

THE REQUIREMENTS FOR THE INCLUSION OF STANDARD TERMS IN INTERNATIONAL SALES CONTRACTS

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SUMMARY

The problem dealing with the inclusion of standard terms and conditions in contracts is a problem that has engaged most legal systems. The United Nations Convention on Contracts for the International Sale of Goods, Vienna 1980 (CISG) does not expressly deal with this problem. Accordingly the solution to the issue must be found in an interpretation and application of the general principles found in articles 8, 14 and 18. One of the main objects of the CISG is the harmonisation of international trade law. It is generally recognised that in order to achieve harmonisation it is necessary that courts should interpret and apply the convention in a consistent and harmonious manner. Unfortunately a number of approaches have emerged from courts around the world in regard to the inclusion of standard terms. German courts have developed a strict approach which requires that the standard terms be made available to the addressee at the time of the conclusion of the contract. They also require that the standard terms be couched in the language of the main contract. In stark contrast an American court has used an approach which is very lax in regard to incorporation, even allowing incorporation after the conclusion of the contract. There is, however a more moderate approach set out in decisions of the Austrian Supreme Court where the court adopted an approach which is more akin to that found in most legal systems, namely that a clear incorporation clause in the contract is sufficient for the effective incorporation of standard terms. The author critically examines the case law, the various approaches and the underlying arguments on which they are based, before reaching the conclusion that the two extreme approaches should be rejected in favour of the more moderate approach. This approach is founded on a proper interpretation of the provisions of the CISG as well as being in step with international trade practice.

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KEYWORDS

Standard terms and conditions in contracts; international sales contracts; CISG; international trade law