



International Distribution Institute

# **DISCUSSION PANEL 1**

## **Sales contract concluded through incorporation of standard terms**

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**Heidi Yildiz**, 36 Stone, London

## 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 replied 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: **Delivery date: 28.May.2021 receiving**  
Warehouse  
German Company Street  
D-12345 Germantown

We order herewith solely according to our conditions of purchase. 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.

2nd order for  
\*\*\*\*\*  
Project: 32U-WPS1 - Valves - WTE - Saudi Arabia  
\*\*\*\*\*  
Please note:

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	

## Buyer's General Conditions of Purchase

is commenced.

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

1. 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.
2. 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.
3. 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.
4. 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

	REVISADO REVISED	ORDER P21E0309
	CONFORMIDAD / AGREEMENT	
	YES	NO
PLAZO / DELIVERY TIME	15/09/2021	X
PRECIO / PRICE		X
PENALIDAD / PENALTY		X
FORMA DE PAGO / PAYMENT TERMS		X
FECHA DATE	15/03/2021	
FIRMA SIGNATURE	Juan Ignacio Cancelleri	

En todo caso se entiende que el cliente acepta y se somete a las presentes Condiciones Generales de venta, así como a las condiciones de entrega.

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.

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: **Delivery date:- 28.May.2021-receiving**

~~Warehouse-~~  
~~German Company Street-~~ **EX-WORKS**  
~~D-12345 Germantown-~~

We order herewith solely according to our conditions of purchase. 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.

## 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

## 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

REVISED	ORDER
REVISED	P21E0208
CONFORMIDAD / AGREEMENT	YES NO
PLAZO DE ENTREGA / DELIVERY DATE	15/09/2021 X
PRECIO / PRICE	X
FORMA DE PAGO / PAYMENT TERMS	X
FECHA / DATE	15/03/2021
FIRMA / SIGNATURE	Juan Ignacio Cancellieri

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

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

Your supplier number  
3 0558

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**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

## **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?



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**Thanks for your kind attention!**

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