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**United Nations Commission  
on International Trade Law****UNCITRAL Digest of case law on the United Nations  
Convention on the International Sale of Goods\****Article 18*

- (1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.
- (2) An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.
- (3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

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\* 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.



1. Article 18 is the first of five articles that deal with the acceptance of an offer. Paragraph (1) of article 18 addresses what constitutes the acceptance of an offer, while paragraphs (2) and (3) determine when the acceptance is effective. Article 19 qualifies article 18 by providing rules for when a purported acceptance so modifies an offer that the reply is a counter-offer.

2. Decisions have applied article 18 not only to offers to conclude a contract but also to acceptance of counter-offers<sup>1</sup>, proposals to modify the contract<sup>2</sup> and proposals to terminate the contract<sup>3</sup>. The provisions of article 18 have also been applied to matters not covered by the Sales Convention<sup>4</sup>.

### **Indication of assent to an offer**

3. An offeree accepts an offer by a statement or other conduct indicating assent. Whether or not the statement or conduct indicates assent is subject to interpretation in accordance with the rules of paragraphs (1) and (2) of article 8<sup>5</sup>. All the circumstances, including negotiations prior to conclusion of the contract and the course of performance after conclusion, are to be taken into account in accordance with paragraph (3) of article 8<sup>6</sup>. If a statement or conduct indicating assent to an offer cannot be found there is no contract under Part II<sup>7</sup>.

4. Only the addressee of a proposal to conclude a contract is entitled to accept the offer<sup>8</sup>.

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<sup>1</sup> CLOUT case No. 291 [Oberlandesgericht Frankfurt a.M., Germany, 23 May 1995] (delivery of 2,700 pairs of shoes in response to order of 3,400 pairs was a counter-offer accepted by buyer when it took delivery).

<sup>2</sup> CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998] (no acceptance in communications regarding modification) (see full text of the decision); CLOUT case No. 347 [Oberlandesgericht Dresden, Germany, 9 July 1998] (proposal to modify in commercial letter of confirmation not accepted) (see full text of the decision); CLOUT case No. 193 [Handelsgericht des Kantons Zürich, Switzerland, 10 July 1996] (proposal to modify not accepted by silence of addressee); CLOUT case No. 133 [Oberlandesgericht München, Germany, 8 February 1995] (proposal to modify time of delivery not accepted) (see full text of the decision); CLOUT case No. 203 [Cour d'appel, Paris, France, 13 December 1995] (proposal to modify in letter of confirmation not accepted).

<sup>3</sup> CLOUT case No. 120 [Oberlandesgericht Köln, Germany, 22 February 1994] (acceptance of proposal to terminate contract); CIETEC award No. 75, China, 1 April 1993, Unilex (acceptance of proposal to terminate).

<sup>4</sup> CLOUT case No. 308 [Federal Court of Australia, 28 April 1995] (applying art. 18 to determine whether retention of title clause accepted).

<sup>5</sup> Oberlandesgericht Frankfurt a.M., Germany, 30 August 2000, Unilex (sending of promissory note interpreted as not an acceptance).

<sup>6</sup> See, e.g., Comisión para la Protección del Comercio Exterior de México, Mexico, 29 April 1996, Unilex (alleged seller's letter in reply to offer, letter of credit naming it as payee, and subsequent conduct of the parties evidenced conclusion of contract); CLOUT case No. 23 [Federal District Court, Southern District of New York, United States, 14 April 1992] (course of dealing created duty to respond to offer).

<sup>7</sup> CLOUT case No. 173 [Fovárosi Biróság, Hungary, 17 June 1997] (no clear agreement to extend distribution contract); CLOUT case No. 135 [Oberlandesgericht Frankfurt a.M., Germany, 31 March 1995] (correspondence did not reach agreement on quality of glass ordered).

<sup>8</sup> CLOUT case No. 239 [Oberster Gerichtshof, Austria, 18 June 1997] (remand to determine whether the offer was made to a mercantile agent).

5. Whether an offeree's reply indicating assent to an offer but modifying that offer is an acceptance or a counter-offer is determined by article 19<sup>9</sup>. Whether a counter-offer is accepted is then determined by article 18<sup>10</sup>.

6. The indication of assent may be in an oral or written statement<sup>11</sup> or by conduct.<sup>12</sup> Conduct found to indicate assent include: buyer's acceptance of goods;<sup>13</sup> third party's taking delivery of goods;<sup>14</sup> issuance of letter of credit;<sup>15</sup> signing invoices to be sent to financial institution with request that it finance the purchase;<sup>16</sup> sending a reference letter to an administrative agency.<sup>17</sup>

### Silence or inactivity as assent to an offer

7. In the absence of other evidence indicating assent to an offer, an offeree's silence or inactivity on receiving an offer does not amount to an acceptance<sup>18</sup>. By virtue of article 9 (1), parties are bound by practices established between themselves and these practices may indicate assent to an offer notwithstanding the silence or inactivity of the addressee.<sup>19</sup> Parties are also bound by usages as provided in

<sup>9</sup> CLOUT case No. 242 [Cour de Cassation, France, 16 July 1998] (reply with different jurisdiction clause a material modification under art. 19 and therefore a counter-offer); CLOUT case No. 227 [Oberlandesgericht Hamm, Germany, 22 September 1992] (reply with reference to "unwrapped" bacon a counter-offer under art. 19 and not acceptance under art. 18).

<sup>10</sup> CLOUT case No. 232 [Oberlandesgericht München, Germany, 11 March 1998] (buyer, by performing contract, accepted seller's standard terms that modified buyer's offer) (see full text of the decision); CLOUT case No. 227 [Oberlandesgericht Hamm, Germany, 22 September 1992] (buyer accepted counter-offer when its reply did not object to counter-offer).

<sup>11</sup> CLOUT case No. 395 [Tribunal Supremo, Spain, 28 January 2000] (faxed unconditional acceptance); CLOUT case No. 308 [Federal Court of Australia, 28 April 1995] (statement in offeree's letter interpreted as an acceptance) (see full text of the decision).

<sup>12</sup> Oberlandesgericht Frankfurt a.M., Germany, 30 August 2000, Unilex (sending fax and promissory note could be act indicating acceptance but interpretation of documents showed no such acceptance); CLOUT case No. 291 [Oberlandesgericht Frankfurt a.M., Germany, 23 May 1995] (seller's delivery of fewer pairs of shoes than ordered was a counter-offer accepted by buyer taking delivery).

<sup>13</sup> CLOUT case No. 292 [Oberlandesgericht Saarbrücken, Germany, 13 January 1993] (buyer's acceptance of goods indicated assent to offer, including standard terms in letter of confirmation) (see full text of the decision).

<sup>14</sup> CLOUT case No. 193 [Handelsgericht des Kantons Zürich, Switzerland, 10 July 1996] (third party taking delivery for third party was act accepting increased quantity of goods sent by seller) (see full text of the decision).

<sup>15</sup> CLOUT case No. 417 [Federal District Court, Northern District of Illinois, United States, 7 December 1999] (pleading stated cause of action by alleging facts showing parties concluded contract of sale).

<sup>16</sup> Cámara Nacional de Apelaciones en lo Comercial, Argentina, 14 October 1993, Unilex.

<sup>17</sup> [Federal] Southern District Court of New York, United States, 10 May 2002, *Federal Supplement (2<sup>nd</sup> Series)* 201, 236 ff.

<sup>18</sup> CLOUT case No. 309 [Østre Landsret Denmark, 23 April 1998] (parties had no prior dealings); CLOUT case No. 224 [Cour de Cassation, France, 27 January 1998] (without citation of the Sales Convention, court of cassation finds that court of appeal did not ignore rule that silence does not amount to an acceptance); CLOUT case No. 193 [Handelsgericht des Kantons Zürich, Switzerland, 10 July 1996] (no acceptance where addressee silent and no other evidence of assent).

<sup>19</sup> CLOUT case No. 313 [Cour d'appel, Grenoble, France, 21 October 1999] (in prior transactions seller had filled buyer's without notifying the buyer); CLOUT case No. 23 [Federal District

paragraphs (1) and (2) of article 9 and these usages may give effect to an offer notwithstanding the addressee's silence or inactivity.<sup>20</sup> One court stated that the course of dealing between the parties created a duty on a party to object promptly to an offer and the party's delay in objecting constituted acceptance of the offer.<sup>21</sup> A buyer's failure to exercise any remedy under the Convention in response to the seller's proposal that the buyer examine the delivered goods and resell them was construed as acceptance of an offer to terminate the contract.<sup>22</sup>

### Effectiveness—time limits for acceptance

8. Paragraph (2) of article 18 provides that, except in the circumstances set out in paragraph (3), an acceptance becomes effective at the moment it reaches the offeror if it does so within the time limit for acceptance. The acceptance "reaches" the offeror when article 24 is satisfied. By virtue of article 23 a contract is concluded when the acceptance becomes effective<sup>23</sup>.

9. To be effective, however, the acceptance must reach the offeror within the time limits set by paragraph (2) of article 18 as modified by article 21 on late acceptance. Article 20 provides rules of interpretation for determining the time limits. An offer cannot be accepted after the time limit expires unless the offeror informs the offeree without delay that the acceptance is effective<sup>24</sup>.

### Effectiveness by performance of act

10. An acceptance is effective at the moment the offeree performs an act when the offeree is authorized to indicate its acceptance of the offer by an act by virtue of the offer or as a result of practices which the parties have established between themselves or of usage. Several decisions have cited paragraph (3) rather than paragraph (1) for the proposition that a contract may be concluded by the performance of an act by the offeree<sup>25</sup>.

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Court, Southern District of New York United States 14 April 1992] (course of dealing created duty to respond to offer).

<sup>20</sup> Gerechtshof 's-Hertogenbosch, Netherlands, 24 April 1996, Unilex; CLOUT case No. 347 [Oberlandesgericht Dresden, Germany 9 July 1998] (buyer who sent commercial letter of confirmation did not establish existence of international usage by which silence constitutes assent). See also Opinion of Advocate General Tesouro, *EC Reports*, 1997, I-911 ff. (commercial letter of confirmation enforceable notwithstanding recipient's silence if international usage established).

<sup>21</sup> CLOUT case No. 23 [Federal District Court, Southern District of New York, United States, 14 April 1992]. See also CLOUT case No. 313 [Cour d'appel, Grenoble, France 21 October 1999] (seller with manufacturing samples and original material in its possession should have questioned buyer about absence of order from buyer).

<sup>22</sup> CLOUT case No. 120 [Oberlandesgericht Köln, Germany, 22 February 1994].

<sup>23</sup> CLOUT case No. 203 [Cour d'appel, Paris, France, 13 December 1995] (contract concluded before receipt of letter of confirmation so no acceptance of the standard terms referred to in letter).

<sup>24</sup> ICC award No. 7844, 1994, *The ICC International Court of Arbitration Bulletin* (Nov. 1995) 72-73.

<sup>25</sup> CLOUT case No. 416 [Minnesota [State] District Court, United States 9 March 1999] (if Convention applicable, party accepted by performance under art. 18 (3)) (see full text of the

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decision); CLOUT case No. 193 [Handelsgericht des Kantons Zürich, Switzerland, 10 July 1996] (third party taking delivery of greater number of goods than contracted for an acceptance under art. 18 (3), but not acceptance of seller's proposal to modify price); CLOUT case No. 291 [Oberlandesgericht Frankfurt a.M., Germany, 23 May 1995] (delivery of goods an acceptance under art. 18 (3) but because amount differed materially from order the acceptance is a counter-offer under art. 19).

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