



**SILESIA  
UNIVERSITY**

SCHOOL OF BUSINESS  
ADMINISTRATION IN KARVINA

# International Business Law

International purchase-sale  
(concluding the purchase contract)

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# Purchase contract in international business

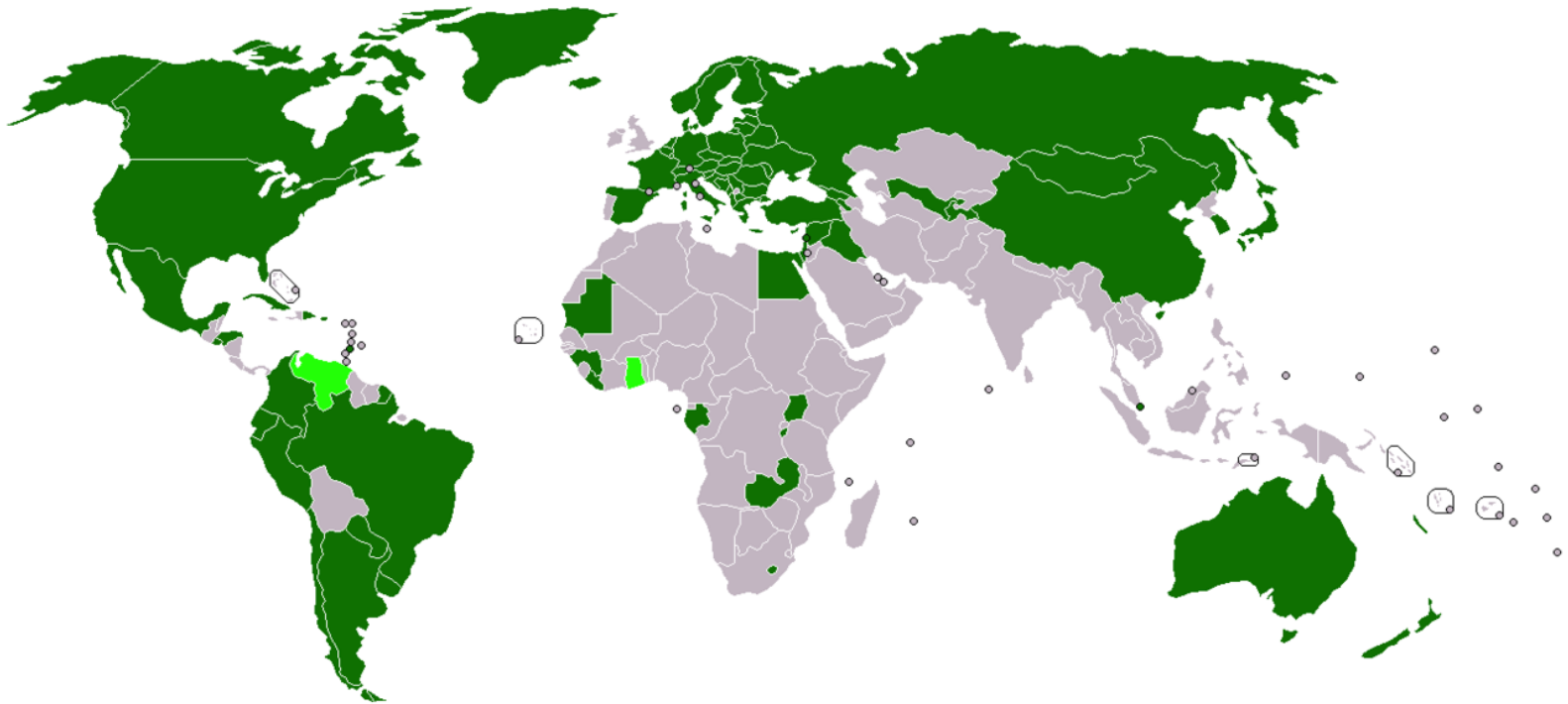
- The most common business transaction
- Business transaction purchase-sale can be in two forms:
  - **Direct trade**
  - Producer (importer) acts on its own with the partner
  - **Indirect trade**
    - Between producer (importer) and partner is the third party – mediator
- **Entrepreneurs do not include all facts in contracting**
  - That's why it is important to determine **the applicable law** will be followed
  - Determination by **two methods** (direct and collision)

# Direct method of purchase contract

- Special norms (esp. international agreements) are basic for **direct methods**, they contains directly rights and obligations of parties
  - i.e. there is no need to determine the legal order
- Direct norms take precedence over collision ones
  
- Worldwide effort to unify purchase contracts
- 1964 in Haag : 2 international agreements adopted
  - Uniform Law on the International Sale of Goods
  - Uniform Law on the International Sale of Goods **unsuccessful**
  
- 1980 United Nations Commission on international trade law (UNCITRAL)
  - United Nations Conention on Contracts for the International Sale of Goods (Vienna convention or CISG)

# Extension of Vienna Convention (CISG)

- Ratified by 92 countries (the greatest success in unification of private law)
- Created by UNCITRAL
- 1991 Czechoslovakia, 1.1.1993 the Czech Republic
- Published under No. 160/1991 Coll.



*Updated: 2019*

# Text of Vienna Convention

Structure (4 parts, 101 articles)

1. Sphere of Application and General Provisions
2. Formation of the Contract
3. Sale of Goods
4. Final Provisions

Reservations in articles 92 - 96

# Legal nature

**Incomplete** – doesn't contain everything

- Doesn't regulate e.g. validity, responsibility for damages on health and life
  - For these questions need to be applied conflict rule

The nature of standards is **dispositive**

- Norms and also the convention are dispositive – it's application can be excluded by agreement of the parties
- Beware of that : „*this purchase contract is followed by czech law*“ -> Vienna Convention would be applicable because it is a part of Czech law as ratified international treaty
- There is need to explicitly write: „*this purchase contract is not regulated by Vienna Convention*“

# Conditions of application

1. Seller and buyer are entrepreneurs from **different countries (A,B)** which are **contractual parties of Vienna Convention**
2. It is a **purchase contract**
3. Subjects of purchase are some kind of goods

# Condition No. 1

## Example:

A is subject having a place of business on territory of Poland. B is subject doing business on territory of Czech republic. **Both countries are contractual parties of the Convention.**

Their relation is qualified as international purchase contract without any reference to Vienna Convention and also this Convention will be applicable

*Compare to:*

*A is subject from China and B is subject from India*



- If an entrepreneur has **more than one place of business**
  - The decisive place is the one which has the closest relation to the contract and its performance
- The term „place of business“ is not defined
  - It can be e.g. settlement of the company or
  - place where the goods are produced

# Condition No. 2

- It's based on article 30 and 53 CISG
- The definition of purchase contract
  - The seller is obliged to **deliver** goods, hand **over the documents** and transfer the ownership
  - The buyer is obliged to pay for goods **purchase price and take the delivery**

# Purchase contract X Contract of Work

- Vienna contract is also about products which are about to be **produced**
- It is the **purchase contract** in case if producer delivered essential part of material needed for production

X

If the customer delivers an essential part of material, then it's **Contract of Work**

It's **Contract for Work** contract if dominant part of the obligation is to perform work or provide service

- e.g. installation required

# Case

- *The Swiss company as buyer and German company as seller concluded a contract on **deliver and installation of fitness devices***
- *It was water tank with high concentration of salt. This tank began to leak out even after several reparations*
- *The Swiss buyer resigned **from the contract** and requested to refund the purchasing price and damages*
- *The Court decided that Vienna Convention will be applicable because **the price of labour is not more valuable than the goods.***

# Condition No. 3

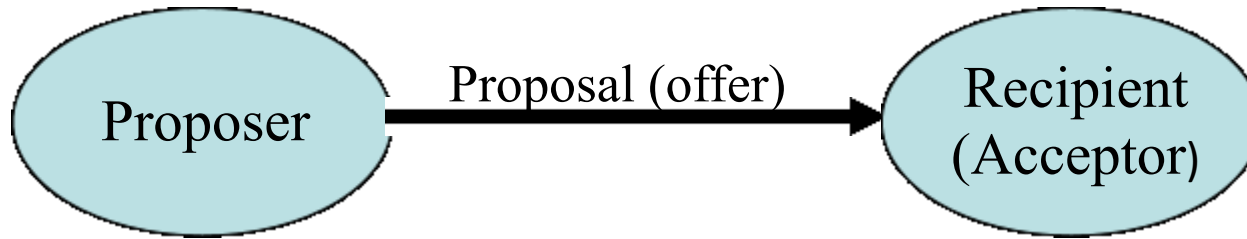
- The object of purchase must be **goods**
  - **Goods = movable and tangible things**
  - **Case:**
    - *The German client let Swizz marketing institute make **an analysis of market**. German client refused to pay because the result doesn't match the assignment according to him.*
    - *The Court decided that Vienna convention **will not** be applicable because for the sale of goods is characteristic transferring of ownership rights.*
    - *Although the report written, it is not a transfer of ownership of the paper but of the ideas which are there*

# Vienna convention cannot be used for purchasing:

- Goods bought for **personal**, family or household uses  
i.e. **consumer contracts**  
Differentiation: especially by amount of purchased goods, place of purchase, etc.
- **Goods sold at auctions**
  - Differentiation: seller do not know buyer – it is another contracting process
- Goods sold during **execution**
  - Seller do not have things disposal
- **Securities or money**
- **Boats, ships, hovercrafts or aircrafts**
- **Electricity**  
Not everywhere is understood as “thing”

# Creation of purchase contract

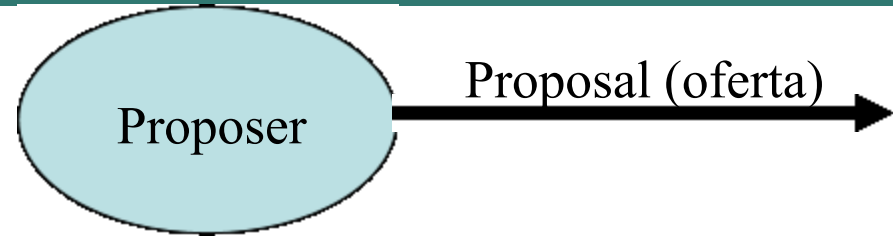
1.



2.



# Proposal (art.14 CISG)



## Requirements:

- **Personal** - the proposal has to be design to **one or more** specific persons
  - Otherwise it is a call for file a motion (e.g. advertising)
- **Content**- it has to be sufficiently definite
  - **goods** (individually/ group) - can be determined by samples or originals, reffering to catalogue, description...
  - **amount**
  - **puchase price** or provision allowing its determination (e.g. price lists, price arbitrage)
- The proposal has to **demonstrate willingness of Proposer to be committed** if the proposal is accepted.



# Cancellation and withdrawal of an offer

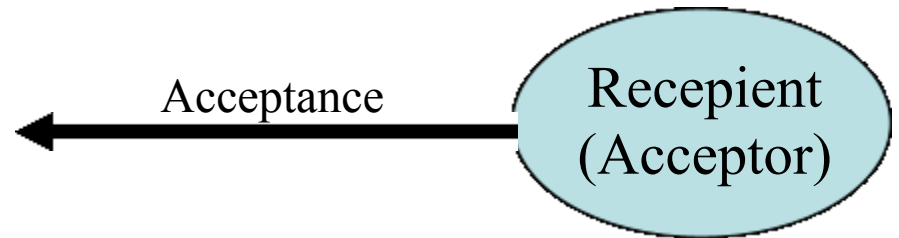
## Cancellation

- It is possible if the notice of cancellation of an offer reaches the Acceptor **sooner or simultaneously with the offer.**
  - This is the way to cancel the offer which is even described as irrevocable

## Withdrawal

- After the offer reached the Acceptor it cannot be cancelled, but it can be withdraw if:
  1. Until potential Acceptor sends an acceptance and
  2. An offer is not irrevocable

# Acceptance (art. 18 CISG)



- **Declaration** – e.g. signing a contract, consent with an order
  - Effective when the acceptance reaches the proposer
  - No need to use the same mean of communication
- **Acting** – other than sending a consent
  - E.g. delivering goods, paying the purchase prices
  - Condition: **reflected in the proposal or it's common practice between parties**
- **Silence** generally doesn't mean an acceptance of an offer
  - But it might become based on conventions and customs or previous contractual agreement (framework agreement containing a commitment to purchase contracts realization)

# Deadline (art. 18/2,20,21 CISG)

- Acceptance of an offer is effective if it **reaches the proposer**
  - Acceptor has to reply:
    - At the time they both **agreed** (the best option in practice)
    - No time is fixed – it means at **reasonable time** with taking into account circumstances
      - Time for proposal to get there, acceptance, bridging time, the form of the proposal (email is faster), type of goods
    - Verbal proposal has to be accepted **immediately** (unless it's otherwise according the circumstances)

# Deadline for acceptance is from....

- From the day specified **in the letter** or **on the envelope**
- From the moment when **the proposal gets** to acceptor in case it was arranged by phone, telex or other means allowing immediate communication
  - If the last day of the deadline is public holiday then it extends to the first working day

# Late acceptance / delivery

## Acceptor sent it late

### **No contract conclude**

Late acceptance of a proposal is effective as normal acceptance **only if Proposer notify the receiver** without any delay

## Acceptor sent it on time

If the acceptance was sent on time but due i.e. failure of post service reaches Proposer late -> **The contract is concluded**

Only if Proposer urgently inform Acceptor that he consider this offer as terminated

# Rejection / acceptance with slight changes

- **Rejection**

- Means termination of the offer as soon as it reaches Proposer

- **Acceptance with slight changes**

- Answer which contains changes or appendix which does not significantly change the terms of the proposal is considered as acceptance !!!
- Proposer has to **protest** if doesn't want the contract to be concluded
- **Significant change** = change of the price, payment, quality, amount, place and time of delivery, liability, dispute resolution

# Standard form contracts

*Represent standardised text prepared one of the parties of contractual agreement. There are supposed to be fill in those data: 1) about the other party, 2) specification of goods and its amount, 3) purchase price*

- Advantage is speeding up and simplifying of the contractual process
- It is used often in international business