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

#### *Article 23*

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

1. Article 23 provides that a contract is concluded when an acceptance of an offer becomes effective. Except as provided in article 18 (3), an acceptance is effective at the moment it reaches the offeror in accordance with article 18 (2). The exception in article 18 (3) provides that an acceptance is effective at the moment the offeree performs an act if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree is authorized to indicate its acceptance of the offer by an act.

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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.



2. A contract is concluded when communications between the parties, as interpreted in accordance with article 8, establish that an acceptance of an offer reaches the offeror.<sup>1</sup> One decision concluded that an offer conditioned on the approval of the parties' respective Governments, when properly interpreted, did not postpone conclusion of the contract under the Convention.<sup>2</sup> Another decision found that a supplier and a potential sub-contractor had agreed to condition the conclusion of the sales contract on the award of a sub-contract by the main contractor.<sup>3</sup>

3. Once a contract is concluded, subsequent communications may be construed as proposals to modify the contract. Several courts subject these proposals to the Convention's rules on offer and acceptance.<sup>4</sup>

4. Article 23 does not address where a contract is concluded. One court deduced from article 23 that the contract was concluded at the place of business where the acceptance reached the offeror.<sup>5</sup>

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<sup>1</sup> Comisión para la Protección del Comercio Exterior de México, Mexico, 29 April 1996, Unilex (contract concluded when acceptance reached buyer); CLOUT case No. 134 [Oberlandesgericht München, Germany, 8 March 1995] (although Part II not applicable because of art. 92 declaration, court finds contract concluded by intention of the parties); CLOUT case No. 158 [Cour d'appel, Paris, France, 22 April 1992] (contract concluded when acceptance reached offeror); CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990] (exchange of communications, interpreted in accordance with art. 8, established parties' intent to conclude contract) (see full text of the decision).

<sup>2</sup> Fovárosi Biróság (Metropolitan Court), Budapest, Hungary, 10 January 1992, English-language trans. available on the Internet at <<http://cisgw3.law.pace.edu/cases/920110h1.html>>, *reversed on other grounds*, CLOUT case No. 53 [Legfelsőbb Biróság, Hungary 25 September 1992] (see full text of the decision).

<sup>3</sup> ICC award No. 7844, 1994, *The ICC International Court of Arbitration Bulletin* (Nov. 1995) 72-73.

<sup>4</sup> CLOUT case No. 395 [Tribunal Supremo, Spain, 28 January 2000] (proposal to modify price not accepted); CLOUT case No. 193 [Handelsgericht des Kantons Zürich, Switzerland, 10 July 1996] (proposal to modify price not accepted by silence, citing art. 18 (1)); CLOUT case No. 203 [Cour d'appel, Paris, France 13 December 1995] (confirmation letter sent after contract concluded not accepted).

<sup>5</sup> CLOUT case No. 308 [Federal Court of Australia, 28 April 1995] (German law applied because acceptance reached offeror at its place of business in Germany) (see full text of the decision).