

ATTORNEY'S GUIDE: COMPARISON CHART UCC AND CISG



The purpose of this presentation is to highlight some of the main differences between the Uniform Commercial Code Article 2 (“UCC”) and the United Nations Convention on Contracts for the International Sale of Goods (“CISG”). An exhaustive discussion of the differences is beyond the scope of this presentation. A comparison chart has been prepared for ease of reference. The UCC provisions stated herein are from the UCC Model Law; it may vary slightly in each state.

Where relevant, CISG case law from the U.S. has been included; please note that case law included herein is not an exhaustive list, it only serves as an example, and you may refer to the [Pace University Albert H. Kritzer CISG Database](#) to further search CISG case law.

APPLICATION OF THE CISG

The UCC and CISG both govern the sale of goods. However, as per the supremacy clause of the United States, CISG, as a self- executing multilateral international treaty, preempts UCC, when there is an international sales contract to which CISG is applicable. CISG is applicable to a sales contract when the parties to a contract are from different signatory countries. The CISG also applies to an international sales contract when the private international law rules point to the laws of a contracting country. However, as per the derogation made by the U.S. under CISG Art. 95, if the private international law rules point to U.S. law, the CISG is not applicable. For information on the application of the CISG, you may refer to the annotated text available at the [Pace CISG Database](#).

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I. SPHERE OF APPLICATION

The sphere of application of the UCC and CISG vary slightly; consumer sales have been excluded from the scope of the CISG (Art. 2). On the other hand, the UCC does not *per se* preclude consumer sales; it merely does not impair the provisions of any other legal instrument governing the sale to consumers.

UCC	CISG
<p>§ 2-102</p> <p>Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.</p>	<p>Article 2</p> <p>This Convention does not apply to sales:</p> <ul style="list-style-type: none">(a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;(b) by auction;(c) on execution or otherwise by authority of law;(d) of stocks, shares, investment securities, negotiable instruments or money;(e) of ships, vessels, hovercraft or aircraft;(f) of electricity.

II. VALIDITY OF A CONTRACT

The validity of a contract is one of the issues excluded under the CISG; the CISG only governs formation of a contract. Validity of a contract is related with enforceability; in other words, validity

of a contract concerns whether the contractual terms are enforceable. Nevertheless, it should be noted that formal (writing) requirements are addressed in the CISG (*see below*).

Examples of validity of a contract issues are fraud, undue influence, mistake, capacity & authorization, illegality, unconscionability and duress.

The line between the formation and validity of a contract is sometimes not clear cut. As such, at times, courts have preferred to exclude the CISG, rather than first addressing contract formation under the CISG, thereafter addressing validity issues under the UCC and common law contracts. For example, *see* case law: [Barbara Berry, S.A. de C.V. v. Ken M. Spooner Farms, Inc. \(2006\)](#); [Amit Israeli v. Dott. Gallina et al. \(2009\)](#).

UCC	CISG
<p><i>[Examples of provisions concerning validity of contract is unconscionable contracts]</i></p>	<p>Article 4</p> <p>This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:</p> <ul style="list-style-type: none"> (a) the validity of the contract or of any of its provisions or of any usage; (b) the effect which the contract may have on the property in the goods sold.

III. FORMAL REQUIREMENTS (WRITING REQUIREMENT)

The UCC requires any contract over \$500 to be in writing. This is referred to as the statute of frauds. On the other hand, the CISG does not require a contract to be in writing; it allows for oral

contracts of any amount. There is also no formal requirement for modifications of a contract; modifications do not necessarily have to be in writing.

UCC	CISG
<p>§ 2-201</p> <p>(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker.</p>	<p>Article 11</p> <p>A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.</p>

IV. CONTRACT INTERPRETATION (PAROL EVIDENCE)

The parol evidence rule determines to what extent parties may introduce into evidence of a prior or contemporaneous agreement in order to modify, explain, or supplement a contract. The UCC, similar to common law contracts, does not allow for the introduction of extrinsic evidence to contradict a contract, when the contract has been completely integrated. In completely integrated contracts, trade usage may be treated as extrinsic evidence. However, there are exceptions to the parol evidence rule, which are primarily collateral in nature.

On the other hand, the parol evidence rule is not applicable to CISG contracts. The CISG allows for the introduction of extrinsic evidence, such as evidence for establishing the subjective intent of parties (CISG Art. 8(3)) or for allowing the introduction of trade usages inherent in international trade (CISG Art. 9).

A landmark case on parol evidence is [MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova D'Agostino \(1998\)](#). Also, *see* the recent [Transmar Commodity Group Ltd. v. Cooperativa Agraria Industrial Naranjillo Ltda. \(2018\)](#) case for an analysis comparing the parol evidence rule of New York to the CISG.

UCC	CISG
<p>§ 2-202</p> <p>Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of the agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented</p> <ul style="list-style-type: none"> • (a) by course of dealing or usage of trade (Section <u>1-205</u>) or by course of performance (Section <u>2-208</u>); and • (b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. 	<p>Article 8</p> <p>...</p> <p>(3) In determining the intent of a party or the understanding a reasonable person would have had, <i>due consideration is to be given to all relevant circumstances of the case including the negotiations</i>, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.</p> <p>Article 9</p> <p>...</p> <p>(2) The parties are considered, unless otherwise agreed, to <i>have impliedly made applicable to their contract</i> or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.</p>

V. CONTRACT FORMATION

A. OFFER

As per the CISG, an offer is made when it is “sufficiently definite” and indicates the intent of the offeror to be bound by it (CISG Art. 14). A “sufficiently definite” offer consists of quantity and explicit or implicit price. Nevertheless, CISG Art. 55 governs open price contracts, *where a contract has validly been formed*; as such, the price is deemed to be the market price at the time of conclusion of the contract. On the other hand, under the UCC, an offer is made by inviting acceptance in any manner and does not necessarily have to consist of a price (UCC § 2-305). Thus, UCC allows for open price, while the matter is not conclusively settled under the CISG. For further scholarly discussions and foreign CISG case law, see [Pace CISG Database](#).

The UCC has a firm offer rule; an offer made in writing assuring that it will be kept open is not revocable. However, it may be revoked after the time fixed in the offer itself has passed or after a reasonable time, which may not exceed three months. The CISG allows for revocation until acceptance has been dispatched by the other party. An offer becomes irrevocable only if it is for a fixed term, it has been stated as irrevocable therein or the other party has reasonably relied on it. *See* case law for the interplay between reliance on irrevocable offers (CISG Art. 16) and promissory estoppel claims: [Asia Telco Technologies v. Brightstar International Corp. \(2015\)](#).

It should also be noted that the CISG does not include the traditional U.S. “mailbox rule”, where an acceptance is effective upon mailing. CISG Art. 18(2) requires an acceptance assent to reach the offeror.

UCC	CISG
<p>§ 2-205</p> <p>An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.</p>	<p>Article 16</p> <p>(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.</p> <p>(2) However, an offer cannot be revoked:</p> <p>(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or</p> <p>(b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.</p>

B. ACCEPTANCE (BATTLE OF FORMS)

The UCC and the CISG tackle battle of forms somewhat differently. As per the UCC, an offer is accepted when there is a definite expression thereof. As such, an expression of acceptance is construed, even if there are additional or differentiating terms. Nevertheless, if an offer has been

made conditional upon the additional or different terms, then the said expression is considered a counter- offer. On the other hand, additional terms that are material in nature are considered as proposals for additions. Moreover, the courts primarily apply the “knock out rule” to differentiating terms by eliminating contradicting terms from the contract.

The CISG adopts an approach stemming from the “mirror image rule”; as a rule, if an expression consists of additional or differing terms, it is considered a counter- offer. However, if additional or differing terms are not material in nature, this will be construed as an acceptance, unless the offeror objects to it. Examples of material alterations have been set forth as a non- exhaustive list under CISG Art. 19(3). This non- exhaustive list is rebuttable.

In practice, a matter addressed under the battle of forms provisions is the inclusion of standard terms and conditions. It should be noted that the formation of contract provisions of the CISG may be applicable to determine whether a contract has been formed, even if the standard terms and conditions exclude the CISG. *See case law: [Turfworthy, LLC v. Dr. Karl Wetekam & Co. KG \(2014\)](#). For more on the inclusion of standard terms and conditions *see* [CISG Advisory Council Opinion No: 13](#).*

See U.S. CISG case law on battle of forms: [Hanwha Corporation v. Cedar Petrochemicals, Inc. \(2011\)](#); [Roser Technologies v. Carl Schreiber GmbH \(2013\)](#); [Allied Dynamics Corp. v. Kennametal, Inc. \(2014\)](#).

UCC	CISG
<p>§ 2-207</p> <p>(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.</p>	<p>Article 19</p> <p>(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.</p> <p>(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</p>

<p>(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants terms become part of the contract unless:</p> <ul style="list-style-type: none"> • (a) the offer expressly limits acceptance to the terms of the offer; • (b) they materially alter it; or • (c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received. 	<p>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.</p> <p>(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.</p>
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VI. BREACH OF CONTRACT

The UCC adopts the “perfect tender” rule; the buyer is entitled to remedies if the goods are not in conformity with the contract. The non-conformity does not need to be material in nature. On the other hand, the CISG adopts the concept of fundamental breach; if one of the parties commits a *fundamental breach*, the other party is entitled to remedies arising from the breach of contract. Fundamental breach has been defined as a breach that “results in such detriment to the other party as substantially to deprive him of what he is entitled to expect”. Moreover, there is a “foreseeability” test; the breaching party is not liable if the results of the breach were not foreseeable.

Fundamental breach is determined on a case-by-case basis, some examples are serious defects in the goods, late delivery when “time is of essence” and payment of a small fraction of the purchase price. An example of a recent CISG case discussing fundamental breach: [Hefei Ziking Steel Pipe Co. v. Meever & Meever & Meever United States et al. \(2021\)](#)

UCC	CISG
<p>§ 2-601</p> <p>Subject to the provisions of this Article on breach in installment contracts (Section <u>2-612</u>) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections <u>2-718</u> and <u>2-719</u>), if the <u>goods</u> or the tender of delivery fail in any respect to conform to the <u>contract</u>, the <u>buyer</u> may</p> <ul style="list-style-type: none"> • (a) reject the whole; or • (b) accept the whole; or • (c) accept any <u>commercial unit</u> or units and reject the rest. 	<p>Article 25</p> <p>A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.</p>

VII. REMEDIES

A. SPECIFIC PERFORMANCE

Specific performance is not a preferred type of remedy under traditional U.S. contract law. Parties will not- *by default*- resort to specific performance as a remedy, the appropriate remedy- *by default*- is monetary compensation. The UCC also adopts this approach; parties will seek specific performance only when the goods are “unique” or the specific circumstances require so.

Unlike the UCC, specific performance is not considered a secondary remedy under the CISG. The aggrieved party may, *in principle*, resort to specific performance, even if monetary compensation would have been adequate to remedy the breach. Example of a case whereby the buyer sought specific performance: [Saint Tropez Inc. v. Ningbo Maywood Industry and Trade Co., Ltd. et al. \(2014\)](#)

UCC	CISG
<p>§2-716</p> <p>(A) Specific performance may be decreed where the goods are unique or in other proper circumstances.</p>	<p>Article 46</p> <p>(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.</p>

B. DAMAGES

The UCC and CISG damages provisions are similar *in essence*. However, the terminology used is different. While the UCC categorizes damages as incidental and consequential damages; the CISG focuses on the concept of “foreseeability” to recover damages. *See* for example: [Delchi Carrier, S.p.A. v. Rotorex Corp. \(1995\)](#).

The CISG does not govern punitive damages or liquidated damages. Penalty clauses, such as liquidated damages do not fall within the scope of the CISG, as it is a matter concerning the validity of a contract (CISG Art. 4). *See* for example: [Guangxi Nanning Baiyang Food Co. Ltd. v. Long River International, Inc. \(2010\)](#).

Although parties are entitled to interest under the CISG (CISG Art. 78), the interest rate is that of the law of the forum; *see* for example, [Guang Dong Light Headgear Factory Co., Ltd. v. ACI International, Inc. \(2008\)](#)

Another noteworthy matter is that U.S. courts have ruled that attorney fees are not recoverable as damages under CISG Art. 74, the law of the forum is applicable to determine whether a party is entitled to recover attorney fees. *See* case law on attorney fees: [Zapata Hermanos Sucesores, S.A. v. Hearthside Baking Company \(2002\)](#) and [Granjas Aquanova S.A. de C.V. v. House Mfg. Co \(2010\)](#).

UCC	CISG
<p>§ 2-715</p> <p>(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.</p> <p>(2) Consequential damages resulting from the <u>seller's</u> breach include</p> <ul style="list-style-type: none"> • (a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and • (b) injury to person or property proximately resulting from any breach of warranty. 	<p>Article 74</p> <p>Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.</p>

C. ADDITIONAL REMEDIES UNDER CISG

The CISG consists of remedies that are not typical under U.S. law and the UCC: Unilateral price reduction and *nachfrist* rule.

The buyer has a *unilateral* right to reduce the contract price in case of non- conformity (CISG Art. 50). Case law distinguishing CISG Art. 50 from UCC's set-off: [Maxxsonics USA, Inc., v. Fengshun Peiyang Electro Acoustic Company, Ltd. \(2012\)](#)

Another remedy foreign to UCC is *Nachfrist*; the aggrieved party is entitled to grant the other party additional time for performance. During this additional period, the aggrieved party may not resort

to breach of contract remedies- *other than damages arising from delay in performance*. However, if the other party does not perform within the additional period, the aggrieved party is entitled to avoidance, even if the breach would not have otherwise amounted to a material breach, and as such, avoidance would not have had been an available remedy. (CISG Arts. 47, 49, 63, 64).

UCC	CISG
-	<p>Price Reduction (CISG Art. 50) <i>Nachfrist</i> rule (CISG Arts. 47, 49, 63, 64)</p> <p>Article 50</p> <p>If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.</p> <p>Article 47</p> <p>(1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations. 172</p> <p>(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</p>

	right he may have to claim damages for delay in performance.
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IIX. WARRANTIES

The UCC and CISG both presume that the seller must tender the goods in conformity with the contract. Although these provisions are *in essence* parallel, the terminology used is different. The UCC covers conformity of goods under the theory of warranties. The theory of warranties is typical to U.S. contract law, it is rooted in traditional contract and tort law. The UCC provisions governing conformity of goods reflect this tradition. Within this framework, modification or exclusion of warranties is also regulated and special procedures for effectuating any modification or exclusion has been set forth in the UCC.

The CISG does not adopt the theory of warranties, as such, there is no explicit warranty clause. Nevertheless, the CISG has a clause governing the conformity of goods; although the term “warranty” has not been expressly used, there is an implied warranty clause requiring goods to conform with certain quality standards. However, under the CISG, there is no specific procedure for exclusion or modification; parties may agree otherwise without a necessity to follow a specific procedure, including any writing requirement.

It should be noted that U.S. parties frequently include the UCC language of warranties when drafting contracts ultimately governed by the CISG. For a case discussing the CISG in relation to warranties, *see*: [U.S. Nonwovens Corp. v. Pack Line Corp. and Nuspark Engineering, Inc. \(2015\)](#).

On another note, the matter of privity concerning warranties is covered in the UCC; the seller will be liable towards third parties that are not a party to the sales contract, but nonetheless are beneficiaries. However, the matter of extending rights, including warranties to third parties is not governed by the CISG; as per CISG Art. 4, the CISG governs relations between the seller and buyer only. *See* CISG case law on privity and pre-emption (or not) of state law: [Caterpillar, Inc.](#)

[and Caterpillar Mexico, S.A. v. Usinor Industeel, Usinor Industeel \(U.S.A.\), Inc. and Leeco Steel Products, Inc. \(2005\).](#)

UCC	CISG
<p>§ 2-314. Implied Warranty: Merchantability; Usage of Trade</p> <p>Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.</p> <p>§ 2-315. Implied Warranty: Fitness for Particular Purpose.</p> <p>Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.</p> <p><i>§ 2-318. Third Party Beneficiaries of Warranties Express or Implied.</i></p> <p>[(States to select one alternative.)]</p> <p>Alternative A</p> <p><i>A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may</i></p>	<p>Article 35</p> <p>(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.</p> <p>(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:</p> <p>(a) are fit for the purposes for which goods of the same description would ordinarily be used;</p> <p>(b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement.</p> <p>(c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;</p> <p>(d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.</p>

<p><i>not exclude or limit the operation of this section.</i></p> <p>Alternative B</p> <p><i>A seller's warranty whether express or implied extends to any natural person who may reasonably be expected to use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.</i></p> <p>Alternative C</p> <p><i>A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the <u>good sand</u> who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends.</i></p>	
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IX. EXCUSE FROM PERFORMANCE (FORCE MAJEURE)

The UCC and CISG both have provisions excusing performance in extenuating circumstances. However, in principle, change of economic circumstances/ market conditions on its own is not considered as an extenuating circumstance.

A difference between the UCC and CISG is that the UCC allows only for the seller to excuse itself from performance, while the CISG covers both the seller and the buyer. There is also a difference with respect to damages. The UCC is more lenient, because when the seller is excused from performance, the seller is relieved from all liability. On the other hand, as per the CISG, if the non-performing party is excused, the non-performing party is not liable for monetary damages; nevertheless, the non-performing party may still be subject to other remedies (CISG Art. 79(5)), such as reduction of price or avoidance.

Another difference to note is conceptual. The UCC adopts the approach of “impracticability”; performance must be impracticable to be excused. On the other hand, as per the CISG, an unforeseeable “impediment” is required to excuse a party from performance. Scholars have suggested that grounds for excuse are broader under the UCC, as opposed to the CISG. In other words, “impracticability” is a vague and encompassing concept as opposed to “impediment”. However, in practice the difference does not seem to be apparent, because U.S. courts have interpreted CISG Art. 79 in light of UCC cases stating that the provisions are analogous. For example, *see*: [Raw Materials Inc. v. Manfred Forberich GmbH & Co. \(2004\)](#). Also *see* the following case where the arbitral tribunal and court applied UCC § 2-614 to hold that the impediment could have reasonably been avoided by substitute performance and therefore, thenon-performing party was not excused because all the requirements of CISG Art. 79 had not been met: [Macromex Srl. v. Globex International \(2008\)](#).

UCC	CISG
<p>§ 2-615</p> <p>Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:</p> <ul style="list-style-type: none"> • (a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid. • (b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he 	<p>Article 79</p> <p>(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.</p> <p>(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:</p> <p>(a) he is exempt under the preceding paragraph; and</p> <p>(b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.</p>

<p>must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.</p> <ul style="list-style-type: none"> (c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer. 	<p>(3) The exemption provided by this article has effect for the period during which the impediment exists.</p> <p>(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.</p> <p>(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.</p>
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X. COMMERCIAL TRADE TERMS (*INCOTERMS*)

The UCC defines commercial shipment and delivery terms such as F.O.B., F.A.S. and C.I.F.; while the CISG does not have any provision defining such terms. As such, INCOTERMS® is the source of definitions for commercial delivery terms in international sales contracts. U.S. courts have held that INCOTERMS® has been incorporated into CISG as well-known international practice (CISG Art. 9(2)). Thus, in international sales contracts, INCOTERMS®, *rather than UCC*, is used to interpret the meanings of commercial shipment and delivery terms. *See case law: [China North Chemical Industries Corporation v. Beston Chemical Corporation \(2006\)](#); [BP International, Ltd. and BP Exploration & Oil, Inc. v. Empresa Estatal Petroleos de Ecuador, et al., Empresa Estatal Petroleos de Ecuador and Saybolt, Inc. \(2003\)](#)*

UCC	CISG
<p><i>Examples:</i></p> <p>§ 2-319. F.O.B. and F.A.S.</p> <p>§ 2-320. C.I.F. and C.F.</p>	<p>-</p> <p><i>[see ICC INCOTERMS®]</i></p>

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