

Article 50

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

OVERVIEW

1. Article 50 provides for the remedy of price reduction when the seller has delivered goods that do not conform with the contract. In these circumstances, the buyer then may reduce the price in proportion to the reduced value of the goods. The remedy is, however, not available if the seller has cured the defects in the goods under articles 37 or 48, or if the buyer has refused the seller the opportunity for such cure.

2. Price reduction is one of the buyer's remedies. It may offer the buyer an alternative to the right to request specific performance, damages or avoidance. To the extent these remedies are alternatives, the buyer is free to choose among them.¹ Price reduction may be requested even if the reasonable period of time to avoid the contract (article 49 (2)) has expired.² Instead of, or together with, price reduction, the buyer is entitled to claim damages for any remaining loss.³

PREREQUISITES FOR PRICE REDUCTION

3. Article 50 applies when goods that have been delivered do not conform to the contract.⁴ Non-conformity is to be understood in the sense of article 35, i.e., defects as to quantity,⁵ quality, description (*aliud*) and packaging. It thus applies if inadequate or unsafe packaging causes the destruction or deterioration of the goods.⁶ In addition, defects in documents relating to the goods can be treated as a case of non-conformity.⁷ The remedy of price reduction is, however, not available if the breach of contract is based upon late delivery⁸ or the violation of any obligation of the seller other than the obligation to deliver conforming goods.

4. Price reduction applies whether the non-conformity constitutes a fundamental or a simple breach of contract, whether or not the seller acted negligently, and whether or not the seller was exempted from liability under article 79. Thus even where damages are excluded because of article 79, price reduction may be available. Furthermore, the remedy does not depend on whether the buyer has paid the price.⁹ However, the parties may exclude the remedy of price reduction (and other remedies). A cheap price alone is no indication of an agreed exclusion but may support other

indicia in this direction.¹⁰ In the used car trade, a widespread international usage is that any guarantee is excluded; but this exclusion does not apply if the seller does not disclose facts such as prior accidents or acts of sabotage which can impair the quality of the vehicle and of which the seller was aware.¹¹

5. Price reduction presupposes, however, that the buyer has given notice of the lack of conformity of the goods in accordance with article 39 (or 43).¹² Without due notice the buyer is not allowed to rely on the lack of conformity and loses all remedies.¹³ Article 44 establishes an exception where the buyer can reasonably excuse its failure to give notice of defects, in which case the buyer retains the right to reduce the price under article 50 (or to claim damages other than damages for loss of profit).¹⁴

6. It has been observed that article 50 requires that the buyer express its intention to reduce the price.¹⁵ The buyer's refusal to pay the price has been regarded as a sufficient expression to claim price reduction, and to reduce the price to zero.¹⁶

7. The second sentence of article 50 states the more or less self-evident rule that the remedy of price reduction is not available if the seller has remedied any lack of conformity either under article 37 (cure in case of early delivery) or under article 48 (cure after date for delivery). The same result obtains if the buyer refuses to accept performance when the seller has offered cure in accordance with articles 37 or 48.¹⁷

8. As provided in article 45 (2), an aggrieved buyer can combine different remedies; consequently, the buyer can claim price reduction along with a damages claim. However, where damages are claimed in combination with price reduction, damages can only be awarded for loss other than the reduced value of the goods, since this loss is already reflected in the price reduction.¹⁸

CALCULATION OF PRICE REDUCTION

9. The amount of price reduction must be calculated as a proportion: the contract price is reduced in the same proportion as the value that the non-conforming delivered goods bears to the value that conforming goods would have. The relevant value is determined as of the date of actual delivery

at the place of delivery.¹⁹ Where the insufficient packaging of bottles made them completely useless (because they were cracked or unsterile), their value was not the value at the time before transport, but after the bottles had reached their destination.²⁰

10. In cases where the delivered goods have no value at all, the price can be reduced to zero.²¹ The buyer retains this possibility even if it has lost its right to declare the contract avoided due to the lapse of time (article 49 (2)).²² Price reduction could then have almost the same effect as (the precluded remedy of) avoidance except that it does not oblige the buyer to return the goods.²³

11. The parties are free to agree on a specific way to calculate the reduction in value. Where the parties agreed that the buyer would resell non-conforming goods at the best possible price, it was held that the buyer could reduce the original contract price by the difference produced by the resale.²⁴

12. If disputed by the parties and not otherwise determinable, the respective values can be assessed by expert witnesses.²⁵

PLACE OF PERFORMANCE

13. The place of performance of the remedy of price reduction is where the goods were delivered.²⁶

REPAYMENT OF PREPAID PRICE

14. It has been held that, if the buyer has already paid the price, article 50 can be the basis for the buyer's recovery claim.²⁷ This is indicated by the wording "whether or not the price has already been paid" in article 50. One court, however, found that CISG does not cover the case where the buyer has already paid the price but is entitled to request a price reduction and a respective repayment from the seller.²⁸ According to this court, the buyer can recover that money if the applicable national law on unjust enrichment or restitution so provides.²⁹

BURDEN OF PROOF

15. It has been indicated that the buyer bears the burden to prove the reduction in value.³⁰

Notes

¹ CLOUT case No. 724 [Oberlandesgericht Koblenz, Germany, 14 December 2006].

² Ibid.; CLOUT case No. 938 [Kantonsgericht des Kantons Zug, Switzerland, 30 August 2007].

³ See CLOUT case No. 935 [Handelsgericht des Kantons Zürich, Switzerland, 25 June 2007]; CLOUT case No. 938 [Kantonsgericht des Kantons Zug, Switzerland, 30 August 2007].

⁴ U.S. District Court, Southern District Court of New York, 6 April 1994, Unilex; CLOUT case No. 377 [Landgericht Flensburg, Germany, 24 March 1999] (see full text of the decision).

⁵ Including the weight of the goods; see U.S. District Court, Southern District Court of New York, 6 April 1994, Unilex.

⁶ CLOUT case No. 724 [Oberlandesgericht Koblenz, Germany, 14 December 2006] (seller's insufficient packaging of the goods (bottles) led to cracking and lack of sterility during transport).

⁷ Article 48, to which article 50 refers, provides for the cure of non-conforming documents. See the Digest for article 48, paragraph 2.

⁸ Landgericht Düsseldorf, Germany, 5 March 1996, Unilex.

⁹ See *Official Records of the United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980* (United Nations publication, Sales No. E.81.IV.3), 42, paragraph 5.

¹⁰ See Bundesgericht, Switzerland, 26 March 2013, *Internationales Handelsrecht* 2014, 187 = CISG-online No. 2561.

¹¹ Ibid.

¹² CLOUT case No. 56 [Canton of Ticino Pretore di Locarno Campagna, Switzerland, 27 April 1992]; CLOUT case No. 432 [Landgericht Stendal, Germany, 12 October 2000]; CLOUT case No. 487 [Tribunal Provincial de Barcelona, sección 4, Spain, 12 September 2001]; CLOUT case No. 721 [Oberlandesgericht Karlsruhe, Germany, 8 February 2006]; CLOUT case No. 724 [Oberlandesgericht Koblenz, Germany, 14 December 2006]. See also CLOUT case No. 958 [Federal Court of Australia, Australia, 24 October 2008] (obiter dicta).

¹³ CLOUT case No. 48 [Oberlandesgericht Düsseldorf, Germany, 8 January 1993]; CLOUT case No. 273 [Oberlandesgericht München, Germany, 9 July 1997]; CLOUT case No. 303 [Arbitration Court of the International Chamber of Commerce, 1994 (Arbitral award No. 7331)]; CLOUT case No. 343 [Landgericht Darmstadt, Germany, 9 May 2000] (see full text of the decision); CLOUT case No. 397 [Audiencia Provincial de Pamplona, sección 3, Spain, 27 March 2000]; CLOUT case No. 800 [Tribunal Supremo, sección 1a, Spain, 16 May 2007].

¹⁴ In this respect, see, for example, CLOUT case No. 303 [Arbitration Court of the International Chamber of Commerce, 1994 (Arbitral award No. 7331)]; CLOUT case No. 273 [Oberlandesgericht München, Germany, 9 July 1997].

¹⁵ CLOUT case No. 83 [Oberlandesgericht München, Germany, 2 March 1994].

¹⁶ CLOUT case No. 724 [Oberlandesgericht Koblenz, Germany, 14 December 2006].

¹⁷ CLOUT case No. 282 [Oberlandesgericht Koblenz, Germany, 31 January 1997].

¹⁸ CLOUT case No. 248 [Bundesgericht, Switzerland, 28 October 1998] (see full text of the decision).

¹⁹ CLOUT case No. 56 [Canton of Ticino Pretore di Locarno Campagna, Switzerland, 27 April 1992]; CLOUT case No. 175 [Oberlandesgericht Graz, Austria, 9 November 1995] (see full text of the decision). See also CLOUT case No. 1018 [Hof van Beroep Antwerpen, Belgium, 4 November 1998].

²⁰ CLOUT case No. 724 [Oberlandesgericht Koblenz, Germany, 14 December 2006].

²¹ Supreme Court of Western Australia, Australia, 17 January 2003 (*Ginza Pte. Ltd v. Vista Corporation Pty. Ltd*), available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 724 [Oberlandesgericht Koblenz, Germany, 14 December 2006]; CLOUT case No. 747 [Oberster Gerichtshof, Austria, 23 May 2005]; CLOUT case No. 774 [Bundesgerichtshof, Germany, 2 March 2005]; CLOUT case No. 825 [Oberlandesgericht Köln, Germany, 14 August 2006]; CLOUT case No. 938 [Kantonsgericht des Kantons Zug, Switzerland, 30 August 2007].

²² CLOUT case No. 724 [Oberlandesgericht Koblenz, Germany, 14 December 2006].

²³ *Ibid.*

²⁴ CLOUT case No. 825 [Oberlandesgericht Köln, Germany, 14 August 2006].

²⁵ Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 27 April 2005, CISG-online No. 1500.

²⁶ CLOUT case No. 295 [Oberlandesgericht Hamm, Germany, 5 November 1997].

²⁷ CLOUT case No. 29 [U.S. Bankruptcy Court, Oregon, United States, 29 March 2004 (*In re Siskiyou Evergreen, Inc.*)]. See also (although without discussion), International Commercial Tribunal at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 23 March 2005, English translation available on the Internet at www.cisg.law.pace.edu; Commentary of the Secretariat to [then] article 46, paragraph 5.

²⁸ CLOUT case No. 894 [Bundesgericht, Switzerland, 7 July 2004].

²⁹ *Ibid.*

³⁰ CLOUT case No. 938 [Kantonsgericht des Kantons Zug, Switzerland, 30 August 2007].