

### Article 23

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

#### INTRODUCTION

1. Article 23 provides that a contract is concluded when an acceptance of an offer becomes effective. Except as provided in article 18 (3), an acceptance is effective at the moment it reaches the offeror in accordance with article 18 (2). The exception in article 18 (3) provides that an acceptance is effective at the moment the offeree performs an act if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree is authorized to indicate its acceptance of the offer by an act without notice to the offeror.<sup>1</sup>

#### INTERPRETATION AND THE TIME OF CONCLUSION OF A CONTRACT

2. A contract is concluded when the communications and actions of the parties, as provided in article 18 and as interpreted in accordance with article 8, establish that there has been an effective acceptance of an offer.<sup>2</sup> One decision concluded that an offer that conditioned the contract on

the approval of the parties' respective Governments, when properly interpreted, did not postpone conclusion of the contract under the Convention.<sup>3</sup> Another decision found that a supplier and a potential subcontractor had agreed to condition the conclusion of the sales contract on the future award of a sub-contract by the main contractor.<sup>4</sup> According to some decisions, the burden of proof concerning the conclusion of the contract lies on the party which relies on fact of such conclusion.<sup>5</sup>

3. Once a contract is concluded, subsequent communications may be construed as proposals to modify the contract. Several courts subject these proposals to the Convention's rules on offer and acceptance.<sup>6</sup>

#### PLACE OF CONCLUSION OF A CONTRACT

4. Article 23 does not address where a contract is concluded. One court deduced from article 23 that the contract was concluded at the place of business where the acceptance reached the offeror.<sup>7</sup>

#### Notes

<sup>1</sup> See CLOUT case No. 1516 [Oberster Gerichtshof, Austria, 13 December 2012], *Internationales Handelsrecht* 2013 (offeree who denies the acceptance of the offer uses the delivered goods for construction work; the contract is concluded at this moment).

<sup>2</sup> CLOUT case No. 1193 [Comisión para la Protección del Comercio Exterior de México, Mexico, 29 April 1996] (contract concluded when acceptance reached buyer-offeror); CLOUT case No. 134 [Oberlandesgericht München, Germany, 8 March 1995] (although Part II was not applicable because of an article 92 declaration, court held that the contract was concluded by the intention of the parties); CLOUT case No. 158 [Cour d'appel, Paris, France, 22 April 1992] (contract concluded when acceptance reached offeror); CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990] (exchange of communications, interpreted in accordance with article 8, established parties' intent to conclude contract) (see full text of the decision).

<sup>3</sup> Fovárosi Biróság (Metropolitan Court), Budapest, Hungary, 10 January 1992, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu), *reversed on other grounds*, CLOUT case No. 53 [Legfelsőbb Biróság, Hungary 25 September 1992] (see full text of the decision).

<sup>4</sup> Arbitration Court of the International Chamber of Commerce, 1994 (Arbitral award No. 7844), *The ICC International Court of Arbitration Bulletin* (Nov. 1995) 72 73.

<sup>5</sup> Cour d'appel Liège, Belgium, 28 April 2003, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (contract deemed not concluded due to insufficient proof); Kantonsgericht Freiburg, Switzerland, 11 October 2004, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht Dresden, Germany, 10 November 2006, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (a party who wants to derive legal consequences from the existence of a declaration of intent has the burden of proving the dispatch and reception of the notice; the case discussed the reception of a revocation of the offer and concluded that it was not proven by the sender that the addressee received it). See also Regional Court in Zilina, Slovakia, 29 March 2004, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (initially holding that the seller failed to prove conclusion of a valid contract of sale and failed to prove delivery of the goods, and thus the seller did not justify its claim for payment of the purchase price), reversed because new evidence was presented to confirm the existence of an international sales contract: Supreme Court, Slovakia, 20 October 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu), case returned to the court of first instance, which then confirmed the existence of the contract. Regional Court in Zilina, Slovakia, 8 January 2007, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (contract deemed concluded under article 23 CISG)). Also see Regional Court in Zilina, Slovakia, 18 June 2007, English translation available on the Internet

at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (holding that one of the contracts was not concluded because bills of lading submitted by the seller contained no signature or seal of the buyer and the seller did not submit any other evidence proving delivery of the goods or the conclusion of a tacit contract).

<sup>6</sup> CLOUT case No. 395 [Tribunal Supremo, Spain, 28 January 2000] (proposal to modify price not accepted); CLOUT case No. 193 [Handelsgericht des Kantons Zürich, Switzerland, 10 July 1996] (proposal to modify price not accepted by silence, citing article 18 (1)); CLOUT case No. 203 [Cour d'appel, Paris, France 13 December 1995] (confirmation letter sent after contract concluded was not accepted).

<sup>7</sup> CLOUT case No. 308 [Federal Court of Australia, Australia, 28 April 1995] (German law applied because acceptance reached offeror at its place of business in Germany) (see full text of the decision).