

## A CONCLUSION OF CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

**ABSTRACT:** The international exchange of goods is done through a contract on the international sale of goods. A conclusion of a contract on the international sale of goods is based primarily on the autonomy of the will of the parties, unless that autonomy of will is limited by the compulsory regulations of the states. All sources of law cited in the paper, such as international conventions, autonomous sources of law and even customs and business ethics, can be changed by the disposition of the will, because they are of a dispositive character. The contracting parties most often agree on the application of the United Nations Convention on Contracts for the International Sale of Goods, the so-called Vienna Conventions, except in cases where there are general conditions and standard contracts. The Vienna Convention, which is a compromise of continental, Roman and Anglo-Saxon law, is most often contracted. The offer and its acceptance are necessary for the conclusion of the contract, except for standard and formal contracts.

The offer is a final act, and the acceptance of the offer is a statement of the agreement with the offer. The offer must have essential elements of the contract, but it can also have irrelevant elements. By concluding a contract with the application of INCOTERMS clauses, most irrelevant elements of the contract are regulated.

**Key words:** *The Contract for the International Sale of Goods, the Vienna Convention, an offer for the conclusion of a contract, the acceptance of the offer, a conclusion of a contract.*

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## 1. Introduction

In order to consider the conclusion of a contract on the international sale of goods, it is necessary to indicate the sources of law that regulate this contract. This will be presented through a comparative overview of national legislation and international sources, and within them both offers and acceptance of the offers. These sources of law can be divided into international conventions, autonomous sources of law, customs and business ethics. The main aspect of this article will be directed towards the offer and the conclusion of the contract on the international sale of goods.

The offer for the conclusion of the contract will be presented through the concept of supply, the effect of supply and its effect. The acceptance of the offer will be presented as a whole through an analytical consideration of the notion of acceptance of the offer, withdrawal and revocation of the offer for concluding the contract, time and place of concluding the contract and as a form of international sales contract.

Within the conclusion of the article, the conclusions reached during the study and research of this topic will be summarized. For the elaboration of this article, the methodologies used will be historical method, method of comparative law, comparative-theoretical method and other legal methods used in the analysis of the topics such as this one. Analytical-descriptive and synthetic methods will be used as the basic approach. This application of the methods should enable a systematic presentation of the existing conceptual and empirical knowledge.

## 2. Sources of international trade law

### 2.1. Division of sources of international trade law

Sources of international trade law can be divided into international conventions (so-called *hard law*), autonomous sources (so-called *soft law*), customs and business ethics.

#### *a) international conventions*

The need for unification of the law was imposed very early, with the establishment of the International Institute for the Unification of Private Law in Rome (UNIDROIT 1926). Its significant result was the drafting of the Uniform Hague Law in 1964. The draft law took into account the states

belonging to the civil law legal system, the German legal system, which have their legal basis in the Roman law, as well as in the law of the United States, specifically the Uniform Commercial Code of the USA of 1962.

The efforts of the international community have led to the establishment of the United Nations Commission on International Trade Law (UNCITRAL 1966). After the task was done, the UN General Assembly, with its resolution (General Assembly Resolution 33/93, 1978) made a decision to convene a conference in Vienna. At that conference, the United Nations Convention on the International Sale of Goods was adopted - the so-called **Vienna Convention** (The United Nations Convention on the International Sale of Goods, 1980).

### *b) autonomous sources*

These sources are named autonomous owing to the common characteristic of all autonomous sources because they originate outside the states. These sources are created by economic entities, international organizations, etc. Autonomous international trade law usually signifies formal, standardized contracts and general terms and conditions. Formal contracts and general business conditions represent codified customs that govern certain markets.

United Nations Commission for Europe formed the Economic Commission in 1947. This commission passed a number of formal contracts in international trade. Among others, some of the contracts are the Geneva general conditions and standard form contracts. Typical international sales contracts are intended for the sale of industrial goods, etc. (Geneva general conditions and standard form contracts 1953). Whether they will be applied depends on the autonomy of the will of the contracting parties, i.e. if contracted by the contracting parties.

The International Institute for the Unification of Private Law adopted the UNIDROIT principles of international trade contracts (UPC 1994). In the following period, these principles underwent significant changes and amendments. UNIDROIT principles must be applied if the contracting parties explicitly agree on their application. Their application is also possible when the parties of the contract have not determined the applicable law (Divljak, Marjanski & Fišer Šobot, 2019).

The work of the International Chamber of Commerce, founded in Paris in 1919, also contributed to the codification of legal rules intended for international trade. Namely, the Chamber of Commerce, among other basic activities, has adopted a large number of INCOTERMS clauses to date. The first clauses were passed in 1936, while the last edition of the INCOTERMS

clauses is the one for 2020. These clauses are contracted for the sale of goods and their aim is to facilitate international sales by using certain provisions of the clauses to regulate the issues of importance to the trade.

Along with the autonomous sources of law, the principles of European Contract Law should be noted, which are currently in a draft form, having not entered into force to date. These principles are the result of the European Parliament of the European Union, which adopted two resolutions of 26 June 1989 (A2-157/89), and 25 July 1994 (A3-0329/94) emphasizing the need to adopt the European Civil Code as the most effective method of harmonization in order to establish a single market without borders within the EU. The long-term work of the Commission on European Contract Law has resulted in the Principles of European Contract Law, which are the result of the convergence of different legal systems of the EU countries (PECL). There is no obligation to apply these principles - in order for it to enter into force and to be applied by the EU countries - it is necessary for all EU members to accept the application of these principles.

### *c) Customs*

Customs are defined as a commercial practice that is so widely used that traders expect the contracting parties to act according to that practice. The contracting parties do not have to refer to customs because they are applied as such. However, customs take precedence over dispositive regulations governing a particular matter (Vilus, Carić & Šogorov, 1988).

The uniform law on the conclusion of a contract on the international sale of goods from 1964 defines customs as “a manner of treatment considered by the reasonable persons of the same nature, when in the same situation as the contracting parties, as the principle that should be applied to the conclusion of their contract” (Divljak, Marjanski & Fišer Šobot, 2019).

### *d) Business ethics*

Business ethics are collected customs that are most often codified by national legislations and/or economic organizations. Business ethics can be general, when they refer to all economic branches, and special when they refer to a certain economic branch or trade of one type of goods. If general or special business ethics or other trade and business customs are contrary to the dispositive norms of this Law, the provisions of this Law shall apply, unless

the parties have explicitly agreed on the application of business ethics or other trade and business customs (Law on Contract and Torts, 1978).

### 3. Conclusion of the contract

#### 3.1. *The offer to conclude a contract*

A contract is, by definition, an agreement of the contracting parties, and this presupposes the consent of the will. Concluding contracts in domestic, and particularly in international legal trade of goods is usually a difficult and complex task. In international trade, these difficulties arise because there are different understandings about the legal significance of the offer and acceptance of the offer, the moment of concluding the contract, the deadlines by which the offer is binding and whether it is binding at all. The main obligation of the offeror is to maintain the offer, and the acceptor, on the other hand, to conclude the contract with consent.

Almost all national legislations recognize the difference between an offer that becomes a contract through negotiations and other initiatives that create the possibility of acceptance. When a proposal is reached, the proposal must be specific, detailed and final. The finality of the proposal makes it possible to reach an offer for the contract. It is understood that the offeree may, instead of accepting, declare about the offer, or may submit a counteroffer in order for the original offeror to declare about it. Only when the contracting parties accept the offer in the customary or specially designed manner - the contract is created.

A proposal sent to an indefinite number of persons will be considered only as an invitation to make offers, unless the person making such a proposal clearly indicates otherwise (Vienna Convention 1980).

If we tried to analyse the definition of the offer more comprehensively, we would come to the conclusion that it does not actually contain a personal element of the offer (Vukadinović, 2009). In order for the offer to be accepted, there must be an intention to conclude the contract (*animus contrahendi*) (Divljak, Marjanski & Fišer Šobot, 2019).

Under the general conditions of the UN Economic Commission for Europe (in almost all areas of buying and selling), the case of a *firm offer* is foreseen first, and only then, if the offer is not indicated as firm, it is pointed out that it is not binding. "In the case of a firm offer with an indication of the deadline for acceptance, the contract is considered concluded at the moment when the seller receives the buyer's notice of acceptance of the offer by a

registered letter.” In the event that a firm offer does not provide for a period within which the contract is to be confirmed, it shall be deemed concluded at the time when the seller receives notice of acceptance of the offer in a safe manner within a reasonable time which may not exceed 15 calendar days (Đurović 1986).

### ***3.2. The effect of the offer***

The bid is, by its legal nature, a unilateral declaration of will that binds the offeror. It is a causal statement of will. It reflects the importance of the cause as an economic effect that is to be achieved in economic turnover. A declaration of will establishes a certain legal business. In the case of the subject of our analysis, the acceptance of the declaration of will creates a contract. According to the Vienna Convention, the offer produces legal effect when it reaches the offeree. “It is considered that the offer has reached the offeree if it was communicated to him orally or in another way and delivered to his headquarters or to a postal address, or if he does not have a registered office or a postal address, to his regular residence”(Vienna Convention, 1980).

The acceptance of the offer, therefore, takes effect from the moment the statement of consent reaches the offeror, unless it arrives after the deadline specified in the offer. If the deadline is not determined, and the offer has arrived to the offeree, then it produces effect within a reasonable time, taking into account the circumstances of the business and the speed of the means of communication used by the offeror. An oral offer must be accepted immediately, unless the circumstances indicate otherwise (Vienna Convention, 1980).

### ***3.3. Withdrawal, revocation and acceptance of the offer for concluding the contract***

An offer may be revoked or withdrawn until it begins to produce legal effect. If the offer reaches the offeree, it can be revoked. Comparatively legally observed in the common law system, for example, it is accepted that the offer is, in principle, revoked until the contract is concluded, provided that it reaches the offeree before sending its acceptance.

According to the civil law legal systems (French and Italian) there is a general rule on the offer and revocation according to which only the contract can impose a legal obligation, while the offer cannot be binding. Namely, the offeror creates an offer with a unilateral declaration of will, so he is free to cancel it. The offeror can set a deadline for the offeree to accept it.

The solution accepted in the Vienna Convention on the revocation of the offer represents a compromise between the continental, civil and common law legal systems. According to the Vienna Convention, the offer takes effect from the day it arrives. If the offer states that it is irrevocable, the offer may be withdrawn if the withdrawal arrived to the offeree before or at the same time as the offer (Vienna Convention, 1980).

The revocation of the offer is regulated differently in different legal systems. In the countries with the continental law legal system, the offer is, as a rule, irrevocable (Bianca, Bonnell, 1987). In the common law legal systems, with the exception of the USA, the offer is always revocable. The revocability of the offer is not affected by the fact that the offer states that the offeror's statement is irrevocable, nor by setting the deadline for acceptance of the offer. Under the U.S.A. law, a trader's offer to buy or sell goods, contained in a signed document, from which it is concluded with certainty that the offeror wishes to make a firm commitment, cannot be withdrawn due to lack of compensation until the deadline specified therein. If the deadline is not indicated, then it is so until a reasonable deadline has expired, provided that the period to which the offeror is bound by the offer may in no case be longer than three months. In case the offer is printed on the offeree's form, the offeror must sign separately next to the place that contains his offer (Uniform Commercial Code of the USA, 1962). The Vienna Convention stipulates that until the contract is concluded the offer can be revoked, if the revocation of the offer reaches the offeree before he has sent his acceptance (Vienna Convention, 1980).

In most legal systems, in addition to the essential elements of goods and prices, the offer may contain other elements such as delivery, place, deadline, packaging, transport clauses, etc. In commercial practice, the term *order* is also used. The order would represent the acceptance of the offer only if it fully corresponds to the offer published on the seller's website or on social networks, within the set deadline.

### ***3.4. Time and place of concluding the contract***

The time of concluding the contract depends primarily on whether the contract is concluded between present or between absent persons. If the contract is concluded between the present persons - the offeree is obliged to declare himself about the offer immediately. If the offeror leaves him a deadline - then the contract is created if the offeree accepts the offer within the deadline (Vienna Convention, 1980).

The Vienna Convention applies to contracts on the sale of goods concluded between parties having their registered offices in the territories of the states, while it is necessary that alternatively one of the following conditions is met:

- a) that those states are the contracting states,
- b) that the rules of private international law refer to the application of the law of one of the contracting states (Vienna Convention, 1980).

Article 1 of the Vienna Convention appears to be particularly important because it resolves the issue of the time when a transaction can be considered international. In theory, one starts from a subjective criterion, an objective criterion or a mixed criterion.

The subjective criterion is determined by the citizenship or domicile of the contracting parties. The objective criterion, on the other hand, starts from the fact that the transfer of goods takes place from one state to another. The mixed criterion, in the end, contains both subjective and objective criteria in itself.

The provisions of the Convention shall always apply if both contracting parties have their seats in the countries that are parties to the Convention. An exception is the case where the nationality of a contracting party shall not be taken into account where the rules of private international law refer to the application of the law of a contracting country. However, if the contracting parties have their seats in the countries that are not signatories to the Convention - the application of the Vienna Convention will be taken into account if the contracting parties have provided for it in the contract or it can be determined on the basis of their previous business.

Starting from the principle of autonomy of the will of the parties, the form of the contract for the international sale depends on the will of the parties. Of course, in most cases, in order to avoid proving that the contract has been concluded, the parties will apply a written form.

The Vienna Convention stipulates that the contract on the sale of goods does not have to be concluded or confirmed in writing nor is it subject to any other requirements regarding the form of the contract (Vienna Convention, 1980).

In the event that a contracting state has made a reservation in respect of the form of the contract stipulated by the Vienna Convention, this provision shall not apply, but the provisions of the national law of the State which has made that reservation shall apply.

## **4. Conclusion**

International exchange of goods is performed through the contracts on the international sale of goods. The basis for concluding the contract is based on the sources that regulate it. These sources can be divided into conventions, autonomous sources of law, customs and business ethics.

In order to conclude the contract on international sales, the offer and the acceptance of the offer are necessary, except for standard form contracts. Form and type, on the other hand, contain the text of the contract, so that the buyer has the flexibility to accept or not to accept the text of the contract, and if he accepts it – the obligations of the contracting parties arise. The offer for concluding the contract, whether given orally or in writing, directly or through a representative, or through means of communication, is a unilateral declaration of will and contains important elements, and possibly some of the irrelevant elements on the basis of which the contract would be concluded. An invitation to negotiations is not an offer at the same time. If the offeree accepts the invitation for negotiations – the result of the negotiations could be an offer to conclude a contract.

Acceptance of the offer in the case of the contract on international purchase and sale must correspond to the offer in all respects. In other words, it must be in accordance with all the elements of the offer. The essential elements of the offer are the goods and the price. The offer can be accepted under certain conditions, withdrawn and revoked. The time of concluding the contract appears to be particularly important because the time of concluding the contract depends primarily on whether the contract is concluded between the present or absent persons. The place of conclusion of the contract is also important because it is determined by the seat of the contracting parties and it represents a point of attachment that serves to determine the applicable law that will be applied. The Vienna Convention defines in which cases it will be applied on the basis of the point of attachment, unless it is a matter of the standard form contracts.

The contracting parties determine the form of the contract on international sales. It is usually a written form in order to avoid later proving the content of the contract and its legal validity.

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## ZAKLJUČENJE UGOVORA O MEĐUNARODNOJ PRODAJI ROBE

**REZIME:** Međunarodna razmena robe se obavlja putem ugovora o međunarodnoj prodaji robe. Zaključenje ugovora o međunarodnoj prodaji robe se zasniva pre svega na autonomiji volje stranaka, osim ukoliko ta autonomija volje nije ograničena prinudnim propisima država. Svi izvori prava koji se navode u radu kao što su međunarodne Konvencije, autonomni izvori prava pa čak i običaji i uzanse se mogu dispozicijom volje menjati jer su dispozitivnog karaktera. Ugovorne strane najčešće ugovoraju primenu Konvencije Organizacije Ujedinjenih nacija o ugovorima o međunarodnoj prodaji robe tzv. Bečke konvencije, osim u slučajevima gde postoje opšti uslovi i tipski ugovori. Najčešće se ugovara Bečka Konvencija koja je kompromis kontinentalnog, romanskog i anglosaksonskog prava. Ponuda i prihvatanje ponude su neophodni za zaključenje ugovora, osim kod tipskih i formularnih ugovora. Ponuda je konačan akt, a prihvatanje ponude je izjava ponuđenog kojom se saglašava sa ponudom. Ponuda mora imati bitne elemente ugovora, ali može imati i nebitne elemente. Zaključenjem ugovora uz primenu klauzula INCOTERMS-a reguliše se većina nebitnih elemenata ugovora.

**Ključne reči:** ugovor o međunarodnoj prodaji robe, Bečka konvencija, ponuda za zaključenje ugovora, prihvatanje ponude, zaključenje ugovora.

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