in this connection that, "according to both the general framework of the Convention and its interpretation in case law, the notion of fundamental breach is usually construed narrowly in order to prevent an excessive use of the avoidance of the contract."⁴ Case law affords many illustrations of fundamental breaches involving three conceivable types of contract violations, namely failure to pay the price, failure to take delivery of the goods, and non-performance of other obligations imposed by the contract on the buyer.

4. Definitive failure to pay the price or a large part of the price generally constitutes a fundamental breach of contract.⁵ Proof of definitive failure to pay the price will often derive from a declaration by the buyer that it will not settle the price⁶ or from the buyer's insolvency situation.⁷ Conversely, a mere delay in payment of the price is not construed as a fundamental breach⁸ unless timely performance of the obligation to pay the price is of the essence of the contract. Failure to open a letter of credit at the time fixed by the contract does not automatically constitute a fundamental breach.⁹ However, it may amount to a fundamental breach according to the circumstances of the case.¹⁰ It was possible to rule, in a case involving the conclusion of several successive contracts, that non-payment of the price of some of the contracts did not constitute a fundamental breach of the other contracts unless the seller and the buyer had concluded

a framework agreement.¹¹ Where the buyer has not paid but the requirements for a fundamental breach do not appear to be met, the seller can benefit from fixing an additional period of time for the buyer to pay, which allows the seller to avoid the contract pursuant to article 64 (1) (b) if the buyer fails to pay the price within that period.¹²

5. A buyer's final failure to take delivery of the goods normally constitutes a fundamental breach of contract.¹³ In general, a delay of a few days in the delivery of the goods is not construed as a fundamental breach.¹⁴ However, such a delay can amount to a fundamental breach where observance of the date for taking delivery is especially important for the seller owing to the structure of the contract, for example if the sale relates to perishable goods or if the seller has to have rapid access to its storage or transport facilities.¹⁵ It has been held, in connection with an instalment contract requiring the buyer to take delivery of a specific quantity of goods each year, that the fundamental nature of the breach committed by the buyer in taking insufficient goods one year must be assessed in relation to the quantities under the entire contract, not just those to be supplied annually.¹⁶

6. Non-performance of obligations other than payment of the price or taking delivery of the goods can also amount to a fundamental breach where the criteria set forth in article 25 are met. The existence of a fundamental breach was acknowledged by one court with regard to a re-export prohibition imposed on the buyer.¹⁷ Conversely, one court held, in connection with the buyer's duty to cooperate with the seller in drawing up a delivery schedule for the following year, that the insufficient cooperation of which the seller accused the buyer did not constitute a fundamental breach in light of the criteria in article 25.¹⁸

AVOIDANCE FOR FAILURE TO PAY OR TO TAKE DELIVERY WITHIN AN ADDITIONAL PERIOD OF TIME FIXED (ARTICLE 64 (1) (b))

7. Article 64 (1) (b) provides for a second ground of contract avoidance, applicable only in cases of non-payment of the price or failure to take delivery of the goods:¹⁹ the seller can avoid the contract if the buyer has not paid the price or taken delivery of the goods within the additional period of time fixed by the seller under article 63 (1).²⁰ The seller may also avoid the contract if the buyer declares that it will not pay the price or take delivery of the goods within the period so fixed. Entitlement to avoidance pursuant to article 64 (1) (b) overcomes the difficulties surrounding the question whether the breach committed by the buyer is fundamental on the basis of the criteria set forth in article 25. It can exceptionally happen that decisions hold that the seller is entitled to avoid the contract only if the seller has previously fixed an additional period of time for performance by the buyer, thus disregarding the scope of article 64 (1) (a).²¹

8. The mechanism for avoiding the contract as established in article 64 (1) (b) is inapplicable in cases where the buyer breaches an obligation other than payment of the price or taking delivery of the goods. It is thus important to determine whether the buyer's breach can be construed as a violation of the obligation to pay the price or to take delivery of the goods. Under article 54, the steps or formalities required

to enable payment to be made are part of the obligation to pay the price. Thus, failure to open a letter of credit comes within the sphere of application of article 64 (1) (b).²² The same reasoning applies if the buyer does not perform the acts which could reasonably be expected of the buyer to enable the seller to effect delivery of the goods.

9. Where the seller fixes an additional period of time for the buyer to perform obligations other than the obligation to pay the price or to take delivery of the goods, the buyer's failure to perform the obligation concerned by the end of that period does not permit the seller to avoid under article 64 (1) (b). The contract may be avoided only if the breach is fundamental (article 64 (1) (a)). However, such a time limit is not totally ineffective. On the one hand, the seller may not, during that period, resort to any remedy for breach of contract (article 63 (2)). On the other, refusal to perform an obligation other than payment of the price or taking delivery of the goods could add to the weight of the non-performance and can influence the assessment of the fundamental nature of the breach committed by the buyer.²³

DECLARATION OF AVOIDANCE OF THE CONTRACT

10. Under article 64, avoidance of the contract is effected by means of a declaration by the seller ("The seller may declare the contract avoided").²⁴ By virtue of article 26, a declaration of avoidance of the contract is effective only if made by notice to the buyer.²⁵ In accordance with article 27, a delay or error in the transmission of the communication or its failure to arrive does not deprive the seller of the right to rely on the communication. Pursuant to article 11, the notice need not be in writing and is not subject to any requirement as to form, except where the article 96 reservation applies. The freedom-from-form-requirements principle governing the notice means that the avoidance declaration can be made orally or derive from the seller's action.²⁶ Irrespective of the means of expression chosen by the seller, the notice must clearly indicate that the seller is terminating the contract.²⁷ According to several court decisions, the avoidance declaration may already be contained in the notice by which the seller fixes an additional period of time for performance by the buyer.²⁸ This is the case where a seller, when fixing an additional period, declares that the contract will be avoided forthwith in the event of non-payment of the price within the period fixed.²⁹ On the other hand, a mere threat to avoid the contract is not sufficient.³⁰ Avoidance can also result from the filing of a lawsuit or arbitration proceedings with a view to contract avoidance,³¹ or from an award of damages for the loss caused by non-performance.³²

PERIOD OF TIME FOR DECLARATION OF AVOIDANCE WHEN THE PRICE HAS BEEN PAID (ARTICLE 64 (2))

11. Article 64 (2) specifies the situations in which the seller's right to declare the contract avoided must be exercised within certain periods. Since the rules in article 64 (2) are applicable only in cases where the buyer has paid the price, the seller's right to declare avoidance is, in contrast, not subject to time limitations as long as the buyer has not paid the total price.³³ If the buyer has paid only part of the price, the

seller continues to be entitled to declare avoidance at any time.³⁴ In cases of non-payment of the price, only a waiver by the seller or conduct contrary to the principle of good faith can prevent the seller from declaring the contract avoided.³⁵

12. Where the buyer has paid the price, the seller loses the right to avoid the contract if it does not declare avoidance within the periods stated in article 64 (2). This provision makes a distinction between late performance and breaches other than late performance. In cases of late performance, the seller loses the right to declare the contract avoided unless it does so before becoming aware that performance has been (tardily) rendered.³⁶ The provision is accordingly more rigorous than article 49 (2), under which, in cases of late delivery by the seller, the buyer is allowed a reasonable time, after becoming aware that delivery has been made, to

declare the contract avoided.³⁷ In regard to any breach other than late performance, article 64 (2) (b) makes a distinction according to whether or not the seller has fixed an additional period for performance in accordance with article 63 (1). In the absence of an additional period for performance, the seller loses the right to declare the contract avoided unless it declares avoidance within a reasonable time after the seller knew or ought to have known of the breach (article 64 (2) (b) (i)). Where the seller has fixed an additional period of time for performance by the buyer, the seller loses the right to declare the contract avoided unless it declares avoidance within a reasonable time after the expiration of the additional period fixed by the seller or after the buyer has declared that it will not perform its obligations within such additional period (article 64 (2) (b) (ii)). Article 64 (2) has given rise to very little case law.

Notes

¹ Owing to the similarity of the two provisions, courts sometimes refer to article 64 instead of article 49: see *Rechtbank van Koophandel Kortrijk* [Belgium, 4 June 2004], available in Dutch on the Internet at www.law.kuleuven.be, available in English on the Internet at www.cisg.law.pace.edu; *Oberlandesgericht Nürnberg*, Germany, 20 September 1995, available in German on the Internet at www.globalsaleslaw.org (see CLOUT case No. 229 [Bundesgerichtshof, Germany, 4 December 1996], *Neue Juristische Wochenschrift—Rechtsprechungsreport*, 1997, 690, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu, in which the error in the judgment of the *Oberlandesgericht Nürnberg* was pointed out).

² See *Oberlandesgericht Brandenburg*, Germany, 18 November 2008, IHR 2009, 105, Cisg-online 1734; for a comparable observation in connection with article 49, see the Digest for article 49.

³ See the Digest for article 25.

⁴ Arbitration Court of the International Chamber of Commerce, August 1998 (Arbitral award No. 9887), *ICC International Court of Arbitration Bulletin*, 2000, vol. 11, No. 2, 109, available in English on the Internet at www.unilex.info.

⁵ U.S. District Court, Southern District of New York, United States, 29 May 2009 (*Doolim Corp. v. R Doll, LLC et al.*), available in English on the Internet at www.cisg.law.pace.edu (in connection with payment of less than 25 per cent of the price); *Tribunal cantonal du Valais*, Switzerland, 2 December 2002, available in French on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 578 [U.S. District Court, Western District of Michigan, United States, 17 December 2001], 2001 WL 34046276, available in English on the Internet at www.cisg.law.pace.edu (non-payment of the price is the most significant form of a fundamental breach by a buyer); CLOUT case No. 468 [International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 5 October 1998]; CLOUT case No. 130 [Oberlandesgericht Düsseldorf, Germany, 14 January 1994].

⁶ See, for example, *Tribunal cantonal du Valais*, Switzerland, 2 December 2002, available in French on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 361 [Oberlandesgericht Braunschweig, Germany, 28 October 1999], *Transportrecht-Internationales Handelsrecht*, 2000, 4.

⁷ CLOUT case No. 308 [Federal Court of Australia, South Australian District, Adelaide, Australia, 28 April 1995], (1995) 57 *Federal Court Reports* (Australia) 216-240 (*Roder Zelt- und Hallenkonstruktionen GmbH v. Rosedown Park Pty Ltd et al.*).

⁸ *Oberlandesgericht Düsseldorf*, Germany, 22 July 2004, *Internationales Handelsrecht*, 2005, 29, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 301 [Arbitration Court of the International Chamber of Commerce, 1992, (Arbitral award No. 7585), *ICC International Court of Arbitration Bulletin*, 1995, vol. 6, No. 2, 60, available in English on the Internet at www.unilex.info.

⁹ China International Economic and Trade Arbitration Commission, People's Republic of China, April 2006 (Arbitral award No. CISG/2006/21), available in English on the Internet at www.cisg.law.pace.edu; *Landgericht Kassel*, Germany, 21 September 1995, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; China International Economic and Trade Arbitration Commission, People's Republic of China, 23 April 1995, *Zhōngguó guójì jīngjì mào yì zhōngcái cáijué shū xuānbīān*, vol. 1995, 2004, 1446, available in English on the Internet at www.cisg.law.pace.edu.

¹⁰ China International Economic and Trade Arbitration Commission, People's Republic of China, 15 September 2005, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 976 [China International Economic and Trade Arbitration Commission, People's Republic of China, 26 June 2003], available in English on the Internet at www.cisg.law.pace.edu; Supreme Court of Queensland, Court of Appeal, Australia, 12 October 2001, (*Downs Investments v. Perwaja Steel*), [2001] QCA 433 [2002] 2 Qd R 462, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 631 [Supreme Court of Queensland, Australia, 17 November 2000] (*Downs Investments in liq. v. Perwaja Steel*), available in English on the Internet at www.austlii.edu.au; China International Economic and Trade Arbitration Commission, People's Republic of China, 1 March 1999, *Zhōngguó guójì jīngjì mào yì zhōngcái cáijué shū xuānbīān*, vol. 1999, 2004, 1585, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 717 [China International Economic and Trade Arbitration Commission, People's Republic of China, 6 January 1999], *Zhōngguó guójì jīngjì mào yì zhōngcái cáijué shū xuānbīān*, vol. 1999, 2004, 1417; Arbitration Court of the International Chamber of Commerce, 1999 (Arbitral award No. 10274), *Yearbook Commercial Arbitration*, vol. 29, 2004, 89, available in English on the Internet at www.cisg.law.pace.edu; China International Economic and Trade Arbitration

Commission, People's Republic of China, 21 July 1997, *Zhōngguó guójì jīngjì mào yì zhōngcái cáijué shū xuǎnbiān*, vol. 1997, 2004, 2215, available in English on the Internet at www.cisg.law.pace.edu.

¹¹ CLOUT case No. 826 [Oberlandesgericht München, Germany, 19 October 2006], *Internationales Handelsrecht*, 2007, 30, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu.

¹² See, for example, China International Economic and Trade Arbitration Commission, People's Republic of China, 15 September 2005, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 243 [Cour d'appel de Grenoble, France, 4 February 1999], available in French on the Internet at www.cisg-france.org available in English on the Internet at www.cisg.law.pace.edu (the court observed that, in the absence of a fundamental breach, the seller should have granted the buyer an additional period of time in which to take delivery); CLOUT case No. 261 [Bezirksgericht der Saane, Switzerland, 20 February 1997], *Schweizerische Zeitschrift für internationales und europäisches Recht*, 1999, 195-197, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (failure to obtain a letter of credit within the additional period of time fixed by the seller under article 63).

¹³ See CLOUT case No. 987 [China International Economic and Trade Arbitration Commission, People's Republic of China, 22 March 2001] (refusal to hire a ship to transport the goods under an FOB sale); 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 (refusal to take delivery of the goods) (see full text of the decision); CLOUT case No. 227 [Oberlandesgericht Hamm, Germany, 22 September 1992], *Transportrecht-Internationales Handelsrecht*, 1999, 24, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (refusal to take delivery of more than half of the goods); China International Economic and Trade Arbitration Commission, People's Republic of China, 9 January 1993, *Zhōngguó guójì jīngjì mào yì zhōngcái cáijué shū xuǎnbiān*, vol. 1993, 2004, 187, available in English on the Internet at www.cisg.law.pace.edu (refusal to send a ship to transport the goods under an FOB sale).

¹⁴ CLOUT case No. 243 [Cour d'appel de Grenoble, France, 4 February 1999], available in French on the Internet at www.cisg-france.org, available in English on the Internet at www.cisg.law.pace.edu (sale of orange juice whose delivery was to be staggered over several months, where the buyer announced a delay of a few days in taking delivery of one instalment); see, however, CLOUT case No. 629 [Kantonsgericht Zug, Switzerland, 12 December 2002], *Internationales Handelsrecht*, 2004, 65 (the court held that the few days' delay constituted a fundamental breach; the significance of this assertion should be qualified, since the seller had previously granted the buyer an additional period of time without result).

¹⁵ See, for a similar assertion, Oberlandesgericht Düsseldorf, Germany, 22 July 2004, *Internationales Handelsrecht*, 2005, 29, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (after stating this principle, the court rejected the existence of a fundamental breach in connection with the late delivery of children's fashion shoes).

¹⁶ Oberlandesgericht Brandenburg, Germany, 18 November 2008, *Internationales Handelsrecht*, 2009, 105, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu.

¹⁷ CLOUT case No. 154 [Cour d'appel de Grenoble, France, 22 February 1995], *Journal du droit international*, 1995, 632, English translation available on the Internet at www.cisg.law.pace.edu (a buyer of jeans was required, under the contract, to provide evidence of the final destination of the goods in Africa and South America in order to ensure that a re-export prohibition relating, in particular, to Europe was complied with by the buyer; the court held that the buyer's failure to furnish proof of the final destination of the goods was a fundamental breach).

¹⁸ Oberlandesgericht Brandenburg, Germany, 18 November 2008, *Internationales Handelsrecht*, 2009, 105, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu.

¹⁹ Arbitration Court of the International Chamber of Commerce, September 1996 (Arbitral award No. 8574), *ICC International Court of Arbitration Bulletin*, vol. 11, No. 2, 2000, 57, available in English on the Internet at www.cisg.law.pace.edu (the ruling referred to the option available to the seller of avoidance for fundamental breach or avoidance upon the lapse of an additional period of time without receiving performance).

²⁰ See, by way of illustration, Oberlandesgericht Karlsruhe, Germany, 14 February 2008, *Internationales Handelsrecht*, 2008, 53, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (payment of the price); CLOUT case No. 886 [Handelsgericht des Kantons St. Gallen, Switzerland, 3 December 2002] (Sizing machine case), *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 2003, 104, English translation available on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Graz, Austria, 24 January 2002, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu.

²¹ CLOUT case No. 307 [Oberster Gerichtshof, Austria, 11 September 1997], *Juristische Blätter*, 2000, 729, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu. See also the Digest for article 63, paragraph 3.

²² See, by way of illustration, CLOUT case No. 261 [Bezirksgericht der Saane, Switzerland, 20 February 1997], *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1999, 195, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (failure to obtain a letter of credit within the additional period of time fixed by the seller under article 63).

²³ See, for example, CLOUT case No. 154 [Cour d'appel de Grenoble, France, 22 February 1995], *Journal du droit international*, 1995, 632, English translation available on the Internet at www.cisg.law.pace.edu (in connection with the buyer's failure to furnish proof required by the contract of the final destination of the goods, the court stated, in its assessment of the fundamental nature of the breach committed by the buyer, that the seller had granted the buyer a reasonable time in which to fulfil its contractual obligations).

²⁴ CLOUT case No. 1021 [Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce, Serbia, 15 July 2008] (Milk packaging equipment case), available in Serbian on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu ("For avoidance of the contract, a decision by a court or arbitral tribunal is not necessary"); CLOUT case No. 746 [Oberlandesgericht Graz, Austria, 29 July 2004], available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu ("The CISG does not know any ipso facto avoidance of the contract").

²⁵ See China International Economic and Trade Arbitration Commission, People's Republic of China, April 2006 (Arbitral award No. CISG/2006/21), available in English on the Internet at www.cisg.law.pace.edu (the contracts concluded in this case were not avoided since the seller did not inform the buyer of the avoidance); CLOUT case No. 746 [Oberlandesgericht Graz, Austria, 29 July 2004], available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu.

²⁶ Oberlandesgericht Düsseldorf, Germany, 22 July 2004, *Internationales Handelsrecht*, 2005, 29, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (the conduct of the seller invoking avoidance should have been such as to enable the buyer to conclude that the seller was terminating the contract); Tribunal cantonal du Valais, Switzerland, 2 December 2002, available in French on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (avoidance of the contract "occurred by way of conclusive deeds"); CLOUT case No. 243 [Cour d'appel de Grenoble, France, 4 February 1999], available in French on the Internet at www.cisg-france.org, available in English on the Internet at www.cisg.law.pace.edu; Landgericht Kassel, Germany, 21 September 1995, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu ("The statement required to that effect under article 26 CISG can be made impliedly").

²⁷ CLOUT case No. 427 [Oberster Gerichtshof, Austria, 28 April 2000], *Österreichische Juristenzeitung*, 2000, 167 (It has to be clearly apparent from the declaration that the seller no longer wishes to be bound by the contract).

²⁸ CLOUT case No. 746 [Oberlandesgericht Graz, Austria, 29 July 2004], available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Graz, Austria, 24 January 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. 986 [China International Economic and Trade Arbitration Commission, China, 4 February 2002]; CLOUT case No. 261 [Bezirksgericht der Saane, Switzerland, 20 February 1997], *Schweizerische Zeitschrift für internationales und europäisches Recht*, 1999, 195-197, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu. See, however, Arbitration Court of the International Chamber of Commerce, 2003 (Arbitral award No. 11849), *Yearbook Commercial Arbitration*, vol. 31, 2006, 148, available in English on the Internet at www.cisg.law.pace.edu, ruling that, when an additional period of time has been fixed, "termination needs a second, specific notification to be sent after the elapsing of such additional period of time."

²⁹ Cf., for similar wording, Oberlandesgericht Graz, Austria, 24 January 2002, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (the seller had, on fixing an additional period of time, stated that "it would refuse to accept payment ... and ... would ... claim damages for breach of contract"); CLOUT case No. 261 [Bezirksgericht der Saane, Switzerland, 20 February 1997], *Schweizerische Zeitschrift für internationales und europäisches Recht*, 1999, 195-197, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (the seller had stated that it would refuse to accept performance and takeover of the goods by the buyer if the additional period of time lapsed without the buyer performing).

³⁰ CLOUT case No. 746 [Oberlandesgericht Graz, Austria, 29 July 2004], available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (the notice fixing an additional period of time stated, "we will rely on claims for damages because of non-performance or avoid the contract"); CLOUT case No. 83 [Oberlandesgericht München, Germany, 2 March 1994], *Neue Juristische Wochenschrift-Rechtsprechungsreport* (NJW-RR) 1994, 1075, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (a statement containing a reminder of the outstanding obligation to pay the price and referring to the possibility that the seller would withdraw from the contract).

³¹ See, by way of example, Tribunal de commerce de Versailles, France, 12 March 2010, available in French on the Internet at www.cisg-france.org; CLOUT case No. 427 [Oberster Gerichtshof, Austria, 28 April 2000], *Österreichische Juristenzeitung*, 2000, 167.

³² Landgericht Kassel, Germany, 21 September 1995], available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (the seller instituted legal proceedings claiming compensation for the loss resulting from the "complete failure" of the transaction).

³³ See UNCITRAL Secretariat Commentary to draft article 60.

³⁴ CLOUT case No. 539 [Oberlandesgericht Graz, Austria, 31 May 2002], available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu.

³⁵ CLOUT case No. 826 [Oberlandesgericht München, Germany, 19 October 2006], *Internationales Handelsrecht*, 2007, 30, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (the court held that the right of avoidance had not been forfeited even though six months had elapsed between the fixing of the additional period of time by the seller and the declaration of avoidance, since the buyer could not expect that the seller would not utilize its rights).

³⁶ See, as an illustration of the provision, Arbitration Court of the International Chamber of Commerce, 2003 (Arbitral award No. 11849), *Yearbook Commercial Arbitration*, vol. 31, 2006, 148, available in English on the Internet at www.cisg.law.pace.edu (seller had sent a letter of termination after learning of the (late) opening of the letter of credit by the buyer).

³⁷ See the Digest for article 49.