Battle of Forms under the CISG
Context of the "battle" and Art. 19 CISG
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)
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