





Seller's Obligation to Deliver Conforming Goods

Art. 35

Art. 35.1 → Goods must conform to the *express* or "*factually*" *implied* terms of the contract

- Quantity, quality, and description as agreed
- Contained or packaged as agreed

Art. 35.2 → Only applies absent contrary agreement

Art. 35.2 (a)-(d) = default terms implied by law that apply unless parties agree otherwise

Art. 35.3 → Exceptions only to the Art. 35.2 *only*

Art. 35.2 (a)-(d) do not apply to the extent buyer "*knew or could not have been unaware*" of lack of conformity at the time of contract conclusion

Art. 35.2

Obligations implied in every contract, unless the parties agree otherwise



Art. 35.2 (a) - for "ordinary" purpose

Art. 35.2 (b) - for certain "particular" purpose

Art. 35.2 (c) - consistent with sample or model

Art. 35.2 (d) - properly packaged

Ordinary purpose

[...] *the purposes for which goods of the same description would ordinarily be used*

No obligations for special or unique regulations in buyer's country



Exceptions under the *New Zealand Mussels* case

What sort of quality is required?



Rijn Blend decision:

- Follows Art. 7.2 CISG
- Required "reasonable" quality under the circumstances
- Referenced the *principle of reasonableness* as a general principle of the CISG

Particular purpose

Art. 35.2 (b) - Particular purpose only applies if:

- Expressly or implied made known to the seller
- At time of conclusion of the contract
- Burden of proof is on the buyer

Art. 35.2 (b) - Seller's defense:

- Circumstances show no reasonable reliance on seller's skill and judgment
- Burden of proof is on the seller

Art 35.2 (b) two part test



1. Did the buyer make it expressly or impliedly known to the seller?
2. Did the buyer rely on the seller's skill and judgment?

Samples, models and packaging

Art. 35.2 (c): goods must comply with any sample or model

- If express or implied in fact promise, obligation may also arise under Art. 35.1
- Crucial if all implied in law obligations are disclaimed

Art. 35.2 (d): goods must be contained or packaged adequately

- Often an issue under Art. 36.2
- Actual terms may be addressed as well

Art. 35.3

Typically applies when buyer has the opportunity to inspect the goods *before* conclusion of the contract

Operates as an exception to Art.35.2:

Seller will not be liable under Art. 35.2 if buyer "*knew or could not have been unaware*"

It has no effect on seller's obligations under Art. 35.1



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