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# INTERNATIONAL SALES LAW (CISG)

January 7, 2021

16:00 – 18:00

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## General notes:

- Please check at receipt of the exam the number of questions. The examination contains five questions.
- Write your answers directly into the document "Answer\_Module\_International Sales Law" and save it locally on your computer with your Student ID number.
- Write your Student ID number and your Examination serial number in the header on page 2.
- For submission/upload, save the document with your Student ID number as a PDF file according to the example and upload it. Example: Answer\_criminology\_17301002.pdf
- Take enough time for the submission (at least 5 min). Nothing can be uploaded after the examination time has expired.
- You are responsible for uploading the exam in time. You will not be made aware of this.

## Notes on marking

When marking the exam each question is weighted separately. Points are distributed to the individual questions as follows:

Question 1	15 points	25% of total points
Question 2	7.5 points	12.5% of total points
Question 3	15 points	25% of total points
Question 4	15 points	25% of total points
Question 5	7.5 points	12.5% of total points
<b>Total</b>	<b>60 points</b>	<b>100%</b>

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We wish you a lot of success!

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## Legal requests

### Claimant:

1. *The claimant ("the Buyer") seeks damages for a loss of profit amounting to CHF 900'000.–.*
2. *The claimant further seeks reimbursement for a replacement unit, the price for which exceeded the price for the seller's original unit by CHF 50'000.–.*

### Defendant:

1. *The defendant ("the Seller") claims damages from the Buyer for unrightfully avoiding the contract.*

## The facts

The Buyer (a manufacturer of office material [mostly scissors] incorporated in Switzerland) ordered by letter dated 29 September 2019 a laser cutting machine for scissors. As proposed by the Seller (a company based in Munich, Germany) in its initial offer including his conditions of sale, the Buyer ordered the machine "Cutting Edge S". On 11 October 2019 the Seller confirmed the order in writing.

The Buyer and the Seller (together "the Parties") agreed on a total net price of CHF 1'245'000.–. Clause 8.5 of the conditions of sale (heading: Price) further stated that the Parties agreed the net price to be a "price quotation ex works Munich/Germany". Clause 9.2 of the conditions of sale (heading: Delivery) provided that delivery had to be made by the end of February 2020. According to clause 5 of the conditions of sale (heading: Specifications), the Buyer had to provide "*all technical specifications and all relevant data for the scissors intended to be manufactured*" before the end of November 2019. Under clause 6.1 the Seller was obligated to provide mechanics employed by its Swiss subsidiary to ensure the unit's assembly as well as operational readiness at the Buyer's place of business. The parties expected this to take less than one day.

The Parties further agreed that an acceptance test had to be conducted at the Seller's factory in Munich. The sample materials needed to perform such test were to be supplied by the Buyer at least 14 days before the acceptance test.

By e-mail of 20 December 2019 the Seller informed the Buyer that production of the unit was delayed due to the late arrival of the specifications on 15 December, and was now scheduled for the end of summer 2020. The Buyer objected to such drastic change in schedule. Through his legal counsel, he set an additional time period for the delivery of the unit until 30 May 2020. With letter of 15 June 2020, the Buyer's legal counsel declared the contract avoided. Immediately after declaring avoidance, the Buyer purchased a different production unit as substitute.

## QUESTIONS

*Note: Switzerland and Germany are CISG contracting states.*

1. Is this a sales contract governed by the CISG
  - a. regarding the geographical-personal scope of application? (5 points)
  - b. regarding the material scope of application? (5 points)
  - c. if the parties would have (validly) agreed in the contract that it shall be governed by Swiss law? (5 points)

*Note: Assume that the CISG is applicable to the given contract when answering questions 2-5.*

2. Define the Parties' agreement regarding the place of performance. (7.5 points)
3. Did the Buyer successfully avoid the contract? (15 points)
4. On which provisions of the CISG does the Buyer base his damages claims? Are the prerequisites for a claim for damages existent? On what grounds can the recoverable loss be reduced? (15 points)
5. Briefly explain on what grounds a party generally can be exempt from paying damages under the CISG? Would the Seller have a right to ask for a reduction of damages? (7.5 points)