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## International Sales Law (CISG)

### Exam

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**Duration:** 120 minutes

- The exam contains 5 pages and 4 cases.
- Please read the entire facts and questions carefully.
- Assume that a valid contract has been concluded between the parties.

#### Grading

The questions are weighted as follows:

Question 1	20% of total points
Question 2	25% of total points
Question 3	30% of total points
Question 4	25% of total points



**1. Are the following contracts governed by the CISG? Explain why and state the relevant provision/s.**

**1.1.** The buyer and the seller concluded a contract for the sale of a pony. The buyer operates an equestrian center and deals with horses. She also has a daughter who competes in show jumping competitions with ponies. The buyer informed the seller that her daughter wanted the pony very much.

[cf. CISG-online 6400]

**1.2.** The buyer and the seller concluded a contract for the sale of a large-scale waste separation machine to be manufactured. Content of the contract was the planning, delivery, assembly and putting into operation of the complete plant. The value of the machine itself is less than 50% of the total contractual value.

[cf. CISG-online 726]

**1.3.** A seller and a buyer concluded a contract for the sale of metal bars. The seller has his place of business in the UK (non-contracting state) and the buyer in Germany (contracting state). The parties have chosen German law to be applicable and have subjected their contract to arbitration.

**1.4.** The buyer and the seller conclude a contract for the sale of 1.000 “foldable GPS drones with 4K camera”.



## 2. Case-Study (CISG is applicable)

A **Portuguese Seller (S)**, based in Lisbon, has long been the supplier of olive oil of the brand “Saoloio Portuguese Olive Oil” for a **Swiss Buyer (B)**. On Monday, 17 April 2023, B sent S an email with the following content:

*Dear S,  
Many thanks again for last year's delivery; our buyers were delighted with the quality of the products. To ensure that we are fully stocked for the upcoming season, we would like to place the following order: 50 boxes à 12 bottles of “Saloio Portuguese Olive Oil 1 liter” for € 96 per box (Total € 4,800). Thank you in advance for your confirmation.  
Greetings from Zurich,  
B.*

S sees the email in his inbox on Tuesday, 18 April 2023 and is overjoyed as sales have been low in recent months. S promptly replies:

*Dear B,  
Thank you for your email. We are pleased to have you as our customer. We are happy to provide you with the newest addition to our selection: 50 boxes à 12 bottles of “Saloio Portuguese Deluxe Olive Oil 0.75 liter” for € 96 per box (Total € 4,800). Payment as always via bank transfer and in advance. Please be advised that any orders will from now on be subject to our Standard Terms which can be found on our website.  
Kind regards from Portugal,  
S.*

B never replies to this email but transfers € 4,800 to S's bank account by Thursday, 20 April 2023. S is confused by B's behaviour and approaches you in your role as their lawyer.

### Questions:

**2.1. Has a contract been concluded between S and B?**

**2.2. Assuming a contract has been concluded, what is the content of this contract?**

[Cf. CISG-online 1906]

### 3. Case-Study (CISG is applicable)

In January 2023, a Swiss buyer (B) had ordered five million flower bulbs from a German seller (S) at a total price of 25,200 €. Delivery was agreed for 31 July 2023. According to the contract, the goods were to be handed over to the buyer at his registered office in Switzerland.

However, on 15 July 2023 a major fire broke out in the cold store of the producer (P) from which S had purchased the flower bulbs to be delivered to B. S had conducted an expert check in advance in order to assure that his producer had complied with the fire safety regulations. This was confirmed. As a result of the fire, P cannot deliver to S, and S cannot meet the deadline of 31 July. On 1 August 2023, B informs S that he will grant him an additional period of three weeks to fulfill his obligations. However, S tells him that he cannot deliver as his producer lost all his crop. B suffers loss of profit because of the non-delivery.

#### 3.1. Which remedies does B have?

##### Instructions:

- The nature and scope of any claim for compensation need not be discussed.
- Check all claims and remedies and consider which one(s) make(s) sense in the present case.

##### **Variation:**

Assume that the entire harvest of flower bulbs was in the cold store and was destroyed by the fire. Moreover, the ordered flower bulbs are unique and irreplaceable, not grown by any other producer.

#### 3.2. Can B claim damages from S for non-performance?

[Cf. CISG-online 4614]



Flower bulbs

(Source: <https://myplantin.com/blog/what-bulbs-to-plant-in-fall>)



#### **4. Case-Study (CISG is applicable)**

CandyCo Int. (Buyer B) domiciled in Liberia is a company specializing in the export of sweets to West Africa. Rigo (Seller S) domiciled in Luxembourg is a supplier of the brand "Maribo", including the supply of sweets such as gummy bears called "Silberbären" in German and "Silverbears" in English (both separately registered brands). Since 2015, B has regularly ordered "Silberbären 100 grs" from S.

On 9 July 2019, B requested the following: "3 loads of Silberbären 100 grs - 5376 cases per load." S confirmed the order, sent the invoices, which subsequently were paid by B, and delivery took place on 19 September 2019 as requested.

On 18 February 2020, B informed S per email that the bags delivered were not labelled "Silberbären" but "Silverbears" and the former was intended, as the German brand enjoys great trust in West Africa and stands for high-quality goods. S explained that it is the same product with a redesign, and a supply of the former is therefore deemed to be a supply of the same product, only in a new design.

In a letter dated 25 August 2020, B asks S to deliver the correct products within four weeks. These four weeks have passed without any reaction from S.

#### **Questions:**

**4.1. Did S supply conforming goods?**

**4.2. Has B fulfilled the prerequisites to exercise his remedies based on the alleged non-conformity?**

**4.3. Which remedy is B exercising? Examine, if this claim can be successful.**

[Cf. CISG-online 6387]