

Table of Contents

Preface	xi
Content of Sample Clauses	xiii
Introduction	1
CHAPTER 1	
Preliminary Matters	3
I Introduction to the International Sales Convention	3
A How to Determine if the CISG Applies	5
(1) Parties Must Be in Contracting States	5
(i) Both Parties Located in States Signatory to the CISG?	5
(ii) If Only One Party Is Signatory to the CISG, Which Law Governs?	6
(iii) If Only One Party Is Signatory to the CISG, Has It Opted Out of Article 1(1)(b)?	7
(2) Contract Must Be for a Commercial Sale of Goods	8
(3) Are Materials or Services Also Being Provided?	9
(4) Does the CISG Cover the Matters at Hand?	11
B Important Distinctions Between the CISG and Domestic Sales Law	12
(1) Contrast with United States Law	12
(2) Contrast with Canadian Law	16
C Enactment of the CISG in the United States and Canada	20
D When to Use or Exclude the CISG	23
II Other International Contract Rules: UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law	24

Table of Contents

CHAPTER 2		
Drafting the Agreement		27
I	Offer and Acceptance: Contract Formation	28
A	Intent	29
B	Essential Terms	30
C	Statutory Requirements	32
II	Date and Heading of the Agreement	40
III	The Parties to the Agreement	41
IV	Recitals	43
V	Definitions	46
CHAPTER 3		
The Goods Being Sold		49
I	Quality	49
II	Quantity	54
CHAPTER 4		
Trade Terms		57
I	INCOTERMS	57
A	The 'E' Term	59
(1)	EXW ('Ex Works')	59
B	The 'F' Terms	60
(1)	FCA (Free Carrier)	60
(2)	FAS (Free Along Side)	61
(3)	FOB (Free on Board)	61
(4)	Modifications and Complications of the FOB Term	63
C	The 'C' Terms	65
(1)	CIF (Cost, Insurance, Freight)	65
(2)	Modifications of CIF Term	66
(3)	CFR (Cost and Freight)	67
(4)	CPT (Carriage Paid To)	67
(5)	CIP (Carriage and Insurance Paid To)	68
D	The 'D' Terms	68
(1)	DAT (Delivered at Terminal)	68
(2)	DAP (Delivered at Place)	69
(3)	DDP (Delivered Duty Paid)	69
CHAPTER 5		
Price		71
I	Stating the Price	71
II	Price Adjustment	73
III	Currency	78
IV	Exchange Controls	79
V	Taxes and Duties	82

Table of Contents

CHAPTER 6		
Permits, Licences, and Certificates		85
I	Export Controls	85
II	Import Controls: Commercial Invoices	88
III	Government Documentation	90
IV	Certificate of Origin	94
V	Certificates of Quality	96
VI	Packing, Marking, and Labelling	97
CHAPTER 7		
Payment		101
I	Cash in Advance and Open Account	102
II	Documentary Collection	109
III	Letters of Credit	110
IV	Performance Bonds and Standby Letters of Credit	123
CHAPTER 8		
Delivery		127
I	Practical Delivery Issues	127
II	Delivery Dates	128
III	Specific Quantity Issues	128
IV	Pre-delivery Schedules	135
V	Failure to Take Delivery	138
CHAPTER 9		
Transfer of Title and Risk		141
I	Passing of Risk and Title	142
II	Retention of Title: Romalpa Clauses	142
III	Application of the CISG	143
IV	Situations Where Title and Risk Should Pass	144
V	Replacement Goods	144
CHAPTER 10		
Bills of Lading and Other Documents for Carriage of Goods		147
I	Container and Multimodal Transportation	155
II	Carriage of Goods by Air	156
III	Carriage of Goods by Rail and by Road	157
CHAPTER 11		
Insurance		159
I	Transportation Insurance	159
A	Open Cover Policy	159
B	Special Cargo Policy	160
C	Who Takes Out the Insurance Policy?	161
D	Beneficiary of the Policy	163

Table of Contents

E	Duty of Disclosure	163
II	Product Liability Insurance	163
CHAPTER 12		
Inspection		
I	Pre-delivery Inspections	167
II	Post-delivery Inspections	170
CHAPTER 13		
Warranties		
I	Definition of What Is Warranted	178
II	Definition of What Is Not Warranted	181
III	How Long Is the Warranty in Effect	184
IV	Type of Notice Required to File a Valid Warranty Claim	186
V	Identification of the Agreed upon Remedies for a Valid Warranty Claim	188
VI	Negation Clauses	193
VII	Limitation of Liability Clauses	197
CHAPTER 14		
Force Majeure and Hardship		
I	Force Majeure	205
II	Hardship	216
CHAPTER 15		
Termination and Penalty Clauses		
221		
CHAPTER 16		
Intellectual Property		
233		
CHAPTER 17		
Other Obligations of the Parties		
I	Confidentiality	241
II	Conformity with Local Laws / Corporate Social Responsibility	247
III	No Agency Relationship	251
CHAPTER 18		
Dispute Resolution		
I	Venue and Attornment Provisions	253
II	Judgment Currency	257
III	Damages	257
IV	Mediation	258
V	Arbitration	261
A	Drafting the Arbitration Clause	262
B	Ad Hoc Arbitration	267
C	Place of Arbitration	268

Table of Contents

D	Discovery and Procedure	270
E	Number and Qualities of Arbitrators	271
F	Language of Arbitration	273
G	Finality of Award	274
H	Currency of Award	274
I	Costs	275
J	Interest	275
K	Sovereign Immunity	276
L	Specific Performance During Arbitration	277
M	Timing of Arbitration; Delivery of Award	278
N	Confidentiality	279
CHAPTER 19		
Governing Law		
281		
CHAPTER 20		
Language		
287		
CHAPTER 21		
Miscellaneous Provisions		
I	Notices	289
II	Bribery and Corruption	292
A	Drafting Considerations to Avoid Bribery	294
III	Antitrust Issues	300
IV	Entire Agreement	301
V	Avoiding Contra Preferentum	306
VI	Assignment	306
VII	Execution	307
Appendices		
311		
APPENDIX I		
The CISG		
313		
APPENDIX II		
UNIDROIT Principles of International Commercial Contracts		
343		
APPENDIX III		
Principles of European Contract Law		
373		
Index		
425		