

Article 52

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

INTRODUCTION

1. Even where the seller does more than is required by the contract there is an issue of performance not in accord with the contract. Article 52 addresses two such situations—namely, if the seller delivers goods too early (article 52 (1)) or delivers too many goods (article 52 (2)). In both cases article 52 provides that the buyer is entitled to refuse delivery of the goods. If the buyer accepts a greater quantity of goods than that provided for in the contract, article 52 (2) provides that the buyer is bound to pay the contract price for the excess quantity.

EARLY DELIVERY (ARTICLE 52 (1))

2. If the seller delivers the goods before the time for delivery stipulated in the contract the buyer may refuse the tender. Early delivery occurs if the contract stipulates a certain date or period at or during which delivery must be effected (e.g., “delivery during the 36th week of the year”) and delivery is made prior to that date. Under a term such as “delivery until 1 September”, any delivery before that date would be in accordance with the contract.¹ If the buyer has rightfully refused the goods because of early delivery, the seller must redeliver the goods at the correct time.² Pursuant to article 86, if the buyer intends to reject goods delivered early he may be responsible for the goods in the interim.³ It has been held that early delivery does not give the buyer grounds to avoid the contract or to suspend the buyer’s own obligations.⁴

3. If, however, the buyer takes over goods that are delivered early, the buyer is obliged to pay the contract price.⁵

Any remaining damage (additional storage costs and the like) may be recovered according to article 45 (1) (b), unless the acceptance of the early tendered goods amounts to an agreement to modify the delivery date.⁶

4. The rules regarding early delivery also apply if documents relating to the goods are tendered prematurely.

DELIVERY OF EXCESS QUANTITY (ARTICLE 52 (2))

5. If the seller delivers a greater quantity of goods than stipulated, the buyer is entitled to reject the excess. According to case law, there is not a delivery of excess goods where the contract allows for delivery “+/-10 per cent” and delivery remains within those limits.⁷ If the buyer does not wish to take and pay the contract price for excess goods he must give notice of the incorrect quantity because it constitutes a non-conformity to which the notice requirement of articles 39 or 43 applies.⁸ A notice after several months has been deemed belated.⁹ After a rightful refusal to take the excess quantity, the buyer must preserve the excess goods pursuant to article 86. If the buyer takes all or part of the excess quantity, however, it is obliged to pay at the contract rate for the excess part.¹⁰ If the buyer cannot separately reject the excess quantity, the buyer can avoid the entire contract if the delivery of the excess quantity amounts to a fundamental breach of contract;¹¹ if the buyer cannot avoid and thus must take delivery of the excess, the buyer must pay for it¹² but (provided the notice requirement of article 39 is satisfied) can claim compensation for any damages he suffers from the breach.¹³

Notes

¹ See the Digest for article 33, paragraph 6.

² 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), 44, paragraph 5.

³ *Ibid.*, paragraph 4.

⁴ China International Economic and Trade Arbitration Commission, People’s Republic of China, 25 May 2005, English translation available on the Internet at www.cisg.law.pace.edu

⁵ CLOUT case No. 141 [Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 25 April 1995 (Arbitral award No. 200/1994)] (dispatch, in mid-December, of chocolates for Christmas, before buyer transmitted bank guarantee which was supposed to establish the delivery date; buyer held obliged to pay full price).

⁶ 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), 44, paragraph 6.

⁷ CLOUT case No. 341 [Ontario Superior Court of Justice, Canada, 31 August 1999].

⁸ Oberlandesgericht Rostock, Germany, 25 September 2002, CISG-online No. 672; Landgericht Köln, Germany 5 December 2006, *Internationales Handelsrecht* 2007, 162.

⁹ Landgericht Köln, Germany 5 December 2006, *Internationales Handelsrecht* 2007, 162.

¹⁰ CLOUT case No. 341 [Ontario Superior Court of Justice, Canada, 31 August 1999] (see full text of the decision).

¹¹ 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), 44, paragraph 9.

¹² Landgericht Köln, Germany 5 December 2006, *Internationales Handelsrecht* 2007, 162.

¹³ *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), 44, paragraph 9.