

Article 60

The buyer's obligation to take delivery consists:

- (a) In doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
- (b) In taking over the goods.

INTRODUCTION

1. Article 60 defines the components of the buyer's obligation to take delivery of the goods,¹ one of the two basic obligations of the buyer² set forth in article 53.³ The obligation to take delivery involves the two elements described in the provision.

DUTY TO COOPERATE

2. Article 60 (a) imposes on the buyer a duty to cooperate: the buyer must do "all the acts which could reasonably be expected of him in order to enable the seller to make delivery". The acts of cooperation which could reasonably be expected of the buyer are often defined in the contract. Price-delivery terms used by the parties to the sale play a key role in this regard. Acts of cooperation can take a variety of forms: the preliminary examination of the goods by the buyer prior to delivery and the signing of a qualification certificate;⁴ the obtaining of the import licence⁵ and, more rarely, the export licence;⁶ the conclusion of the contract of carriage or notification of the name of the vessel on board which the goods are to be delivered;⁷ the obligation to give notice to the seller within a reasonable period in connection with deliveries to be made at the buyer's request⁸ or the obligation of a contracting party bound by a purchase obligation to place orders required under the contract.⁹ If the place of delivery is the buyer's place of business, the buyer must ensure that the seller has access to those premises. If the seller is required to, for example, install equipment, the site must be prepared for that purpose.¹⁰

3. It is important to differentiate between the duty to cooperate within the meaning of article 60 (a) and the buyer's other, subsidiary obligations, since only a breach of the former can be penalized by avoidance of the contract after an additional period of time has elapsed without performance (article 64 (1) (b)).¹¹

4. The question whether the duties of the buyer come within the scope of the acts referred to in article 60 (a) is the subject of debate especially in connection with the buyer's obligation to provide plans, documents or data necessary for the manufacture of the goods. According to one legal view, such an obligation cannot be linked to article 60 because it is too far removed from the obligation to take delivery of the goods, while another view holds that article 60 is applicable. That judicial position supporting the application of article 60

was referred to in an American court decision.¹² Doubts also arise in connection with the buyer's obligation to specify the form, measurement or other features of the goods, which one view would place outside the sphere of article 60 (a), primarily for the reason that the seller could, in the event of the buyer's failure, make the specification itself (article 65).¹³

5. The buyer's duty to cooperate is limited to acts "which could reasonably be expected of him in order to enable the seller to make delivery". It has been held, in connection with a re-export prohibition involving a third country, that it was not for the buyer to ensure the absence of delivery restrictions but rather for the seller to inform the buyer of such limitations.¹⁴

BUYER'S DUTY TO TAKE OVER THE GOODS

6. Article 60 (b) sets out the second element of the buyer's obligation to take delivery, namely the duty to take over the goods. As noted in several court decisions, taking delivery within the meaning of article 60 (b) is the physical handing over of the goods.¹⁵ The place where the goods are to be taken over, which is not specified in article 60 (b), and the takeover arrangements depend on the procedures for delivery agreed on by the parties or, in their absence, on the rules set forth in article 31 (a), (b) and (c).¹⁶ For example, when the obligation to deliver consists in placing the goods at the disposal of the buyer at the seller's place of business (article 31 (c)), the buyer must either go to that place in order to remove the goods or have them removed by a third party of its own choice.

7. Taking delivery applies not only to the goods, but also to the documents which the seller has to hand over in accordance with articles 30 and 34.¹⁷

8. Taking delivery of the goods or documents does not imply their approval by the buyer.¹⁸ In other words, taking delivery does not affect the buyer's right to give notice of a lack of conformity in the goods or documents (article 39 (1)) or to resort to the remedies available to the buyer in the event of late delivery or delivery at an unsuitable place.

RIGHT TO REJECT THE GOODS

9. Article 60 does not specify in which situations the buyer is entitled to reject the goods. Other articles of the Convention provide for two specific cases. Where the seller delivers

the goods before the date fixed, the buyer may refuse to take delivery (article 52 (1)), and where the seller delivers a quantity of goods greater than that provided for in the contract (article 52 (2)), the buyer may refuse to take delivery of the excess quantity. It is almost unanimously accepted that the buyer has the right to reject the goods if the seller commits a fundamental breach of contract (article 25), which entitles the buyer to declare the contract avoided (article 49 (1) (a)) or to demand delivery of substitute goods (article 46 (2)). Similarly, the buyer also has a right to avoid (and thus a right to reject delivery) if the seller fails to deliver within an additional period of time fixed in accordance with article 47

(see article 49 (1) (b)). A much debated question is whether the buyer is also entitled to reject the goods if the breach committed by the seller is not a fundamental breach. According to the predominant view, the buyer is, in that event, obliged to take delivery of the goods and one court decision is often cited in support of this position.¹⁹

10. If the buyer intends to reject the goods, the buyer is required to take reasonable steps to preserve them and may even be obliged to take possession of the goods for this purpose, but will be entitled to reimbursement for the expenses of preservation (article 86).²⁰

Notes

¹ Polimeles Protodikio Athinon, Greece, 2009, English abstract available on the Internet at www.cisg.law.pace.edu (the court saw in CISG article 60 an important innovation in comparison with the Greek Civil Code).

² Arbitration Court attached to the Bulgarian Chamber of Commerce and Industry, Bulgaria, 12 February 1998, *Praktika Bălgarska tărgovsko-promishlena palata*, 1998-1999, No. 3 [12], No. 5 [18], available in English and German on the Internet at www.cisg.law.pace.edu.

³ See the Digest for article 53.

⁴ China International Economic and Trade Arbitration Commission, People's Republic of China, 29 September 2000, available in English on the Internet at www.cisg.law.pace.edu (the breach of article 60 was asserted solely by the seller without any ruling by the arbitration tribunal on that point); International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry, Ukraine, 8 September 2000, available in English on the Internet at www.cisg.law.pace.edu.

⁵ See, for example, in connection with a CIP clause (Incoterms 1990), International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 24 January 2002, available in English on the Internet at www.cisg.law.pace.edu.

⁶ See, for example, EXW, Incoterms.

⁷ See, for example, FOB and FCA, Incoterms; CLOUT case No. 987 [China International Economic and Trade Arbitration Commission, People's Republic of China, 22 March 2001] (a buyer who, under an FOB sale, fails to book shipping space and does not notify the seller of the name of the vessel, the place of loading or the time of delivery to be observed is in breach of CISG article 60); CLOUT case No. 163 [Választottbíróóság csatolták a Magyar Kereskedelmi és Iparkamara, Hungary, 10 December 1996] (FOB sale: "taking over the goods" means taking over the goods as provided for in the Incoterms); CLOUT case No. 680 [China International Economic and Trade Arbitration Commission, People's Republic of China, 8 March 1996], *Zhōngguó guójì jīngjì mào yì zhōngcái cáijūé shū xuǎnbiān*, 1996, 957 (FOB sale).

⁸ CLOUT case No. 579 [U.S. District Court, Southern District of New York, United States, 10 May 2002], 201 F. Supp. 2d 236 (*Geneva Pharmaceuticals Technology Corp. v. Barr Laboratories, Inc. et al.*), available in English on the Internet at www.cisg.law.pace.edu.

⁹ See CLOUT case No. 591 [Oberlandesgericht Düsseldorf, Germany, 28 May 2004], *Internationales Handelsrecht*, 2004, 203. For a contrary position, Oberlandesgericht Brandenburg Germany, 18 November 2008, *Internationales Handelsrecht*, 2009, 105, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu, according to which the placing of orders by the buyer to attain the quantities fixed by the contract could not be linked to article 60 and the requirements for application of article 64 (1) (b) were thus not met.

¹⁰ CLOUT case No. 732 [Audiencia Provincial de Palencia, Spain, 26 September 2005], in connection with the installation of a printing machine whose operating defects had been attributed by the seller to the poor condition of the factory, the buyer was considered to have fulfilled its obligation under article 60).

¹¹ See the Digest for article 64.

¹² CLOUT case No. 579 [U.S. District Court, Southern District of New York, United States, 10 May 2002], 201 F. Supp. 2d 236, available in English on the Internet at www.cisg.law.pace.edu (preparatory measures such as the furnishing of plans or data are also within the scope of the cooperation required of the buyer since they ultimately serve to enable the seller to make delivery).

¹³ See the Digest for article 65.

¹⁴ CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996], *Zeitschrift für Rechtsvergleichung (ZfRV)*, 1996, 248 (when giving grounds for this interpretation, the court did not, however, mention article 60).

¹⁵ Oberlandesgericht Brandenburg, Germany, 18 November 2008, *Internationales Handelsrecht*, 2009, 105, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 721 [Oberlandesgericht Karlsruhe, Germany, 8 February 2006], *Internationales Handelsrecht*, 2007, 106; CLOUT case No. 885 [Tribunal fédéral, Switzerland, 13 November 2003], *Schweizerische Zeitschrift für internationales und europäisches Recht*, 2005, 116; Landgericht Saarbrücken, Germany, 2 July 2002, *Internationales Handelsrecht*, 2003, 27, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 251 [Handelsgericht des Kantons Zürich, Switzerland, 30 November 1998], *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1999, 185; CLOUT case No. 123 [Bundesgerichtshof, Germany, 8 March 1995], *Entscheidungssammlung des Bundesgerichtshofes in Zivilsachen (BGHZ)*, 129, 75.

¹⁶ CLOUT case No. 47 [Landgericht Aachen, Germany, 14 May 1993], *Recht der Internationalen Wirtschaft*, 1993, 760 (see full text of the decision).

¹⁷ CLOUT case No. 251 [Handelsgericht des Kantons Zürich, 30 November 1998], *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1999, 185.

¹⁸ CLOUT case No. 892 [Kantonsgericht Schaffhausen, Switzerland, 27 January 2004], *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 2005, 122.

¹⁹ CLOUT case No. 79 [Oberlandesgericht Frankfurt a.M., Germany, 18 January 1994], *Neue Juristische Wochenschrift*, 1994, 1013 (see full text of the decision) (in accordance with the Vienna Convention, the buyer is expected to agree to take delivery of non-conforming goods and to resort to remedies other than avoidance provided that the non-conformity does not constitute a fundamental breach).

²⁰ See the Digest for article 86.