



---

**United Nations Commission  
on International Trade Law**

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

*Article 47*

(1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.

(2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

**Meaning and purpose of the provision**

1. Article 47 (1) entitles the buyer to fix an additional period of time within which the seller is requested finally to perform its obligations. The provision thus complements the right to require performance under article 46, but it is particularly relevant for the right to terminate the contract under article 49. In fact the provision has practical importance only under the latter provision since article 49 (1) (b)

---

\* 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.

provides that once the additional period of time fixed in accordance with article 47 expires, the buyer can declare the contract avoided. Thus the fixing of an additional period of time paves the way for the termination of the contract. It has, however, to be noted that this mechanism only works in case of non-delivery.<sup>1</sup>

2. Article 47 (2) states that the buyer who fixes an additional period of time binds itself not to resort to other remedies except damages during that period. This binding effect is intended to protect the seller who may prepare the performance—even at considerable expense—and should be entitled to expect that the buyer will accept the requested performance if it is not otherwise defective.<sup>2</sup> Only if the seller informs the buyer that it will not perform during the additional period will the buyer be free to resort to any other available remedy since in that case the seller needs no protection against such change.

3. Article 47 allows the buyer to fix an additional period of time for any obligation the seller has thus far not performed. Like article 46 (3) the provision thus refers to all obligations the seller has agreed to fulfil. But in order to function as a stage prior to avoidance, the additional time period is not a consideration unless the seller has violated its duty to deliver the sold goods.

### **Fixing of additional period of time (article 47 (1))**

4. The buyer is entitled, but not obliged, to fix an additional period for performance.<sup>3</sup> In case of non-delivery of the goods, however, the buyer can benefit from this the mechanism in that it clarifies whether late delivery justifies the termination of the contract<sup>4</sup>. There are cases stating that where the buyers had not granted an additional period of time, they had no right to avoid the contract.<sup>5</sup>

5. The buyer must fix an additional period of time of reasonable length. A period of two weeks for the delivery of three printing machines from Germany to Egypt was deemed to be too short, whereas a period of seven weeks was regarded as reasonable.<sup>6</sup> In a Danish-German car sale a period of three to four weeks was found to be reasonable.<sup>7</sup> If the buyer fixes an unreasonably short period courts have decided instead that a reasonable period for delivery is applicable.<sup>8</sup> Courts have also found the reasonability requirement satisfied if the buyer having previously fixed an

---

<sup>1</sup> See Digest, art 49.

<sup>2</sup> 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), 39–40.

<sup>3</sup> Oberlandesgericht Hamburg, Germany, 4 July 1997, Unilex.

<sup>4</sup> See article 49 (1) (b).

<sup>5</sup> See, e.g., CLOUT case No. 7 [Amtsgericht Oldenburg in Holstein, Germany, 24 April 1990]; CLOUT case No. 82 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994]; CLOUT case No. 120 [Oberlandesgericht Köln, Germany, 22 February 1994].

<sup>6</sup> CLOUT case No. 136 [Oberlandesgericht Celle, Germany, 24 May 1995].

<sup>7</sup> CLOUT case No. 362 [Oberlandesgericht Naumburg, Germany, 27 April 1999] (see full text of the decision).

<sup>8</sup> CLOUT case No. 136 [Oberlandesgericht Celle, Germany, 24 May 1995] (see full text of the decision); Landgericht Ellwangen, Germany, 21 August 1995, Unilex; CLOUT case No. 362 [Oberlandesgericht Naumburg, Germany, 27 April 1999] (see full text of the decision).

unreasonably short period then waits with its notice of avoidance until a reasonable period time has expired.<sup>9</sup>

6. Where the buyer fixes a certain date or a certain period of time, the buyer must make clear that the seller has to perform within that time in order for the buyer to be entitled to avoid the contract.<sup>10</sup> A clear expression that a final deadline is granted is necessary (e.g. “final delivery date: 30 September 2002”).<sup>11</sup> It has therefore been decided that a mere reminder demanding prompt delivery does not suffice, since no additional time period for delivery had been fixed.<sup>12</sup> On the contrary, for the purposes of article 47 (1) it has been held to be sufficient if the buyer accepts a new delivery date offered by the seller when the buyer makes clear at the same time that performance until that date is of essential importance.<sup>13</sup> The same result was reached in a case where the buyer accepted several requests of the seller to extend the time for delivery.<sup>14</sup> Where a buyer tolerated the late delivery of several instalments of an instalment sale, it was held that the buyer’s behaviour compared to the granting of an additional period of time.<sup>15</sup>

7. There is generally no requirement as to the form of the granting of the additional period of time, consistent with article 11; however, where an article 96 reservation is applicable, a form requirement may have to be met. In the absence of such an applicable reservation, the issue of whether the time extension has been communicated in writing or orally or has been made impliedly is irrelevant.<sup>16</sup> #

### **Effect of fixing an additional period of time (article 47 (2))**

8. The fixing of an additional period of time for performance assists at first the seller who gains an extension of time for performance. According to article 47 (2) the buyer may not claim avoidance or price reduction as long as the additional period of time lasts, unless the seller has declared that it is not able or willing to not perform<sup>17</sup> or has made its performance dependant of conditions not stipulated in the contract<sup>18</sup>. If the seller performs during the additional period of time the buyer must accept the performance. The buyer nevertheless retains the right to claim any damages caused by the delay of performance. If the seller does not perform the buyer may resort to any available remedy including avoidance.

<sup>9</sup> Landgericht Ellwangen, Germany, 21 August 1995, Unilex; CLOUT case No. 362 [Oberlandesgericht Naumburg, Germany, 27 April 1999] (see full text of the decision).

<sup>10</sup> 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), 39, paras. 6–7.

<sup>11</sup> *Id.*, para. 7.

<sup>12</sup> CLOUT case No. 275 [Oberlandesgericht Düsseldorf, Germany, 24 April 1997].

<sup>13</sup> CLOUT case No. 277 [Oberlandesgericht Hamburg, Germany, 28 February 1997] (see full text of the decision).

<sup>14</sup> CLOUT case No. 225 [Cour d’appel, Versailles, France, 29 January 1998].

<sup>15</sup> CLOUT case No. 246 [Audiencia Provincial de Barcelona, Spain, 3 November 1997].

<sup>16</sup> See the decisions cited in the preceding paragraph.

<sup>17</sup> See CLOUT case No. 293 [Arbitration—Schiedsgericht der Hamburger freundschaftlichen Arbitrage, 29 December 1998].

<sup>18</sup> *Id.*