



**United Nations Commission
on International Trade Law**

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

Article 19

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

* 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.

1. Article 19 qualifies article 18 by providing that a purported acceptance which modifies the offer is a rejection of the offer and is considered instead to be a counter-offer¹. Paragraph (1) of article 19 states this basic proposition, while paragraph (2) makes an exception for immaterial modifications to which the offeror does not object. Paragraph (3) lists matters which are considered material.

Material modifications

2. Paragraph (1) provides that a reply to an offer that adds to, limits or otherwise modifies the offer is a rejection of the offer. Several decisions have reviewed the parties' exchange of multiple communications and have concluded, without specifying the modifications, that at no point was there an acceptance of an offer².

3. Paragraph (3) lists matters as to which modifications are to be considered material. Modifications of the following listed matters have been found to be material: price³; payment⁴; quality and quantity of the goods⁵; place and time of delivery⁶; settlement of disputes⁷. However, notwithstanding paragraph (3) one decision has stated that modifications of matters listed in that paragraph are not material if the modifications are not considered material by the parties or in the light of usages⁸.

Immaterial modifications

4. Paragraph (2) provides that a reply with immaterial modifications of the offer constitutes an acceptance unless the offeror notifies the offeree without undue delay

¹ But see CLOUT case No. 189 [Oberster Gerichtshof, Austria, 20 March 1997] (the reply must satisfy the definiteness requirements of art. 14 (1) in order to be a counter-offer).

² See, e.g., CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998] (no agreement on termination of contract) (see full text of the decision); CLOUT case No. 173 [Fovárosi Biróság, Hungary, 17 June 1997] (no clear agreement to extend distribution contract).

³ Oberster Gerichtshof, Austria, 9 March 2000, Unilex; CLOUT case No. 417 [Federal District Court, Northern District of Illinois, United States, 7 December 1999] (see full text of the decision); CLOUT case No. 193 [Handelsgericht des Kantons Zürich, Switzerland, 10 July 1996] (see full text of the decision).

⁴ CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996] (time of payment) (see full text of the decision).

⁵ CLOUT case No. 291 [Oberlandesgericht Frankfurt a.M., Germany, 23 May 1995] (delivery of fewer pairs of shoes than ordered); CLOUT case No. 135 [Oberlandesgericht Frankfurt a.M., Germany, 31 March 1995] (difference in quality of glass test tubes); CLOUT case No. 121 [Oberlandesgericht Frankfurt a.M., Germany, 4 March 1994] (acceptance ordering additional kinds of screws); CLOUT case No. 227 [Oberlandesgericht Hamm, Germany 22 September 1992] (acceptance offering to sell "unwrapped" bacon rather than bacon).

⁶ CLOUT case No. 413 [Federal District Court, Southern District of New York, United States, 6 April 1998] (delivery terms) (see full text of the decision); CLOUT case No. 133 [Oberlandesgericht München, Germany, 8 February 1995] (time of delivery) (see full text of the decision).

⁷ CLOUT case No. 242 [Cour de Cassation, France, 16 July 1998] (differing choice-of-forum clause); CLOUT case No. 23 [Federal District Court, Southern District of New York, United States, 14 April 1992] (inclusion of arbitration clause) (see full text of the decision).

⁸ CLOUT case No. 189 [Oberster Gerichtshof, Austria, 20 March 1997].

that the offeror objects to the modifications⁹. One court has stated that modifications that favour the addressee are not material and do not have to be accepted expressly by the other party¹⁰.

5. The following modifications have been found to be immaterial: a reply that modified an offer by stating that the price would be modified by increases as well as decreases in the market price and deferring delivery of one item¹¹; seller's standard term reserving the right to change the date of delivery;¹² a request that buyer draft formal termination agreement;¹³ a request to treat the contract confidential until the parties make a joint public announcement;¹⁴ contractual requirement that buyer must reject goods delivered within stated period.¹⁵

Conflicting standard terms

6. The Convention does not have special rules to address the issues raised when a potential seller and buyer each uses standard contract terms prepared in advance for general and repeated use (the so-called "battle of the forms"). Several decisions conclude that the parties' performance notwithstanding partial contradiction between their standard terms established enforceable contracts¹⁶. As for the terms of these contracts, several decisions would include those terms on which the parties substantially agreed and replace with the default rules of the Convention those standard terms that, after appraisal of all the terms, conflict¹⁷, while several other decisions give effect to the standard terms of the last person to make an offer accepted by subsequent performance of the other party¹⁸. Another decision refused

⁹ Tribunal Commercial de Nivelles, Belgium, 19 September 1995, Unilex.

¹⁰ CLOUT case No. 189 [Oberster Gerichtshof, Austria, 20 March 1997].

¹¹ CLOUT case No. 158 [Cour d'appel, Paris, France 22 April 1992], *affirmed*, CLOUT case No. 155 [Cour de Cassation, France, 4 January 1995] (affirming with no specific reference to the Convention) (see full text of the decision).

¹² CLOUT case No. 362 [Oberlandesgericht Naumburg, Germany, 27 April 1999] (delivery clause interpreted in accordance with art. 33 (c)).

¹³ CIETAC award No. 75, China, 1 April 1993, Unilex.

¹⁴ Fováosi 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].

¹⁵ CLOUT case No. 50 [Landgericht Baden-Baden, Germany, 14 August 1991] (see full text of the decision).

¹⁶ Bundesgerichtshof, Germany, 9 January 2002, available on the Internet at <<http://www.rws-verlag.de/bgh-free/volltex5/vo82717.htm>>; Landgericht Kehl, Germany, 6 October 1995, Unilex (parties' performance established that parties either derogated from art. 19 or waived enforcement of conflicting standard terms); CLOUT case No. 232 [Oberlandesgericht München, Germany, 11 March 1998] (buyer accepted standard terms that differed from its offer by performing contract) (see full text of the decision).

¹⁷ Bundesgerichtshof, Germany, 9 January 2002, available on the Internet at <<http://www.rws-verlag.de/bgh-free/volltex5/vo82717.htm>>; Landgericht Kehl, Germany, 6 October 1995, Unilex (enforcing only standard terms in common).

¹⁸ CLOUT case No. 232 [Oberlandesgericht München, Germany, 11 March 1998] (by performing buyer accepted standard terms that differed from its offer); ICC award No. 8611, 1997, Unilex (if standard terms considered counter-offer recipient accepted by taking delivery of goods with invoice to which standard terms are attached). See also Hof 's-Hertogenbosch, Netherlands, 19 November 1996 (seller's acceptance stated that its standard terms applied only to extent they did not conflict with buyer's standard terms).

to give effect to either set of standard terms: the seller was not bound by the buyer's terms on the back of the order form in the absence of a reference to them on the front of the form, while the seller's terms were in a confirmation letter sent after the contract was concluded and the buyer did not accept them by its silence¹⁹.

¹⁹ CLOUT case No. 203 [Cour d'appel, Paris, France, 13 December 1995].
