



## The Convention You've Never Heard of: The United Nations Convention on Contracts for the International Sale of Goods

### Legal Disclaimer

- Law is ever-changing. This briefing is a synopsis only and cannot substitute for personal legal advice. Everyone's facts and circumstances are different and you should not rely on the contents of this publication to make substantive legal decisions. Please contact me for a further consultation.

It's what you don't know that can hurt you. Such is the case with the United Nations Convention on Contracts for the International Sale of Goods. CISG (as it's called) is an international analogue to Article 2 of the U.S. Uniform Commercial Code, and governs contracts for the sales of goods internationally. It was sponsored by the UN and opened for national ratification in 1980.

### Relevant to US Law?

But how is CISG relevant to U.S. law? Actually, that's a trick question, because CISG is already U.S. law, having been ratified by the Senate in 1978. Seventy-one signatory countries are listed on the UNCITRAL website ([www.uncitral.org/uncitral/en/uncitral\\_texts/sale\\_goods/1980CISG\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html)). A couple of very notable non-signers of CISG are the UK and Ireland. Russia and Israel are signatories and have therefore adopted CISG as part of their domestic law. Because it's US law, the point here is that CISG applies unless the parties specifically opt out. This same point applies as well to parties in other signatory countries.

### Adopting Countries

CISG applies to parties having relevant places of business in countries that have adopted it. These adopting countries are known as "contracting states", but there are some exceptions to applicability, notably

when it's not readily apparent that the parties have places of business in different states. In addition, UNCISG binds the parties regardless of the parties' nationality and the commercial character of the contract. Further, the convention does not apply when the parties are sharing materials or labor and when the contract consists primarily of labor or services.

### Sales of Goods Between Merchants

As the title implies, CISG applies to contracts for the sale of goods, but not all goods. Certain types of goods are excluded. These include stocks, shares, investment securities negotiable instruments, money, ships, aircraft and electricity. Also excluded are goods that are used for personal, family or household purposes and auctions. Basically, CISG applies to contracts between merchants, not ordinary retail transactions.

### What Does it Apply To?

Like the UCC or US contract law generally, CISG applies to how a contract is formed and the obligations of the parties. There are notable exceptions to the general statement, however. Article 4 makes clear that CISG only applies to the buyer and seller in any deal. It does not apply to rights of third parties and doesn't concern itself with issues of contract validity or property in the goods sold. Article 5 states that CISG doesn't apply to the liability of

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## UNCSIG, continued

sellers “for death or personal injury caused by the goods to any person.”

### CISG vs. the UCC

CISG differs from both the UCC and general US contract law in several key respects. First, CISG does not recognize the Statute of Frauds, which generally requires some writing signed by the parties to enforce the contract. Second, parol evidence (evidence beyond the written document) is generally not admissible. Third, warranty disclaimers are a completely open area under CISG (unlike the UCC, which permits such disclaimers). Fourth, CISG generally endorses the older “mirror image” rule of contract that existed prior to the UCC. Under this rule, an offer must be accepted exactly without modifications. The offeror is the master of his own offer. An attempt to accept the offer on different terms instead creates a counter-offer, and this constitutes a rejection of the original offer. Finally, when the seller alleges “commercial impracticability” (the seller cannot fulfill the contract except at an unreasonable cost to himself), CISG excuses both parties, not just the seller (as under the UCC). For these reasons (and others), CISG has not been popular with American lawyers and their clients.

### Opting Out

It is possible, however, to opt out of CISG. Because it is part of US domestic law, it probably applies regardless of whether

parties provide a choice of law provision in the contract document. Article 6 provides that the parties may “exclude” the application of CISG and, with a couple of exceptions, “derogate from or vary the effect of any of its provisions.” Translation: you can vary in whole or in part.

So, it is possible to opt out, but it is necessary to explicitly disclaim applicability. See *Assante Technologies, Inc. v. PMC Sierra, Inc.*, 164 F.Supp 2d 1142 (N.D. Cal. 2001). Be very clear when you do it, however, using a sample clause like:

“The parties agree that the United Nations Convention on International Sales of Goods shall have no force or effect on this Agreement.”

If you do elect to apply CISG, be sure to identify the official language version because translations do vary. There are several official translations and various unofficial versions. Be sure you nail the proper edition.

One final word of caution: CISG doesn’t cover every contingency of every transaction. For example, if there are third-party beneficiary rights involved (which CISG doesn’t recognize), it will be necessary to provide explicit adoption of “gap-filler” law to cover such uncovered contingencies. So, be sure you consult with a competent lawyer as you structure your international transaction. It will be cost-effective in the end.