

Article 17

[Additions or modifications to the offer]

(1) A reply to an offer which purports to be an acceptance containing additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but which contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance unless the offeror objects to the discrepancy without undue delay. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(3) Additional or different terms relating, *inter alia*, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially, unless the offeree by virtue of the offer or the particular circumstances of the case has reason to believe they are acceptable to the offeror.

PRIOR UNIFORM LAW

ULF, article 7.

Commentary

General rule, paragraph (1)

1. Article 17 (1) states that a purported acceptance which adds to, limits or otherwise modifies the offer to which it is directed is a rejection of the offer and constitutes a counter-offer.

2. This provision reflects traditional theory that contractual obligations arise out of expressions of mutual agreement. Accordingly, an acceptance must comply exactly with the offer. Should the purported acceptance not agree completely with the offer, there is no acceptance but the making of a counter-offer which requires acceptance by the other party for the formation of a contract.

3. However, the acceptance need not use the exact same words as used in the offer so long as the differences in the wording used in the acceptance would not change the obligations of the parties.

4. Even if the reply makes inquiries or suggests the possibility of additional terms, it may be that the reply does not purport to be an acceptance under article 17 (1). The reply may be an independent communication intended to explore the willingness of the offeror to accept different terms while leaving open the possibility of later acceptance of the offer.

5. This point is of special importance in the light of article 15 which provides that "an offer, even if it is irrevocable, is terminated when a rejection reaches the offeror."

6. Although the explanation for the rule in article 17 (1) lies in a widely held view of the nature of a contract, the rule also reflects the reality of the common factual situation in which the offeree is in general agreement with the terms of the offer but wishes to negotiate in regard to certain aspects of it. There are, however, other common factual situations in which the traditional rule, as expressed in article 17 (1), does not give desirable results. Article 17 (2) creates an exception to article 17 (1) in regard to one of these situations.

Non-material alterations, paragraphs (2) and (3)

7. Article 17 (2) contains rules dealing with the situation where a reply to an offer is expressed and intended as an acceptance but contains additional or different terms which do not materially alter the terms of the offer. Article 17 (3) provides that certain terms are normally to be considered as material.

8. In most cases in which a reply purports to be an acceptance the offeree does not consider the additional or different terms to be material alterations of the offer. This is particularly the case where the parties do not enter into formal negotiations but communicate with one another by means of an exchange of telegrams, telex or the like or by the exchange of an order form and an acceptance form.

9. If the additional or different terms do not in fact materially alter the terms of the offer, the reply constitutes an acceptance and, according to article 21, a contract is concluded on its receipt. In such a case, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

10. Even if the additional or different terms do not materially alter the terms of the offer, the offeror may object to them. In such a case the reply of the offeree is to be considered as a rejection of the offer rather than as an acceptance.

11. Additional or different terms which are of routine significance to the personnel engaged in ordering or selling the goods may constitute material alterations of the offer from a legal point of view. Article 17 (3), by way of example, sets out a non-exhaustive list of provisions in respect of which any additional or different term in the purported acceptance is considered to be material. Additional or different terms in respect of such a provision would not, however, be considered to be material alterations if the "offeree by virtue of the offer or the particular circumstances of the case has reason to believe they are acceptable to the offeror."

12. For example, an offeree might reply to an offer stating that the offeror has 50 tractors available for sale at a certain price by sending a telegram which accepts the offer but adds "ship immediately." Or a seller who receives an order for a certain quantity of a particular animal fibre might accept by use of a form containing a clause calling for arbitration by the relevant international trade association.

13. Article 17 (3) indicates that the additional or different terms contained in these two replies would constitute material alterations since the term "ship immediately" would change the time of delivery¹ and the arbitration clause is in respect of the settlement of disputes.

14. In both of these cases it may be that the offeree would have, by virtue of the offer or the particular circumstances of the case, reason to believe that the additional or different terms he proposed are acceptable to the offeror. If that was the case, the terms would not constitute a material alteration.

15. If the reply contains a material alteration, the reply would not constitute an acceptance but would constitute a counter-offer. If the original offeror responds to this reply by shipping the goods or paying the price, a contract may eventually be formed by notice to the original offeree of the shipment or payment. In such a case the terms of the contract would be those of the counter-offer, including the additional or different term.

¹ In the absence of the "ship immediately" term in the contract, delivery would have to be effected "within a reasonable time after the conclusion of the contract" by virtue of article 31 (c).