

CHAPTER 2

Formation

Section 1 : General Provisions

ARTICLE 2:101: CONDITIONS FOR THE CONCLUSION OF A CONTRACT

- (1) A contract is concluded if:
 - (a) the parties intend to be legally bound, and
 - (b) they reach a sufficient agreement without any further requirement.
- (2) A contract need not be concluded or evidenced in writing nor is it subject to any other requirement as to form. The contract may be proved by any means, including witnesses.

ARTICLE 2:102: INTENTION

The intention of a party to be legally bound by contract is to be determined from the party's statements or conduct as they were reasonably understood by the other party.

ARTICLE 2:103: SUFFICIENT AGREEMENT

- (1) There is sufficient agreement if the terms:
 - (a) have been sufficiently defined by the parties so that the contract can be enforced, or
 - (b) can be determined under these Principles.
- (2) However, if one of the parties refuses to conclude a contract unless the parties have agreed on some specific matter, there is no contract unless agreement on that matter has been reached.

ARTICLE 2:104: TERMS NOT INDIVIDUALLY NEGOTIATED

- (1) Contract terms which have not been individually negotiated may be invoked against a party which did not know of them only if the party invoking them took reasonable steps to bring them to the other party's attention before or when the contract was concluded.
- (2) Terms are not brought appropriately to a party's attention by a mere reference to them in a contract document, even if that party signs the document.

ARTICLE 2:105: MERGER CLAUSE

- (1) If a written contract contains an individually negotiated clause stating that the writing embodies all the terms of the contract (a merger clause), any prior statements, undertakings or agreements which are not embodied in the writing do not form part of the contract.
- (2) If the merger clause is not individually negotiated it will only establish a presumption that the parties intended that their prior statements, undertakings or agreements were not to form part of the contract. This rule may not be excluded or restricted.
- (3) The parties' prior statements may be used to interpret the contract. This rule may not be excluded or restricted except by an individually negotiated clause.
- (4) A party may by its statements or conduct be precluded from asserting a merger clause to the extent that the other party has reasonably relied on them.

ARTICLE 2:106: WRITTEN MODIFICATION ONLY

- (1) A clause in a written contract requiring any modification or ending by agreement to be made in writing establishes only a presumption that an agreement to modify or end the contract is not intended to be legally binding unless it is in writing.
- (2) A party may by its statements or conduct be precluded from asserting such a clause to the extent that the other party has reasonably relied on them.

ARTICLE 2:107: PROMISES BINDING WITHOUT ACCEPTANCE

A promise which is intended to be legally binding without acceptance is binding.

Section 2: Offer and Acceptance

ARTICLE 2:201: OFFER

- (1) A proposal amounts to an offer if:
 - (a) it is intended to result in a contract if the other party accepts it, and
 - (b) it contains sufficiently definite terms to form a contract.
- (2) An offer may be made to one or more specific persons or to the public.
- (3) A proposal to supply goods or services at stated prices made by a professional supplier in a public advertisement or a catalogue, or by a display of goods, is presumed to be an offer to sell or supply at that price until the stock of goods, or the supplier's capacity to supply the service, is exhausted.

ARTICLE 2:202: REVOCATION OF AN OFFER

- (1) An offer may be revoked if the revocation reaches the offeree before it has dispatched its acceptance or, in cases of acceptance by conduct, before the contract has been concluded under Article 2:205(2) or (3).
- (2) An offer made to the public can be revoked by the same means as were used to make the offer.
- (3) However, a revocation of an offer is ineffective if:
 - (a) the offer indicates that it is irrevocable; or
 - (b) it states a fixed time for its acceptance; or
 - (c) it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

ARTICLE 2:203: REJECTION

When a rejection of an offer reaches the offeror, the offer lapses.

ARTICLE 2:204: ACCEPTANCE

- (1) Any form of statement or conduct by the offeree is an acceptance if it indicates assent to the offer.
- (2) Silence or inactivity does not in itself amount to acceptance.

ARTICLE 2:205: TIME OF CONCLUSION OF THE CONTRACT

- (1) If an acceptance has been dispatched by the offeree the contract is concluded when the acceptance reaches the offeror.
- (2) In the case of acceptance by conduct, the contract is concluded when notice of the conduct reaches the offeror.
- (3) If by virtue of the offer, of practices which the parties have established between themselves, or of a usage, the offeree may accept the offer by performing an act without notice to the offeror, the contract is concluded when the performance of the act begins.

ARTICLE 2:206: TIME LIMIT FOR ACCEPTANCE

- (1) In order to be effective, acceptance of an offer must reach the offeror within the time fixed by it.
- (2) If no time has been fixed by the offeror acceptance must reach it within a reasonable time.
- (3) In the case of an acceptance by an act of performance under Article 2:205(3), that act must be performed within the time for acceptance fixed by the offeror or, if no such time is fixed, within a reasonable time.

ARTICLE 2:207: LATE ACCEPTANCE

- (1) A late acceptance is nonetheless effective as an acceptance if without delay the offeror informs the offeree that he treats it as such.
- (2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror informs the offeree that it considers its offer as having lapsed.

CHAPTER 1

General Provisions

Section 1: Scope of the Principles

ARTICLE 1:101: APPLICATION OF THE PRINCIPLES

- (1) These Principles are intended to be applied as general rules of contract law in the European Union.
- (2) These Principles will apply when the parties have agreed to incorporate them into their contract or that their contract is to be governed by them.
- (3) These Principles may be applied when the parties:
 - (a) have agreed that their contract is to be governed by "general principles of law", the "lex mercatoria" or the like; or
 - (b) have not chosen any system or rules of law to govern their contract.
- (4) These Principles may provide a solution to the issue raised where the system or rules of law applicable do not do so.

ARTICLE 1:102: FREEDOM OF CONTRACT

- (1) Parties are free to enter into a contract and to determine its contents, subject to the requirements of good faith and fair dealing, and the mandatory rules established by these Principles.
- (2) The parties may exclude the application of any of the Principles or derogate from or vary their effects, except as otherwise provided by these Principles.

ARTICLE 1:103: MANDATORY LAW

- (1) Where the law otherwise applicable so allows, the parties may choose to have their contract governed by the Principles, with the effect that national mandatory rules are not applicable.
- (2) Effect should nevertheless be given to those mandatory rules of national, supranational and international law which, according to the relevant rules of private international law, are applicable irrespective of the law governing the contract.

ARTICLE 1:104: APPLICATION TO QUESTIONS OF CONSENT

- (1) The existence and validity of the agreement of the parties to adopt or incorporate these Principles shall be determined by these Principles.
- (2) Nevertheless, a party may rely upon the law of the country in which it has its habitual residence to establish that it did not consent if it appears from the circumstances that it would not be reasonable to determine the effect of the party's conduct in accordance with these Principles.

ARTICLE 1:105: USAGES AND PRACTICES

- (1) The parties are bound by any usage to which they have agreed and by any practice they have established between themselves.
- (2) The parties are bound by a usage which would be considered generally applicable by persons in the same situation as the parties, except where the application of such usage would be unreasonable.

ARTICLE 1:106: INTERPRETATION AND SUPPLEMENTATION

- (1) These Principles should be interpreted and developed in accordance with their purposes. In particular, regard should be had to the need to promote good faith and fair dealing, certainty in contractual relationships and uniformity of application.
- (2) Issues within the scope of these Principles but not expressly settled by them are so far as possible to be settled in accordance with the ideas underlying the Principles. Failing this, the legal system applicable by virtue of the rules of private international law is to be applied.

ARTICLE 1:107: APPLICATION OF THE PRINCIPLES BY WAY OF ANALOGY

These Principles apply with appropriate modifications to agreements to modify or end a contract, to unilateral promises and to other statements and conduct indicating intention.

Section 2: General Duties

ARTICLE 1:201: GOOD FAITH AND FAIR DEALING

- (1) Each party must act in accordance with good faith and fair dealing.
- (2) The parties may not exclude or limit this duty.

ARTICLE 1:202: DUTY TO CO-OPERATE

Each party owes to the other a duty to co-operate in order to give full effect to the contract.

Section 3: Terminology and Other Provisions

ARTICLE 1:301: MEANING OF TERMS

In these Principles, except where the context otherwise requires:

- (1) 'act' includes omission;
- (2) 'court' includes arbitral tribunal;
- (3) an 'intentional' act includes an act done recklessly;
- (4) 'non-performance' denotes any failure to perform an obligation under the contract, whether or not excused, and includes delayed performance, defective performance and failure to co-operate in order to give full effect to the contract;
- (5) a matter is 'material' if it is one which a reasonable person in the same situation as one party ought to have known would influence the other party in its decision whether to contract on the proposed terms or to contract at all;
- (6) 'written' statements include communications made by telegram, telex, telefax and electronic mail and other means of communication capable of providing a readable record of the statement on both sides

ARTICLE 1:302: REASONABLENESS

Under these Principles reasonableness is to be judged by what persons acting in good faith and in the same situation as the parties would consider to be reasonable. In particular, in assessing what is reasonable the nature and purpose of the contract, the circumstances of the case and the usages and practices of the trades or professions involved should be taken into account.

ARTICLE 1:303: NOTICE

- (1) Any notice may be given by any means, whether in writing or otherwise, appropriate to the circumstances.
- (2) Subject to paragraphs (4) and (5), any notice becomes effective when it reaches the addressee.
- (3) A notice reaches the addressee when it is delivered to it or to its place of business or mailing address, or, if it does not have a place of business or mailing address, to its habitual residence.
- (4) If one party gives notice to the other because of the other's non-performance or because such non-performance is reasonably anticipated by the first party, and the notice is properly dispatched or given, a delay or inaccuracy in the transmission of the notice or its failure to arrive does not prevent it from having effect. The notice shall have effect from the time at which it would have arrived in normal circumstances.
- (5) A notice has no effect if a withdrawal of it reaches the addressee before or at the same time as the notice.
- (6) In this Article, 'notice' includes the communication of a promise, statement, offer, acceptance, demand, request or other declaration.

ARTICLE 1:304: COMPUTATION OF TIME

- (1) A period of time set by a party in a written document for the addressee to reply or take other action begins to run from the date stated as the date of the document. If no date is shown, the period begins to run from the moment the document reaches the addressee.
- (2) Official holidays and official non-working days occurring during the period are included in calculating the period. However, if the last day of the period is an official holiday or official non-working day at the address of the addressee, or at the place where a prescribed act is to be performed, the period is extended until the first following working day in that place.
- (3) Periods of time expressed in days, weeks, months or years shall begin at 00.00 on the next day and shall end at 24.00 on the last day of the period; but any reply that has to reach the party which set the period must arrive, or any other act which is to be done must be completed, by the normal close of business in the relevant place on the last day of the period.

ARTICLE 1:305: IMPUTED KNOWLEDGE AND INTENTION

If any person who with a party's assent was involved in making a contract, or who was entrusted with performance by a party or performed with its assent:

- (a) knew or foresaw a fact, or ought to have known or foreseen it; or
- (b) acted intentionally or with gross negligence, or not in accordance with good faith and fair dealing,

this knowledge, foresight or behaviour is imputed to the party itself.