

DISCUSSION PANEL 1 Sales contract concluded through incorporation of standard terms

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Topics to be discussed

Context:

International sales agreement

Contract concluded through an exchange of emails

Issues:

Incorporation of standard terms

Conclusion of the sales contract

Validity and effectiveness of a jurisdiction clause included in standard terms

HYPOTHETICAL

SPANISH SELLER

GERMAN BUYER

Sale of equipments in the context of waste water project in the United Arab Emirates

Following a negotiation by phone, the buyer sent a written order to the seller by email and the seller replayed by email as well

No further correspondence took place after that exchange

The products were then delivered ex works and shipped to the UAE

Purchase order sent by the Buyer

German GmbH

German GmbH, P.O.Box 1111, 12345 Germantown, Germany

Spanish Company, S.L. Street, No. City SPAIN

Your supplier number 30558

Delivery terms: Spanishtown

Payment terms: Before 1 in 3 months Due net

Delivery only between 7 a.m. and 3:15 p.m.

Please deliver to: Warehouse

German Company Street D-12345 Germantown Purchase order

PO number/date 45536824 / 05.Mar.2021 Buyer name

Buyer phone

Buyer e-mail

Confirmation e-mail

E-Mail invoice

Confirmation fax-no

Delivery date: 28.May.2021 receiving

We order herewith solely according to our <u>conditions of purchase</u>. You can find and download them under http://www.germantown-gmbh.com/en/tscs.html.
On request we are pleased to send them to you.

Receiving location: ATTENTION ! Without the reference to the receiving location, the goods cannot be accepted.

Buyer's General Conditions of Purchase

is commenced.

§ 15 Place of performance, place of jurisdiction and applicable law, partial invalidity

- Any changes or amendments to a contract between Supplier and PURCHASER shall only be valid if made in writing. This shall also apply to any deviation from these Terms and Conditions of Purchase and from this written form clause.
- The Place of performance for all obligations and rights under this contractual relationship, unless specified otherwise in the order, shall be the business location of PURCHASER.
- The place of jurisdiction for all litigation resulting from the contractual relationship as well as its creation and its effectiveness is determined by the business location of PURCHASER, the respective conflict of laws provisions not being applicable. However, PURCHASER shall also be entitled to sue the Supplier at the court of his place of business.
- All legal relationships between the Parties shall be ruled exclusively by the law of the country in which the PURCHASER has its principle place of business.
- 5. Only PURCHASER shall be entitled to cede, assign and transfer any or all of its rights and obligations in terms of this Contract to any of its affiliates. If individual provisions of this Contract or the delivery transaction should be or become invalid or impracticable in whole or in part, then the validity of the remaining provisions or the remaining parts of such provisions is unaffected thereby. The invalid or impracticable clause(s) shall be replaced by provisions the legal and commercial effects of which are as close as possible to what the consequences of the invalid and impracticable clause(s) had been had they been valid and practicable.

Order (confirmation) sent back by the Seller



German GmbH. P.O.Box 1111, 12345 Germantown, Germany

Spanish Company, S.L. Street, No. City SPAIN

Your supplier number 3 0 5 5 8

German GmbH

Purchase order

PO number/date **45536824** / 05.Mar.2021 Buyer name

Buyer phone

buyer e-mail

Confirmation e-mail

E-Mail invoice

Confirmation fax-no

Delivery terms: Payment terms: Spanishtown

Before 1 in 3 months Due net

Delivery only between 7 a.m. and 3:15 p.m.

Please deliver to:

Delivery date: 28.May.2021 receiving

-Warehouse -German Company Street -D-12345-Germantown

EX-WORKS

We order herewith solely according to our <u>conditions of purchase</u>. You can find and download them under http://www.german-gmbh.com/en/tscs.html. On request we are pleased to send them to you.

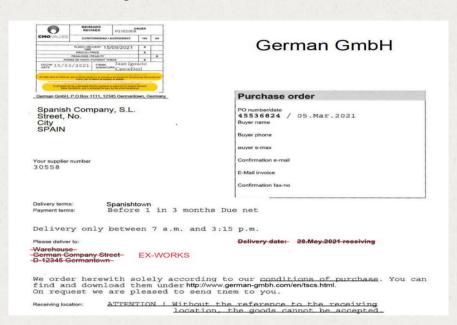
Receiving location:

ATTENTION ! Without the reference to the receiving location, the goods cannot be accepted.



Order (confirmation) sent back by the Seller

In all cases
will be understood
that the customer is aware
of the present
General Sales Conditions,
and is subjected to them
by the order acceptance





DISPUTE BETWEEN THE PARTIES

The German buyer brings a dispute before the German Court competent based on the application of its Conditions of Purchase, claiming multiple defects of the products.

THE FOLLOWING ISSUES ARISES:

- Which of the two standard terms is applicable to the dispute (if any)?
- Does the German Court have jurisdiction over the dispute?



INCORPORATION OF THE THE STANDARD TERMS INTO THE CONTRACT

Both Germany and Spain ratified the CISG

Therefore, the evaluation concerning the conclusion of the contract, the validity of the incorporation of the parties' standard forms, the battle of the forms, etc. shall be made by applying the CISG

INCORPORATION OF THE TERMS (2) Questions:

- Do the Buyer's Conditions apply to the contract: have they been validly incorporated?
- Does a link to a website suffice?
- Do the Seller's Conditions apply to the contract: have they been validly incorporated?
- Does a reference to standard terms included in a "stamp", without any link or attachment suffice?

INCORPORATION OF THE TERMS (3)

Imagining the same situation, but in a context where either:

- English law; or
- German law; or
- Italian law

was applicable, rather than the CISG

Would the answer be different from the one given under the CISG?



JURISDICTION CLAUSE Questions:

Would a specific link to a website also be sufficient under the EU Regulation 1215/2012?

Would Article 7, 1) b) first indent of Reg. 1215/2012 on delivery lead to the jurisdiction of German Courts?

Alternatively, imagining the same situation arising out in a context where an English party was involved, what would be the answer?



Thanks for your kind attention!

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