

Article 59

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

INTRODUCTION

1. Article 59 clearly sets out the rule whereby the buyer must pay the price as soon as it becomes due, without the need for any request or compliance with any other formality by the seller. Article 59 can accordingly be distinguished from those national legal systems under which settlement of a debt is due only if a notice to pay or other formal demand has first been served by the creditor on the debtor.¹

DISPENSING WITH FORMALITIES PRIOR TO PAYMENT OF THE PRICE

2. The sale price becomes due automatically on the date specified in the contract or, failing that, at a specific time in accordance with the rules set forth in article 58.² Because it relieves the seller of the requirement to issue a demand or comply with any other formality in order for the price to become payable, article 59 is frequently cited by judges and arbitrators.³ Article 59 is referred to more rarely in other contexts.⁴

3. The rule that the price becomes due automatically without any request or formality on the part of the seller is subject to various limits. As was observed in one court decision, the price is not automatically payable if at the due date the buyer does not know the exact amount of the price.⁵ Also, a requirement that the seller send an invoice in advance to the buyer frequently derives from the contract or from usages.⁶ The Incoterms all set forth the rule that the seller must provide a commercial invoice to the buyer.⁷ Subject to these exceptions, the principle under which the

obligation to pay the price is not conditional on the issuance of an invoice remains applicable.⁸

4. The buyer's failure to pay the price at the due date entitles the seller to resort to the various remedies for breach of contract by the buyer, as provided in the Convention, without any prior demand for payment. Such remedies include the seller's right to interest on any sum owed by the buyer (article 78). As noted in many court decisions which refer to article 59 in that regard, the interest provided for under article 78 begins to accumulate as soon as the price becomes due.⁹

DISPENSING WITH FORMALITIES PRIOR TO SETTLEMENT OF OTHER MONETARY OBLIGATIONS

5. It is generally accepted that article 59 expresses a general principle (within the meaning of article 7 (2)) that is applicable to the different types of monetary claims made by one party to a sales contract against the other.¹⁰ Such claims include payment of interest on the price or on any sum that is in arrears (article 78), damages claims arising from, *inter alia*, penalty clauses,¹¹ claims for restitution of the price or payment of interest or benefits following contract avoidance (article 81 (2) and article 84 (2)), claims for reimbursement of the difference between the price paid and the price reduced in accordance with article 50, and reimbursement of expenses incurred for preservation of the goods (articles 85 and 86). In order for article 59 to be applicable in these different cases, however, it is necessary for the debtor to know the amount of the sum owed.

Notes

¹ See Secretariat Commentary to article 55 of the draft Convention.

² See the Digest for article 58.

³ See, for example, *Rechtbank Rotterdam*, Netherlands, 1 July 2009, available in Dutch on the Internet at www.cisg-online.ch; *Landgericht München*, Germany, 18 May 2009, available in German on the Internet at www.cisg-online.ch; *Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce*, Serbia, 16 March 2009, available in English on the Internet at www.cisg.law.pace.edu; *Tribunal cantonal du Valais*, Switzerland, 28 January 2009], available in French on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; *Handelsgericht Aargau*, Switzerland, 26 November 2008, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; *Okresný súd Bratislava III*, Slovakia, 22 May 2008, available in English on the Internet at www.cisg.law.pace.edu; *Najvyšší súd Slovenskej republiky*, Slovakia, 30 April 2008, available in English on the Internet at www.cisg.law.pace.edu; *Okresný súd Banská Bystrica*, Slovakia, 29 April 2008, available in English on the Internet at www.cisg.law.pace.edu; *Okresný súd Banská Bystrica*, Slovakia, 7 March 2008, available in English on the Internet at www.cisg.law.pace.edu; *Okresný súd Bardejov*, Slovakia, 29 October 2007, available in English on the Internet at www.cisg.law.pace.edu; *Najvyšší súd Slovenskej republiky*, Slovakia, 27 June 2007, available in English on the Internet at www.cisg.law.pace.edu; *Csongrád Megyei Bíróság*, Hungary, 6 June 2007, available in

English on the Internet at www.cisg.law.pace.edu; Tribunal de Apelación de Baja California, Mexico, 24 March 2006, available in Spanish on the Internet at <http://www.cisgspanish.com>; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 13 February 2006, available in English on the Internet at www.cisg.law.pace.edu; New Pudong District People's Court, People's Republic of China, 23 September 2005, available in English on the Internet at www.cisg.law.pace.edu; China International Economic and Trade Arbitration Commission, China, 2 September 2005, available on the Internet at www.cisg.law.pace.edu; Shànghǎi shì dì èr zhōngjí rén mín fǎyuàn, People's Republic of China, 24 June 2005, available in English on the Internet at www.cisg.law.pace.edu; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 20 April 2004, available in English on the Internet at www.cisg.law.pace.edu; Tribunale di Padova, Italy, 25 February 2004, *Giurisprudenza di merito*, 2004, pp. 867 et seq.; *Giurisprudenza italiana*, 2004, pp. 1405 et seq., available in Italian on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; China International Economic and Trade Arbitration Commission, China, 18 December 2003, available in English on the Internet at www.cisg.law.pace.edu; Tribunal cantonal du Valais, Switzerland, 19 August 2003, available in French on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 634 [Landgericht Berlin, Germany, 21 March 2003], available in German and in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 882 [Handelsgericht Aargau, Switzerland, 5 November 2002]; CLOUT case No. 636 [Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, Argentina, 21 July 2002]; Kantonsgericht Schaffhausen, Switzerland, 25 February 2002, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 986 [China International Economic and Trade Arbitration Commission, People's Republic of China, 4 February 2002]; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 22 January 2002, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 432 [Landgericht Stendal, Germany, 12 October 2000], also in *Internationales Handelsrecht*, 2001, 30; Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce, Serbia, 24 September 2001, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 805 [China International Economic and Trade Arbitration Commission, People's Republic of China, 31 December 1999]; CLOUT case No. 333 [Handelsgericht Aargau, Switzerland, 11 June 1999], available in German on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 297 [Oberlandesgericht München, Germany, 21 January 1998], available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (see full text of the decision); Tribunal cantonal du Vaud, Switzerland, 28 October 1997, available in French on the Internet at www.cisg-online.ch; CLOUT case No. 273 [Oberlandesgericht München, Germany, 9 July 1997], available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 163 [Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 10 December 1996], available in English on the Internet at www.cisg.law.pace.edu (see full text of the decision); CLOUT case No. 854 [China International Economic and Trade Arbitration Commission, People's Republic of China, 15 February 1996]; Amtsgericht Augsburg, Germany, 29 January 1996, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 197 [Tribunal cantonal du Valais, Switzerland, 20 December 1994], available in French on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu (see full text of the decision); Landgericht Hannover, Germany, 1 December 1993, available in German on the Internet at www.cisg-online.ch; Amtsgericht Ludwigsburg, Germany, 21 December 1990, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 7 [Amtsgericht Oldenburg in Holstein, Germany, 24 April 1990], available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (see full text of the decision); CLOUT case No. 46 [Landgericht Aachen, Germany, 3 April 1990], available in German on the Internet at www.cisg-online.ch (see full text of the decision).

⁴ See the following decisions, which cited article 59 as a textual basis for an action for payment: Oberlandesgericht Hamm, Germany, 12 November 2001, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 25 September 2001, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 256 [Tribunal cantonal du Valais, Switzerland, 29 June 1998], available in French on the Internet at www.globalsaleslaw.org (the decision cited article 59 as the sole textual basis of the payment claim); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 26 May 1998, available in English on the Internet at www.cisg.law.pace.edu; Landgericht Marburg, Germany, 12 December 1995, *Neue Juristische Wochenschrift—Rechtsprechungsreport*, 1996, p. 760, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 135 [Oberlandesgericht Frankfurt a.M., Germany, 31 March 1995], available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu. See also the following decision, which referred, *inter alia*, to article 59 to establish the seller's place of business as the place for performance of the obligation to pay the price: Handelsgericht St-Gallen, Switzerland, 29 April 2004, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu. And see the following decision, which overturned a lower-court decision that had referred to article 59 in connection with the allocation of payments: CLOUT case No. 911 [Cour de Justice de Genève, Switzerland, 12 May 2006].

⁵ CLOUT case No. 273 [Oberlandesgericht München, Germany, 9 July 1997], available in English on the Internet at www.cisg.law.pace.edu (the court stated that, because the defendant had been unaware, at the due date, of the exact amount of the price, the invoices had to be paid, at the latest, at the time of their presentation in the course of the proceedings).

⁶ See, by way of illustration, Oberlandesgericht Köln, Germany, 3 April 2006, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (the court interpreted the contract as establishing an obligation to provide an invoice and added, in support, that the buyer was required to have an invoice in its dealings with its country's tax authorities). See also the Digest for article 58, paragraph 4.

⁷ See Incoterms 2010, the seller's obligations, A 1.

⁸ See Najvyšší súd Slovenskej republiky, Slovakia, 3 April 2008, available in English on the Internet at www.cisg.law.pace.edu ("the obligation to pay the purchase price is not subject to the drawing of an invoice").

⁹ See, for example, Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce, Serbia, 16 March 2009, available in English on the Internet at www.cisg.law.pace.edu; Tribunal cantonal du Valais, Switzerland, 28 January 2009, available in French on the Internet at www.cisg-online.ch; Polimeles Protodikio Athinon, Greece, 2009 (docket No. 4505/2009), English abstract available on the Internet at www.cisg.law.pace.edu; Monomeles Protodikio Thessalonikis, Greece, 2007 (docket No. 43945/2007), available in Greek and English on the Internet at www.cisg.law.pace.edu; Kantonsgericht Appenzell Ausserrhoden, Switzerland, 6 September 2007, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Okresný súd Bardejov, Slovakia, 9 March

2007, available in English on the Internet at www.cisg.law.pace.edu; Krajský súd Žilina, Slovakia, 8 January 2007, available in English on the Internet at www.cisg.law.pace.edu; Tribunal cantonal du Valais, Switzerland, 27 October 2006, available in French on the Internet at www.cisg-online.ch; CLOUT case No. 930 [Tribunal cantonal du Valais, Switzerland, 23 May 2006]; CLOUT case No. 911 [Cour de Justice de Genève, Switzerland, 12 May 2006]; CLOUT case No. 907 [Tribunal cantonal du Valais, 27 May 2005]; CLOUT case No. 906 [Kantonsgericht Nidwalden, Switzerland, 23 May 2005]; Handelsgericht Aargau, Switzerland, 25 January 2005, *Internationales Handelsrecht* 2006/1, pp. 34 et seq., available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Handelsgericht Bern, Switzerland, 22 December 2004, *Internationales Handelsrecht*, 2005, 253, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Landgericht Bayreuth, Germany, 10 December 2004, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce, Serbia, 27 May 2004, available in English on the Internet at www.cisg.law.pace.edu; Tribunale di Padova, Italy, 31 March 2004, available in Italian on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 893 [Amtsgericht Willisau, Switzerland, 12 March 2004]; CLOUT case No. 889 [Handelsgericht Zürich, 24 October 2003]; Handelsgericht St. Gallen, Switzerland, 11 February 2003, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Rostock, Germany, 25 September 2002, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu. See also (implicitly), Tribunal de commerce de Namur, Belgium, 15 January 2002, available in French on the Internet at www.law.kuleuven.be, available in English on the Internet at www.cisg.law.pace.edu; Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce Serbia, 12 April 2002, available in English on the Internet at www.cisg.law.pace.edu; Arbitration Court attached to the Bulgarian Chamber of Commerce and Industry, Bulgaria, 12 March 2001, available in English on the Internet at www.cisg.law.pace.edu; Landgericht München, Germany, 6 April 2000, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 255 [Kantonsgericht Wallis, Switzerland, 30 June 1998], available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Landgericht Berlin, Germany, 24 March 1998, available in German on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 833 [Hoge Raad, Netherlands, 20 February 1998], available in Dutch on the Internet at www.unilex.info; CLOUT case No. 254 [Handelsgericht Aargau, Switzerland, 19 December 1997], available in German and in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 283 [Oberlandesgericht Köln, Germany, 9 July 1997], available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 215 [Bezirksgericht St-Gallen, Switzerland, 3 July 1997]; CLOUT case No. 275 [Oberlandesgericht Düsseldorf, Germany, 24 April 1997], available in German on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu; Tribunal cantonal de Vaud, Switzerland, 11 March 1996, available in French on the Internet at www.cisg-online.ch; CLOUT case No. 211 [Tribunal Cantonal de Vaud, Switzerland, 11 March 1996] (Aluminum granules), available in French on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996], available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Landgericht München, Germany, 25 January 1996, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg-online.ch; Amtsgericht Kehl, Germany, 6 October 1995, *Recht der internationalen Wirtschaft*, 1996, 957, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 410 [Landgericht Alsfeld, Germany, 12 May 1995], available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Tribunal de commerce de Bruxelles, Belgium, 5 October 1994, available in French on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 79 [Oberlandesgericht Frankfurt a.M., Germany, 18 January 1994], available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (see full text of the decision); Landgericht Berlin, Germany, 6 October 1992, available on the Internet at www.cisg-online.ch; Landgericht Mönchengladbach, Germany, 22 May 1992, available in German on the Internet at www.cisg-online.ch; Arbitration Court of the International Chamber of Commerce, 1992 (Arbitral award No. 7153), available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 55 [Pretore della giurisdizione di Locarno Campagna, Switzerland, 16 December 1991], *Schweizerische Zeitschrift für internationales und europäisches Recht*, 1993, 665; CLOUT case No. 7 [Amtsgericht Oldenburg in Holstein, Germany, 24 April 1990] (see full text of the decision).

¹⁰ See, in support of this interpretation, CLOUT case No. 1399 [Oberlandesgericht Hamburg, Germany, 25 January 2008], *Internationales Handelsrecht* 2008/3, pp. 98 et seq., available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (after stating that article 59 was applicable to all monetary claims, the court implemented this principle in connection with a sum due under a penalty clause); CLOUT case No. 1406 [Commercial Court of the Donetsk Region, Ukraine, 13 April 2007], available in English on the Internet at www.cisg.law.pace.edu (applying article 59 solely to the sale price owed, the court stated that the “money obligations” had to be fulfilled on the date fixed by the contract without the need for any request or compliance with any other formality on the part of the seller).

¹¹ CLOUT case No. 1399 [Oberlandesgericht Hamburg, Germany, 25 January 2008], *Internationales Handelsrecht*, 2008/3, pp. 98 et seq., available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (after stating that article 59 was applicable to all monetary claims, the court noted that the amount of the penalty clause was payable without any request or formality on the creditor’s part, thus causing interest as provided for under article 78 to accrue automatically).