

Table of Contents

List of Abbreviations.....	XI
Introduction	XV

A. GENERAL PART

I. Role and impact of the law governing a sales contract.....	1
II. The suggested choice of law for the present International Sales Terms	4
III. The CISG	6
1. Part I of the CISG: Scope of application and other general provisions	7
2. Part II of the CISG: The formation of the sales contract	10
3. Part III of the CISG: Obligations, rights, and remedies of the parties	11
a) The concept of a “fundamental breach”	11
b) Obligations of the seller.....	13
aa) Primary obligations	13
bb) Conformity of the goods.....	14
cc) Defects of title.....	16
dd) Examination of the contract goods and notification of defects	17
c) Remedies of the buyer in case of breach	18
aa) Specific performance.....	19
bb) Reduction of the contract price (Art 50 CISG).....	20
cc) Damages.....	21
dd) Avoidance of the contract.....	25
ee) The seller’s right to cure (Art 48 CISG) and its impact on rights and remedies of the buyer	26
d) Obligations of the buyer and remedies of the seller	27
IV. Swiss law as the supplementary governing law of choice.....	28
1. Overview on the relevant issues.....	28
2. Relevant Swiss statutory contract and tort laws.....	29
3. Validity of the contract	30
a) Unfair contract terms.....	30
b) The grip of control of Swiss law in relation to general terms and conditions	32
4. Limitation of actions.....	33
a) Limitation periods for warranty claims and product liability	33
b) Limitation periods for other claims arising from a sales contract.....	34
c) Suspension and discontinuation of limitation periods.....	35
5. Set-off.....	35
6. Assignment	36
7. Contractual penalties and liquidated damages	37
a) Contractual penalties.....	38
b) Liquidated damages	39
8. Concurring claims under tort (product liability).....	40
a) Liability under general tort law and the Product Liability Act	40
b) Contractual liability under domestic sales law	40
V. English law as an alternative?: A (very) short introduction into English sales law.....	41
1. Legal sources.....	41
2. Main obligations of the seller	42
3. Remedies of the buyer in case of breach by the seller.....	43
a) Termination and restitution	43
b) Damages	45
4. Obligations of the buyer and remedies of the seller	45
5. Summary	46

Table of Contents

VI. Relevant laws beyond the governing law of the contract	47
1. (Overriding-)mandatory rules: General issues.....	47
a) Domestic mandatory laws.....	47
b) “Overriding-mandatory” rules	49
c) Application of overriding mandatory rules by arbitral tribunals.....	50
2. Essential examples of overriding mandatory provisions.....	52
a) Competition law	52
b) Export control regulations	55
aa) European export laws	55
bb) US export laws.....	57
c) Exchange control regulations	58
3. Relevant laws outside of the scope of the lex contractus	59
a) Proprietary aspects: The transfer of property in the goods sold.....	59
b) Authority of agents	60
c) Insolvency	62
d) Product liability towards third parties.....	62

B.

THE MAIN CONTRACT DOCUMENT

I. The benefit of a countersigned main contract document	66
1. Requirements for the incorporation of general terms into international contracts.....	66
2. The “battle of forms” problem	67
II. Price.....	69
III. Payment Terms.....	70
1. The legal position under the CISG.....	70
2. The preferred payment method: The letter of credit	71
a) General background of a letter of credit transaction.....	71
b) Essential contractual terms in a letter of credit	73
3. Alternative means of settlement: Documentary collection, bank payment obligations, demand guarantees and suretyships	75
a) Documentary collection.....	75
b) The bank payment obligation	75
c) Demand guarantees (performance bonds)	76
IV. Delivery and trade terms	76
1. The role of standardized trade terms in international sales transactions	76
2. The Incoterms © 2020	77

C.

THE INTERNATIONAL SALES TERMS

I. General provisions	83
1. The suggested clause.....	83
2. Annotations	83
II. Payment terms	84
1. The suggested clause.....	84
2. Annotations	85
III. Delivery terms.....	88
1. The suggested clause.....	88
2. Annotations	89
a) The first alternative.....	89
b) The second alternative	91
IV. Retention of title.....	92
1. The suggested clause.....	92
2. Annotations	93
V. Product defects	94
1. The suggested clause.....	94
2. Annotations	96
VI. Limitation of liability.....	103

Table of Contents

1. The suggested clause.....	103
2. General background.....	104
3. Annotations	106
a) The second alternative.....	106
b) The first alternative.....	109
VII. Limitation of actions	114
1. The suggested clause.....	114
2. General background.....	114
3. Annotations	117
VIII. Export control regulations	120
1. The suggested clause.....	120
2. Annotations	120
IX. Avoidance by the seller.....	121
1. The suggested clause.....	121
2. Annotations	121
X. Confidentiality obligations.....	122
1. The suggested clause.....	122
2. Annotations	122
XI. Force majeure.....	124
1. The suggested clause.....	124
2. General background.....	125
3. Annotations	126
XII. Entire agreement, written form, severability and anti-assignment clause	127
1. The suggested clause.....	127
2. Annotations	128
XIII. The governing law of the contract.....	133
1. The suggested clause.....	133
2. Annotations	133
XIV. Arbitration or state court litigation	137
1. The suggested clause.....	137
2. General background.....	137
a) Arbitration	138
b) Litigation	140
c) Alternative dispute resolution.....	142
3. Annotations	143
a) The arbitration clause.....	143
b) The alternative clause: Agreement on jurisdiction	148

Appendix

I. The sales documentation put together.....	151
II. Samples payment securities: Form of letter of credit and payment bond.....	161
III. The United Nations Convention on Contracts for the International Sale of Goods (CISG).....	162
IV. Excerpts from relevant Swiss statutes.....	183
1. Swiss Code of Obligations (Obligationenrecht)	183
2. Swiss Federal Act Against Unfair Competition (Bundesgesetz gegen den unlauteren Wettbewerb)	188
3. Swiss Civil Code (Zivilgesetzbuch).....	188
4. Swiss Federal Act on Private International Law (Bundesgesetz über das Internationale Privatrecht)	189
Index	191