



**United Nations Commission
on International Trade Law**

**UNCITRAL Digest of case law on the United Nations
Convention on the International Sale of Goods***

Article 11

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

* The present digest was prepared using the full text of the decisions cited in the Case Law on UNCITRAL Texts (CLOUT) abstracts and other citations listed in the footnotes. The abstracts are intended to serve only as summaries of the underlying decisions and may not reflect all the points made in the digest. Readers are advised to consult the full texts of the listed court and arbitral decisions rather than relying solely on the CLOUT abstracts.

Freedom from form requirements as to the conclusion of the contract

1. This provisions lays down the rule pursuant to which, subject to article 12, a contract of sale need not be concluded in writing and is not subject to any other specific requirement as to form.¹ The provisions, in other words, establishes the principle of freedom from form requirements.² One court even stated that “[u]nder article 11 CISG, a contract of sale can be concluded informally”.³ According to case law this means that a contract can also be concluded orally⁴ and through the conduct of the parties.⁵ Furthermore, one court stated that a signature was not necessary for the contract to be valid because a sales contract is not subject to any requirement as to form.⁶

2. Several tribunals expressly stated that the aforementioned principle, pursuant to which no form requirements have to be met as far as the conclusion of the contract is concerned, constitutes a general principle upon which the Convention is based;⁷ from this principle it follows, among other things, that the parties are free to modify or terminate their contract in any form be it in writing or orally or in any other form. Even an implied termination of the contract has been held possible;⁸ furthermore, it has been held that a written contract may be orally changed.⁹

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- ¹ See Oberster Gerichtshof, Austria, 9 March 2000, published on the Internet at <http://www.cisg.at/6_31199z.htm>; CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997] (see full text of the decision); CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996] (see full text of the decision); CLOUT case No. 308 [Federal Court of Australia, 28 April 1995] (see full text of the decision); CLOUT case No. 137 [Oregon [State] Supreme Court, United States, 11 April 1996]; for similar affirmations, see also United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 20.
- ² See Bundesgericht, Switzerland, 15 September 2000, published on the Internet at <<http://www.bger.ch/index.cfm?language=german&area=Jurisdiction&theme=system&page=content&maskid=220>>.
- ³ CLOUT case No. 95 [Zivilgericht Basel-Stadt, Switzerland, 21 December 1992] (see full text of the decision).
- ⁴ See CLOUT case No. 222 [Federal Court of Appeals for the Eleventh Circuit United States 29 June 1998] (see full text of the decision); CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996] (see full text of the decision); CLOUT case No. 134 [Oberlandesgericht München, Germany, 8 March 1995]; for an example of a case where an oral contract was held to be valid, see Oberlandsgericht Köln, Germany, 22 February 1994, published on the Internet at <<http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/127.htm>>.
- ⁵ For this statement, see Hof van Beroep Gent, Belgium, 17 May 2002, published on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2002-05-17.htm>>; CLOUT case No. 134 [Oberlandesgericht München, Germany, 8 March 1995].
- ⁶ CLOUT case No. 330 [Handelsgericht des Kantons St. Gallen, Switzerland, 5 December 1995].
- ⁷ See Compromex Arbitration, Mexico, 16 July 1996, published on the Internet at <<http://www.uc3m.es/cisg/rmexi2.htm>>; Compromex Arbitration, Mexico, 29 April 1996, published on the Internet at <<http://www.unilex.info/case.cfm?pid=1&do=case&id=258&step=FullText>>; CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996] (see full text of the decision).
- ⁸ Oberster Gerichtshof, Austria, 29 June 1999, *Zeitschrift für Rechtsvergleichung*, 2000, 33.
- ⁹ Hof van Beroep Gent, Belgium, 17 May 2002, published on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2002-05-17.htm>>; CLOUT case No. 176

3. As the legislative history states, despite the existence under the Convention of the aforementioned general principle, “[a]ny administrative or criminal sanctions for breach of the rules of any State requiring that such contracts be in writing, whether for purposes of administrative control of the buyer or seller, for purposes of enforcing exchange control laws, or otherwise, would still be enforceable against a party which concluded the non-written contract even though the contract itself would be enforceable between the parties.”¹⁰

Form requirements and evidence of the contract

4. Article 11 frees the parties also from having to comply with domestic requirements as to the means to be used in proving the existence of a contract governed by the Convention. Indeed, as expressly stated by various courts, “the contract can be proven with any means”.¹¹ Consequently, domestic rules requiring a contract to be evidenced in writing in order for it to be enforceable are superseded; one court, for instance, stated that “[u]nder the CISG, evidence of the oral conversations between [seller] and [buyer], relating to the terms of the purchase [], could be admitted to establish that an agreement had been reached between [the parties].”¹²

5. As far as the evidence presented by the parties is concerned, it is up to the judge to determine—within the limits set by the procedural rules of the forum—how to evaluate it.¹³ It is on this basis that one court¹⁴ stated that a judge may well attribute more weight to a written document than to oral testimony.

6. For comments on the applicability of the parol evidence rule under the Convention, see article 8, para. 18.

Limits to the freedom from form requirements

7. According to article 12 of the Convention, the principle of freedom from form requirements does not per se apply where one party has its relevant place of

[Oberster Gerichtshof, Austria, 6 February 1996] (see full text of the decision).

¹⁰ United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 20.

¹¹ See *Rechtbank van Koophandel Hasselt*, Belgium, 22 May 2002, published on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2002-05-22.htm>>; *Rechtbank van Koophandel*, Belgium, 4 April 2001, published on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2001-04-05.htm>>; CLOUT case No. 330 [Handelsgericht des Kantons St. Gallen, Switzerland, 5 December 1995]; CLOUT case No. 134 [Oberlandesgericht München, Germany, 8 March 1995].

¹² CLOUT case No. 414 [Federal District Court, Southern District of New York, United States, 8 August 2000] (see full text of the decision).

¹³ See *Rechtbank van Koophandel Kortrijk*, Belgium, 4 April 2001, published on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2001-04-05.htm>>; LG Memmingen, 1 December 1993, published on the Internet at <<http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/73.htm>>.

¹⁴ *Rechtbank van Koophandel Hasselt*, Belgium, 22 May 2002, published on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2002-05-22.htm>>.

business in a State that made an article 96 declaration.¹⁵ Opposing views exist as to the effects of the article 96 reservation. According to one view, the sole fact that one party has its place of business in a State that made an article 96 reservation does not necessarily mean that the form requirements of that State apply.¹⁶ Rather, it will depend on the rules of private international law of the forum whether any form requirements have to be met. Thus, where those rules lead to the law of a State that made an article 96 reservation, the form requirements of that State will have to be complied with; where, on the other hand, the law applicable is that of a contracting State that did not make an article 96 reservation, the principle of freedom from form requirements laid down in article 11 applies, as repeatedly pointed out in case law.¹⁷ According to the opposing view, however, where one party has its relevant place of business in a State that made an article 96 reservation, the contract must be concluded or evidenced or modified in writing.¹⁸

¹⁵ See *Rechtbank van Koophandel*, Belgium, 2 May 1995, published on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/1995-05-02.htm>>.

¹⁶ *Rechtbank Rotterdam*, the Netherlands, 12 July 2001, *Nederlands Internationaal Privaatrecht*, 2001, No. 278.

¹⁷ *Rechtbank Rotterdam*, the Netherlands, 12 July 2001, *Nederlands Internationaal Privaatrecht*, 2001, No. 278; Hoge Raad, the Netherlands, 7 November 1997, published on the Internet at <<http://www.unilex.info/case.cfm?pid=1&do=case&id=333&step=FullText>>; CLOUT case No. 52 [Fovárosi Biróság, Hungary 24 March 1992].

¹⁸ The High Arbitration Court of the Russian Federation, Arbitration, 16 February 1998, referred to on the Internet at <<http://cisgw3.law.pace.edu/cases/980216r1.html>>; *Rechtbank van Koophandel Hasselt*, Belgium, 2 May 1995, published on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/1995-05-02.htm>>.