

# Contracts for the sale of goods

## Legislative framework

1. What domestic legislation and international rules apply to a sale of goods contract in your jurisdiction? Are standard international contractual terms commonly used?

### Domestic legislation

There are no uniform EU rules on contracts for the sale of goods. Rules are set by individual EU member states.

Harmonisation efforts have focused on protecting the weaker party in contractual relations, in particular consumers. Secondary EU legislation in this area has a direct impact on sale of goods. In particular:

- Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (Consumer Sales Directive) requires that professional sellers deliver to consumers goods that are "in conformity with the contract of sale", and grants consumers a choice of remedies for lack of conformity.
- Directive 93/13/EEC on unfair terms in consumer contracts protects consumers in the EU from unfair terms and conditions that may be included in standard sales contracts.
- Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market sets out harmonised rules governing electronic commerce on issues such as transparency, information requirements for online service providers, electronic contracts, and limitations of liability of intermediary service providers.

These directives are minimum harmonisation instruments, that is, they set a minimum set of rules that must be implemented into the national legislation of EU member states. Directive 2011/83/EU on consumer rights sets out rules on consumer information in sales contracts and is a full harmonisation directive (that is, the national legislation of EU member states cannot contain more or less stringent provisions, unless allowed by the Directive itself).

### International rules

The EU is not a party to the UN Convention on Contracts for the International Sale of Goods 1980 (CISG), but EU legislation on consumer sales is directly influenced by the CISG. Most EU member states have ratified the CISG. The CISG is a highly relevant instrument harmonising substantive rules of contract law throughout EU member states.

Each EU member state is a contracting party to the Customs Convention on the International Transport of Goods under Cover of TIR Carnets 1975 (TIR Convention). The EU is a single territory under the TIR Convention. TIR can only be used in the EU for international transport of goods, that is, where the movement either starts or ends in a third country, or the goods move between two or more EU member states via a third country. This situation is regulated by Articles 226 to 228 of Regulation (EU) 952/2013 laying down the Union Customs Code.

The EU is a party to the Convention for the Unification of Certain Rules for International Carriage by Air 1999 (Montreal Convention).

## **Standard contractual terms**

Standard contractual terms are governed by the national laws of EU member states. The international commercial terms developed by the International Chamber of Commerce (Incoterms) are commonly used in the EU.

## **Formation**

**2. What are the essential requirements to create a legally enforceable contract for the sale of goods?**

## **Substantive requirements**

Contract law is governed by the national legislation of each EU member state.

## **Formal requirements**

Contract law is governed by the national legislation of each EU member state.

## **Price and payment**

**3. If price provisions are not agreed by the parties, does local law impose requirements in relation to price (for example, the time, method and place of payment)?**

This issue is governed by the national legislation of each EU member state.

## **Delivery**

**4. If delivery provisions are not agreed by the parties, does local law impose requirements in relation to delivery (the time, method and place of delivery)?**

This issue is governed by the national legislation of each EU member state.

## **Passing of title and risk**

**5. If not agreed by the parties, when does title to the goods pass to the buyer?**

This issue is governed by the national legislation of each EU member state.

**6. Are retention of title clauses enforceable in your jurisdiction? If so, what are the requirements to create a legally enforceable retention of title clause?**

This issue is governed by the national legislation of each EU member state.

**7. If not agreed by the parties, when does risk in relation to the goods pass to the buyer?**

This issue is governed by the national legislation of each EU member state.

## **Enforcement and remedies**

**8. What are the seller's obligations in relation to the description and quality of the goods?**

This issue is governed by the national legislation of each EU member state.

**9. What are the main remedies and rules for losses and damages for breach of a sale of goods contract?**

This issue is governed by the national legislation of each EU member state.

**10. What are the buyer's remedies for breach of a sale of goods contract?**

This issue is governed by the national legislation of each EU member state. Directive 85/374/EEC on liability for defective products (Product Liability Directive) applies to any product marketed in the EU. Compensation for material damage is limited to goods for private use or consumption exceeding EUR500. This Directive sets out a time limit of three years to recover damages and prohibits clauses limiting or excluding the liability of the producer. To obtain compensation, the injured party must prove the damage, the defect and the causal relationship between the defect and damage. Producers can be cleared of liability under certain conditions, notably if they prove any of the following:

- They did not put the product into circulation.
- The defect was due to compliance of the product with mandatory regulations issued by public authorities.
- The state of scientific or technical knowledge when the product was put into circulation could not detect the defect.

#### **11. What are the seller's remedies for non-payment or late payment?**

This issue is governed by the national legislation of each EU member state. Directive 2011/7/EU on combating late payment in commercial transactions applies to all payments made as remuneration for commercial transactions. It requires enterprises to pay their invoices within 60 days, unless they expressly agree otherwise and provided this is not grossly unfair. It also sets out an automatic entitlement to interest for late payment and EUR40 minimum as compensation for recovery costs. These rules are still not entirely implemented in the national legislation of EU member states.

#### **Exclusion of liability**

#### **12. Are exclusion clauses enforceable in your jurisdiction? If so, what are the requirements to create a legally enforceable exclusion clause?**

This issue is governed by the national legislation of each EU member state. The Product Liability Directive ([see Question 10](#)) prohibits clauses limiting or excluding the liability of the producer.

#### **Choice of law**

#### **13. Will local courts recognise a choice of foreign law in a sale of goods contract? Are there any mandatory local rules that apply, despite a choice of foreign law?**

Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I) contains EU-wide rules on conflict of laws and applies to contractual obligations in civil and commercial matters. Article 3 of Rome I provides the principle of the parties' freedom to choose the law governing their contract. A choice of law must be made expressly or clearly demonstrated by the terms of the contract or the circumstances. Parties can select the law applicable to the whole or to parts of the contract. They can also agree to change the governing law of the contract at any time.

The parties' freedom of choice is subject to limitations. Where all other elements relevant to the situation at the time of the choice are in a country other than the country whose law has been chosen, the choice of the parties cannot prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement (*Article 3(3), Rome I*). Additionally, where all other elements relevant to the situation at the time of the choice are in one or more EU member states, the parties' choice of applicable law other than that of a member state cannot prejudice the

application of provisions of EU law, where appropriate as implemented in the member state, which cannot be derogated from by agreement (*Article 3(4), Rome I*).

The parties to a consumer contract can choose the law applicable to the contract, but this choice cannot result in depriving the consumer of the protection afforded to him/her by provisions that cannot be derogated by agreement under the law that, in the absence of choice, would have been applicable (*Article 6(2), Rome I*). Similarly, the choice of law by the parties to an individual employment contract cannot result in depriving the employee of the protection afforded to him/her by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have applied (*Article 8(1), Rome I*).

Article 7(3) of Rome I limits the laws that parties to an insurance contract can choose. A choice of law cannot restrict the application of overriding mandatory provisions of the law of the forum (that is, provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation) (*Article 9, Rome I*).

#### **14. If the parties do not make a choice of law, what rules determine the law applicable to a sale of goods contract?**

If the parties do not make a choice of law, Article 4 of Rome I determines the law applicable to contractual relations. A contract for the sale of goods is governed by the law of the country where the seller has his/her habitual residence. A contract for the provision of services is governed by the law of the country where the service provider has his/her habitual residence. The CISG provides further guidance on this topic.

#### **Choice of jurisdiction**

#### **15. Will local courts recognise a choice of foreign jurisdiction in a sale of goods contract? Are there any mandatory local rules that apply, despite a choice of foreign jurisdiction?**

Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation) applies in civil and commercial matters and facilitates the enforcement of judgments in the EU.

If the parties, regardless of their domicile, have agreed that a court or the courts of an EU member state have jurisdiction to settle any disputes that have arisen or may arise in connection with a particular legal relationship, that court or those courts have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that member state (*Article 25, Recast Brussels Regulation*). The conferred jurisdiction is exclusive unless the parties have agreed otherwise.

An agreement conferring jurisdiction must be any of the following:

- In writing or evidenced in writing.
- In a form that accords with practices that the parties have established between themselves.
- In international trade or commerce, in a form that accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

#### **16. If the parties do not make a choice of jurisdiction, what rules determine the jurisdiction applicable to a sale of goods contract?**

The Recast Brussels Regulation sets out general provisions on determination of the competent jurisdiction. In principle, persons domiciled in one EU member state, regardless of their nationality, must be sued in the courts of that member state (*Article 4, Recast Brussels Regulation*). In matters relating to a contract, a person domiciled in one member state can be sued in another member state, in the courts of the place of performance of the obligation in question (*Article 7(1)(a), Recast Brussels Regulation*). In a sale of goods contract, the place of performance of an obligation is the place in a member state where the goods were delivered or should have been delivered under the contract (*Article 7(1)(b), Recast Brussels Regulation*).

## Arbitration

### 17. Are arbitration clauses commonly included in sales of goods contracts in your jurisdiction?

Parties can include arbitration clauses in sale of goods contracts in the EU. All EU member states are parties to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). The recognition and enforcement of arbitral agreements and awards is governed by the New York Convention.

## Storage of goods

### 18. How is title to goods in storage protected and evidenced? Are warehouse receipts recognised as documents of title in your jurisdiction?

There are no unified rules governing storage of goods in the EU.

### 19. What conditions and formalities must warehouse receipts comply with?

There are no unified rules governing storage of goods in the EU.

### 20. Are other interests over goods in storage recognised?

There are no unified rules governing storage of goods in the EU.

## Reform

### 21. Are there impending developments or proposals for reform of national legislation affecting sale of goods contracts and/or storage of goods in your jurisdiction?

In 2015, the European Commission proposed a maximum harmonisation directive regulating online and other distance sales of tangible goods, which would repeal the Consumer Sales Directive (*see Question 1, Domestic legislation*). The proposal was amended in October 2017 and discussed by the European Parliament in February 2018 and by the Council in June 2018. The legislative process is still ongoing.

## Online resources

EUR-Lex

W <http://eur-lex.europa.eu/homepage.html>

**Description.** EUR-Lex provides access to EU treaties, all EU secondary legislation, international agreements, complementary legislation, and case law.

### **Directorate-General for Justice and Consumers (DG JUST)**

W [https://ec.europa.eu/info/departments/justice-and-consumers\\_en](https://ec.europa.eu/info/departments/justice-and-consumers_en)

**Principal responsibilities.** The website of DG Just provides information on consumer protection.

### **Directorate-General for Taxation and Customs Union (DG Taxud)**

W [https://ec.europa.eu/taxation\\_customs/customs\\_en](https://ec.europa.eu/taxation_customs/customs_en)

**Principal responsibilities.** The website of DG Taxud provides information on customs procedures and customs controls.

### **European External Action Service (EEAS)**

W [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage_en)

**Principal responsibilities.** The website of the EEAS provides information on the EU's sanction policy.

### **Curia**

W <https://curia.europa.eu/jcms>

**Description.** Curia is the official website of the Court of Justice of the European Union and contains all the Court's judgments and relevant documents.