

Commentary

1. Article 51 provides a means for the determination of the price when a contract has been validly concluded but the contract does not state a price or expressly or impliedly make provision for its determination.

2. Article 12 (1) provides that a proposal for concluding a contract is sufficiently definite so as to constitute an offer if, *inter alia*, "it . . . expressly or implicitly fixes or makes provision for determining . . . the price". Therefore, article 51 has effect only if one of the parties has his place of business in a Contracting State which has ratified or accepted this Convention as to Part III (Sales of goods) but not as to Part II (Formation of the contract) and if the law of that State provides that a contract can be validly concluded even though it does not expressly or implicitly fix or make provision for determining the price.

Time of calculation of price

3. The price to be determined by the application of article 51 is that charged at the time of the conclusion of the contract. It is the price which would presumably have been agreed upon by the parties at the time of contracting if they had agreed upon a price at that time. Moreover, if a contract had been validly concluded even without specification of the price, the article recognizes that the seller should not later be able to claim that the price was that prevailing at the time of the delivery of the goods, if that price was higher than the one the seller was charging at the time of the conclusion of the contract.

Article 51

[Calculation of the price]

If a contract has been validly concluded but does not state the price or expressly or impliedly make provision for the determination of the price of the goods, the buyer must pay the price generally charged by the seller at the time of the conclusion of the contract. If no such price is ascertainable, the buyer must pay the price generally prevailing at the aforesaid time for such goods sold under comparable circumstances.

PRIOR UNIFORM LAW

ULIS, article 57.
