



## General Assembly

Distr.: General  
8 June 2004

Original: English

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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 58*

(1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

(2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.

(3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

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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.

## Introduction

1. Article 58 defines the moment when the price becomes due in the absence of any particular contractual stipulation to that effect.<sup>1</sup> In fixing the time at which payment of the price may be demanded, article 58 also determines the point in time at which interest based on article 78 of the Convention starts to accrue, a point that has been made in a number of court decisions<sup>2</sup>.

## The principle of simultaneous payment of the price and handing over of the goods or documents (article 58 (1))

2. The Convention does not mean to oblige the seller, in the absence of a particular agreement on the subject, to grant credit to the buyer. Article 58 (1) establishes the principle of simultaneous handing over of the goods or documents controlling their disposition and payment of the price: the buyer must pay the price when the seller places either the goods or documents controlling their disposition at his disposal. As is stated in the second sentence of article 58 (1), the seller may refuse to hand over the goods or documents controlling their disposition to the buyer if the latter does not pay the price at that time. The seller thus enjoys the right to retain the goods or documents controlling their disposition in these circumstances.

3. The inverse of the principle established in article 58 (1) also applies: the buyer is not bound to pay the price until the goods or documents controlling their disposition have been handed over. Article 58 (3) grants the buyer the complementary right of prior examination of the goods, though only to the extent that contractual provisions concerning handing over and the modalities of payment make this possible<sup>3</sup>.

4. Contractual terms as well as international usage and practices established between the parties may derogate from the principle of simultaneous performance in handing over the goods and paying the price, a principle which applies only “if the buyer is not bound to pay the price at any other specific time”, according to the terms of article 58 (1). One court affirmed that the parties had derogated from the principle of simultaneous performance in a case where they had agreed on payment of 30 per cent of the price upon ordering of the goods, 30 per cent at the beginning

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<sup>1</sup> Landgericht Mönchengladbach, Germany, 15 July 2003, *Internationales Handelsrecht* 2003, 229; Kantonsgericht Schaffhausen, Switzerland, 25 February 2002, available on the Internet at <<http://www.cisg-online.ch/cisg/urteile/723.htm>>; CLOUT case No. 197 [Tribunal cantonal du Valais, Switzerland, 20 December 1994].

<sup>2</sup> See Landgericht Mönchengladbach, Germany, 15 July 2003, *Internationales Handelsrecht* 2003, 229; Amtsgericht Viechtach, Germany, 11 April 2002, available on the Internet at <<http://www.cisg.law.pace.edu/cisg/wais/db/cases2/020411g1.html>>; CLOUT case No. 228 [Oberlandesgericht Rostock, Germany, 27 July 1995]; CLOUT case No. 123 [Bundesgerichtshof, Germany, 8 March 1995] (see full text of the decision); CLOUT case No. 79 [Oberlandesgericht Frankfurt a.M., Germany, 18 January 1994] (see full text of the decision); CLOUT case No. 1 [Oberlandesgericht Frankfurt a.M., Germany, 13 June 1991] (see full text of the decision).

<sup>3</sup> See *infra*, para. 8 *et seq.*

of assembly, and 30 per cent at the completion of installation, the final 10 per cent to be paid after successful start-up of the facility<sup>4</sup>.

5. The place of handing over of the goods or of documents depends on the relevant terms of the contract and, where no such terms exist, on the rules established by the Convention (article 31). For the sale of goods at a particular place (article 31 (b) and (c)), the price becomes payable when the seller has placed the goods at the disposal of the buyer in the agreed place or at its place of business and has given the buyer the opportunity to examine the goods. Article 58 (2) covers the case of sales involving a transport contract<sup>5</sup>.

6. Article 58 (1), like article 58 (2), puts delivery of the goods and handing over of documents controlling their disposition on the same level, anticipating that they will have the same effect. One court found that the handing over of documents controlling the disposition of the goods to the buyer caused the price to become due, as provided in article 58 (1)<sup>6</sup>. The question, however, is to know what exactly is meant by “documents controlling the disposition of the goods”. It has been decided that certificates of origin and quality<sup>7</sup>, and also customs documents<sup>8</sup>, do not constitute documents controlling the disposition of the goods within the meaning of article 58 (1) and that their non-delivery could therefore not be taken to justify refusal on the part of the buyer to pay the price.

### **Sales involving a transport contract (article 58 (2))**

7. Article 58 (2) deals with the case of a sale involving a transport contract. Under this provision, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price. Thus, article 58 (2) does not entitle the seller to let the handing over of goods to the carrier depend on advance payment of the price by the buyer, in the absence of a particular contractual provision to that effect. The buyer is accordingly not required to pay the price until the moment when the goods or documents controlling their disposition are handed over to him by the carrier.

### **The buyer’s right to examine the goods in advance (article 58 (3))**

8. In principle the buyer is not bound to pay the price until he has had an opportunity to examine the goods. Prior examination may be excluded by a contractual stipulation to that effect or by modalities of delivery or payment which are incompatible with such examination, such as clauses involving “payment against handing over of documents” or “payment against handing over of the delivery slip”.

<sup>4</sup> CLOUT case No. 194 [Bundesgericht, Switzerland, 18 January 1996] (see full text of the decision). See also Handelsgericht Aargau, Switzerland, 5 November 2002, available on the Internet at <<http://www.cisg-online.ch/cisg/urteile/715.htm>>.

<sup>5</sup> See *infra*, para. 7.

<sup>6</sup> CLOUT case No. 216 [Kantonsgericht St. Gallen, Switzerland, 12 August 1997].

<sup>7</sup> CLOUT case No. 171 [Bundesgerichtshof, Germany, 3 April 1996].

<sup>8</sup> CLOUT case No. 216 [Kantonsgericht St. Gallen, Switzerland, 12 August 1997].

9. The provision says nothing about whether the buyer is entitled to suspend payment of the price in the event that examination reveals that the goods are not in conformity with the contract. There are not yet any court decisions which have addressed this issue.

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