







## Context of the "battle"

Basic context ——— Use of the pre-printed "forms" during negotiations

Other contexts — Handwritten contract or a context without forms

# Art. 19 CISG

Art. 19.1 ———— Purported acceptance that differs from offer is a counter offer (not an acceptance)

**Art. 19.2** Except if difference is not material If not, the offer is deemed accepted and modified

**Art. 19.3** — List of "material" issues Everything that matters is material

Art. 19 provides "mirror image" rule as to material terms

A party performs in response to a counter-offer, irrespective of conflicting terms

"Last shot" rule

The rule treats performance as acceptance under Art. 18.1

Performance = acceptance of the last open counter - offer in its entirety

Formalistic application of the statutory language

## Knock out rule

Knock out any terms on which the parties differ (the boilerplate terms)

Contract = terms on which the parties agreed + default rules

## CISG Advisory Council Opinions

#### CISG AC Opinion no. 13:

- Addresses a number of issues raised by Art. 19 and interaction with Art. 18
- Includes a discussion of potential application of both last shot and knock out rule

### **CISG AC Opinions:**

- Strongly persuasive as evidence of general principles (Art. 7.2)
- Broad use promotes global uniformity (Art. 7.1)

