

Case 1.

Bernhard, Buyer, is based in Dortmund (Germany). He places an order with Spencer, Seller, who is based in Birmingham (UK) for the delivery of 10 metric tons of stainless steel plates. It is the first time that both companies do business together.

After a couple of additional e-mails aiming at fine-tuning the parameters of the operation, Spencer confirms to Bernhard that the delivery will take place during week 10, at Güterbahnhof Dortmund.

Two months after the delivery, Bernhard discovers that some of the steel plates are heavily defective. Despite a timely notice of non-conformity to Spencer, no remedial action is taken by the seller.

Bernhard decides to initiate legal proceedings against Spencer.

His Counsel draws then his attention to Clause 15 of the seller's General Conditions of sale, which were printed on the back of the commercial invoice which was sent together with the goods. These General Conditions were never discussed between the parties, and their first communication to Bernhard was on the back of the invoice. Clause 15 gives exclusive jurisdiction to the ordinary courts in Birmingham, and under Clause 16, the law applicable to the contract shall be English law. Buyer paid the invoice without reacting.

However, on the basis of the general principles of German law, Bernhard considers that the communication of the General Conditions took place after the conclusion of the contract, so that they cannot be binding on the parties. He decides to take legal action against Spencer before the Courts of Dortmund [art. 7 (1) (a) and (b) Brussels Ia]. Spencer relies on Clause 15 and objects to the jurisdiction of the German courts.

Quid iuris ?

Case 2.

Same basis as before, with the following changes:

Buyer is no longer German but Dutch, and is based in Amsterdam. He sends his order along with his General Conditions of purchase: they provide inter alia for jurisdiction in Amsterdam, with Dutch law being applicable with the exclusion of the CISG.

Seller sends an e-mail to the Buyer, to confirm the operation, along with his own General Conditions of sale, with a jurisdiction clause in favour of the courts in Birmingham and English law applicable.

He then dispatches the goods to the Buyer 10 days later.

No other changes. Buyer sues Seller in front of the Dutch courts in Amsterdam. Seller objects to the jurisdiction of the Dutch Courts.

Case 3.

Same as case 1, with the following changes:

Buyer is again German, and is based in Dortmund. He sends his order along with his General Conditions of purchase: they provide inter alia for jurisdiction in Dortmund, with German law being applicable.

Seller sends an e-mail to the Buyer, to confirm the operation, along with his own General Conditions of sale, with a jurisdiction clause in favour of the courts in Birmingham and English law applicable.

He then dispatches the goods to the Buyer 10 days later.

No other changes. Buyer sues Seller in front of the German Courts in Dortmund. Seller objects to the jurisdiction of the German Courts.