





Copyright © 2010 by the University of
Cambridge
All rights reserved.
No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without the prior written permission of the Cambridge University Press.



Basic Offer and Acceptance

Chapter II, Part II CISG, Arts. 14-24: Formation of contracts

Key provision on offer and acceptance:

Art. 14 governs the offer

Art. 18. governs the acceptance of an offer



Art. 14 - Basic Elements of an Offer

Art. 14: Three basic elements of an offer

1. Offer must be addresses to one or more *specific* persons
2. Offer must *indicate the offeror's intent to be bound*
3. Offer must be *sufficiently definite*

indicating the *goods* to be sold

+

expressly or implicitly fixing a price or
make a provision for determining both
the *quantity* and the *price*

Art. 14 and Art. 55

Art. 55 - default or a gap filling rule

Attempts to reconcile Art. 14 and Art. 55

Traditional approach

The parties may opt out of Chapter II, Part II of CISG under Art. 6

Alternative approach

A Contracting state can make an Art. 92 reservation

Art. 55 = parties may not provide a reference to a price; there must be means to gap fill the price

Even when Art. 14 applies, it may not be necessary to agree on a price and use Art. 55 to provide for a price on a later point



Art. 18 - Rules of Offer Acceptance

Art. 18.I: A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance.

Silence or inactivity does not in itself amount to acceptance

Unless coupled with specific circumstances

Changes to the offer result in a counter-offer (Art. 19):

[...] additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

Contract is concluded when the acceptance is effective

- Limitation on the amount of the fee that can be levied on the issuer. 10/10/11
- An offeror to be named. 10/10/11
- An offeror to be named in the offer document. 10/10/11
- Change to be offer proceeds to be used for the benefit of the issuer. 10/10/11
- An offeror to be named in a different than issuer. 10/10/11
- The issuer to be named in the offer document. 10/10/11

Additional provisions to be considered



Communication are generally effective when they have reached the recipients

See e.g., Arts. 15.1 and 18.1

An offer can be revoked

See Arts. 16.1. and 16.2

An offer can be rejected (counter-offer also serves as a rejection)

See Art. 17

Change to an offer amounts to a counter-offer (also known as the battle of the forms)

See Art. 19

An offer can be withdrawn, which is different than revocation

See Arts. 15 and 22

Unique circumstances involving late acceptance

See Art. 21



© 2010 Pearson Education, Inc.
All rights reserved.
This publication is protected by copyright.
Any unauthorized distribution or reproduction is illegal.



Basic Offer and Acceptance