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Article 52

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

General remarks

1. Even where the seller does more than is required by the contract, this raises an issue of non-performance. The article refers to two such situations, namely when the seller delivers too early (article 52 (1)) or delivers too much (article 52 (2)). In both cases the buyer is entitled to refuse the delivery of the goods. If the buyer accepts them, the buyer will be bound to pay the contract price for any excess quantity.

Early delivery (article 52 (1))

2. If the seller delivers the goods before the time for delivery stipulated in the contract the buyer may refuse the tender. There is early delivery when the contract stipulates a certain date or period at or during which delivery has to be effected

* 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.

(e.g., “delivery during the 36th week of the year”) and delivery is effected prior to that date. In other cases, e.g., “delivery until 1 September”, any delivery before that date would be in accordance with the contract because article 33 permits the seller to begin delivery immediately after the conclusion of contract unless otherwise agreed.¹ If the buyer has rightfully refused the goods because of early delivery the seller must then redeliver the goods at the correct time.² Pursuant to article 86 the buyer remains responsible for the goods in the interim.³

3. If, however, the buyer takes (early) delivery of the goods, the buyer is obliged to pay the contract price.⁴ Any remaining damage (additional storing costs and the like) may be claimed according to article 45 (1) (b) unless the acceptance of the early tendered goods amounts to an agreed modification of the delivery date.⁵

4. The rules regarding early delivery also apply if documents relating to the goods are prematurely tendered.

Delivery of excess quantity (article 52 (2))

5. If the seller delivers a greater quantity of goods than stipulated, the buyer is entitled to reject the excess quantity. According to case law, one cannot speak of delivery of a greater quantity of goods where the contract allows for delivery “+/-10 per cent” and delivery remains within these limits.⁶ Furthermore the buyer must give notice of the wrong quantity since any incorrect quantity is a non-conformity to which the notice requirement of article 39 applies. After a rightful refusal to take the excess quantity, the buyer must preserve the excess quantity of goods pursuant to article 86. But if the buyer takes all or part of the excess quantity, it is obliged to pay the contract price for the excess part as well.⁷ If the buyer cannot reject the excess quantity, the buyer can avoid the entire contract if the delivery of the excess quantity amounts to a fundamental breach of contract.⁸ Therefore, if the buyer has to take delivery of the excess quantity of goods, the buyer must pay for it but can claim compensation for any damages he thereby suffered.⁹

¹ For details see *Digest* article 33.

² See *Official Records of the United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980* (United Nations publication, Sales No. E.81.IV.3), 44, para. 5.

³ *Id.*, para. 4.

⁴ CLOUT case No. 141 [Arbitration-Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, award No. 200/1994 of 25 April 1995] (dispatch, in mid-December, of chocolates for Christmas, before buyer transmitted bank guarantee which was the stipulated delivery date; buyer obliged to pay full price).

⁵ See *Official Records of the United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980* (United Nations publication, Sales No. E.81.IV.3), 44, para. 6.

⁶ CLOUT case No. 341 [Ontario Superior Court of Justice, Canada, 31 August 1999].

⁷ *Id.* (see full text of the decision).

⁸ See *Official Records of the United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980* (United Nations publication, Sales No. E.81.IV.3), 44, para. 9.

⁹ *Id.*