

1986年聯合國國際貨物買賣契約法律適用公約

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Convention on the Law Applicable to Contracts for the International Sale of Goods, The Hague 1986

Hague, 22 Dec 1986

LACSG 1986

The States Parties to the Present Conventions
Desiring to unify the choice of law rules relating to contracts for the international sale of goods,
Bearing in mind the United Nations Convention on contracts for the international sale of goods, concluded at Vienna on 11 April 1980,
Have agreed upon the following provisions:

本公約各締約國，
希望統一國際貨物買賣契約準據法規
則，
瞭解1980年4月11日維也納訂定之聯
合國國際貨物買賣契約公約，
謹協議如下：

CHAPTER 1 - Scope Of The Convention

第一章 公約適用範圍

Article 1

第1條

This Convention determines the law applicable to contracts of sale of goods:

本公約係決定下列貨物買賣契約所應適用之法律：

- (a) between parties having their places of business in different States;
- (b) in all other cases involving a choice between the laws of different States, unless such a choice arises solely from a stipulation by the parties as to the applicable law, even if accompanied by a choice of court or arbitration.

- (a) 其營業所設於不同國家之當事人間所簽訂之契約；
- (b) 所有涉及於不同國家法律間為選擇之其他情況，然以該選擇僅是依據當事人對法律適用為約定，既使亦伴隨法院或仲裁之選擇。

Article 2

第2條

The Convention does not apply to:

本公約不適用於：

- (a) sales by way of execution or otherwise by authority of law;
- (b) sales of stocks, shares, investment securities, negotiable instruments or money; it does, however, apply to the sale of goods based on documents;
- (c) sales of goods bought for personal, family or household use; it does, however, apply if the seller at the time of the conclusion of the contract neither knew nor ought to have known that the goods were bought for any such use.

- (a) 為執行而進行之買賣或其他依法律授權之買賣；
- (b) 公債、股票、投資證券、流通票據或貨幣之買賣；然僅適用於依據證券進行之貨物買賣；
- (c) 對於供私人、家人或家庭使用之貨物買賣；然如賣方於訂立契約時既不知亦無理由知道該貨物係供該使用時，即應予以適用。

Article 3

第3條

For the purposes of the Convention, "goods" includes:

為本公約目的，“貨物”包括：

- (a) ships, vessels, boats, hovercraft and aircraft;

- (a) 船舶、船隻、小船、氣墊船及飛機；

(b)electricity.

(b)電力。

Article 4

- (1) Contracts for the supply of goods to be manufactured or produced are to be considered contracts of sale unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.
- (2) Contracts in which the preponderant part of the obligations of the party who furnishes goods consists of the supply of labour or other services are not to be considered contracts for sale.

第 4 條

- (1) 供應尚待製造或生產之貨物之契約應視為買賣契約，然除訂購貨物之當事人承擔供應該製造或生產所需大部分原料者除外。
- (2) 若提供勞務或其他服務為供貨人之主要義務，則該類契約不應視為買賣契約。

Article 5

The Convention does not determine the law applicable to:

- (a) the capacity of the parties or the consequences of nullity or invalidity of the contract resulting from the incapacity of a party;
- (b) the question whether an agent is able to bind a principal, or an organ to bind a company or body corporate or unincorporate;
- (c) the transfer of ownership; nevertheless, the issues specifically mentioned in Article 12 are governed by the law applicable to the contract under the Convention;
- (d) the effect of the sale in respect of any person other than the parties;
- (e) agreements on arbitration or on choice of court, even if such an agreement is embodied in the contract of sale.

本公約不決定下列事項之法律適用：

- (a) 當事人之行為能力或因當事人無行為能力所導致契約無效之後果；
- (b) 關於某代理人是否能拘束某本人，或某一機構是否能拘束某公司或法人團體或非法人團體之問題；
- (c) 所有權移轉；然第 12 條明確述及之問題應受本公約所決定之法律適用之規範；
- (d) 買賣對當事人以外之任何人之效力；
- (e) 仲裁協議或法院選擇協議，即使該協議規定於買賣契約中。

Article 6

The law determined under the Convention applies whether or not it is the law of a Contracting State.

第 6 條

本公約所決定之準據法，不論是否為締約國之法律，均予以適用。

CHAPTER 2 - Applicable Law

第二章 準據法

Section 1 - Determination of the applicable law

第一節 準據法之決定

Article 7

第 7 條

- (1) A contract of sale is governed by the law chosen by the parties. The parties' agreement on this choice must be express or be clearly demonstrated by the terms of the contract and the conduct of the parties, viewed in their entirety. Such a choice may be limited to a part of the contract.
- (2) The parties may at any time agree to subject the contract in whole or in part to a law other than that which previously governed it, whether or not the law previously governing the contract was chosen by the parties. Any change by the parties of the applicable law made after the conclusion of the contract does not prejudice its formal validity or the rights of third parties.

- (1) 買賣契約受當事人所選擇之法律所規範。當事人之選擇協議必須是明示或從契約規定及當事人行為整體可明顯予以推斷。該選擇可僅限於契約之某部分。
- (2) 當事人得於任何時間約定，其買賣契約之全部或部分適用原來所未規定之法律，而無論原來所適用之法律是否由當事人所締結。買賣契約訂立後，當事人對準據法之任何變更不得損及契約方式上之效力或第三人之權利。

Article 8

- (1) To the extent that the law applicable to a contract of sale has not been chosen by the parties in accordance with Article 7, the contract is governed by the law of the State where the seller has his place of business at the time of conclusion of the contract.
- (2) However, the contract is governed by the law of the State where the buyer has his place of business at the time of conclusion of the contract, if:
 - (a) negotiations were conducted, and the contract concluded by and in the presence of the parties, in that State; or
 - (b) the contract provides expressly that the seller must perform his obligation to deliver the goods in that State; or
 - (c) the contract was concluded on terms determined mainly by the buyer and in response to an invitation directed by the buyer to persons invited to bid (a call for tenders).
- (3) By way of exception, where, in the light of the circumstances as a whole, for instance any business relations between the parties, the contract is manifestly more closely connected with a law which is not the law which would otherwise be applicable to the contract under paragraphs 1 or 2 of this Article, the contract is governed by that other law.
- (4) Paragraph 3 does not apply if, at the time of the conclusion of the contract, the seller and the buyer have their places of business in States having made the reservation under Article 21 paragraph 1 sub-paragraph b.
- (5) Paragraph 3 does not apply in respect of issues regulated in the United Nations Convention on contracts for the international sale of goods (Vienna, 11 April 1980) where, at the time of the conclusion of the contract, the seller and the buyer have their places of business in different States both of which are Parties to that Convention.

Article 9

A sale by auction or on a commodity or other exchange is governed by the law chosen by the parties in accordance with Article 7 to the extent to which the law of the State where the auction takes place or the exchange is located does not prohibit such choice. Failing a choice by the parties, or to the extent that such choice is prohibited, the law of the State where the auction takes place or the exchange is located shall apply.

Article 10

- (1) Issues concerning the existence and material validity of the consent of the parties as to the choice of the applicable law are determined, where the choice satisfies the requirements of Article 7, by the law chosen. If under that law the choice is invalid, the law governing the contract is determined under Article 8.
- (2) The existence and material validity of a contract of sale, or of any term thereof, are determined by the law which, under the Convention would govern the contract or term if it were valid.
- (3) Nevertheless, to establish that he did not consent to the choice

第 8 條

- (1) 於未按照第 7 條選擇買賣契約準據法時，契約應受賣方訂立契約時設有營業所之國家之法律規範。
- (2) 然於下列情況下，買賣契約應受買方訂立契約時設有營業所之國家之法律規範：
 - (a) 談判係該國家進行，且參加談判之各當事人於該國締結契約；或
 - (b) 契約明確約定賣方於該國履行其交貨義務；或
 - (c) 契約主要依買方所決定之條件及應向買方投標人發出之投標邀請（招標）而訂立。
- (3) 作為例外情況，如依據整體情況，例如雙方當事人間之任何業務關係，明顯地與本條第 1 或第 2 項應適用於契約之法律以外之另一法律有更密切聯繫時，則契約受該另一法律之規範。
- (4) 如契約訂立時，買賣雙方營業所所在國根據第 21 條第 1 項 b 款作出保留，則第 3 項即不予適用。
- (5) 如契約訂立時，買賣雙方於不同國家設有營業所，營業所所在國均為聯合國國際貨物買賣契約公約之締約國，則凡屬該公約規範之事項不適用於第 3 項。

第 9 條

凡拍賣地國法律或交易所所在地國法律不禁止法律選擇時，則因拍賣而進行之買賣或商品交易所或其他交易所內之買賣，受當事人依據第 7 條所選擇之法律規範。若當事人未作出選擇，或禁止作出該選擇時，則適用拍賣地國法律或交易所所在地國之法律。

第 10 條

- (1) 凡選擇符合第 7 條規定之法律，則有關當事人準據法之選擇，其協議是否存在，是否具有實質效力等問題由其所選擇之法律予以確定。如依據該項法律，該選擇係無效，則該契約應適用之法律依第 8 條規定確定之。
- (2) 買賣契約或其任何約定是否存在及是否具有實質效力等問題由依本公約所規定之應適用於契約或約定之法律予以確定。
- (3) 然無論如何，如依照前項所規定之法

of law, to the contract itself, or to any term thereof, a party may rely on the law of the State where he has his place of business, if in the circumstances it is not reasonable to determine that issue under the law specified in the preceding paragraphs.

Article 11

- (1) A contract of sale concluded between persons who are in the same State is formally valid if it satisfies the requirements either of the law which governs it under the Convention or of the law of the State where it is concluded.
- (2) A contract of sale concluded between persons who are in different States is formally valid if it satisfies the requirements either of the law which governs it under the Convention or of the law of one of those states.
- (3) Where the contract is concluded by an agent, the State in which the agent acts is the relevant State for the purposes of the preceding paragraphs.
- (4) An act intended to have legal effect relating to an existing or contemplated contract of sale is formally valid if it satisfies the requirements either of the law which under the Convention governs or would govern the contract, or of the law of the State where the act was done.
- (5) The Convention does not apply to the formal validity of a contract of sale where one of the parties to the contract has, at the time of its conclusion, his place of business in a State which has made the reservation provided for in Article 21 paragraph 1 sub-paragraph c.

Section 2 - Scope of the applicable law

Article 12

The law applicable to a contract of sale by virtue of Articles 7, 8 or 9 governs in particular:

- (a) interpretation of the contract;
- (b) the rights and obligations of the parties and performance of the contract;
- (c) the time at which the buyer becomes entitled to the products, fruits and income deriving from the goods;
- (d) the time from which the buyer bears the risk with respect to the goods;
- (e) the validity and effect as between the parties of clauses reserving title to the goods;
- (f) the consequences of non-performance of the contract, including the categories of loss for which compensation may be recovered, but without prejudice to the procedural law of the forum;
- (g) the various ways of extinguishing obligations, as well as prescription and limitation of actions;
- (h) the consequences of nullity or invalidity of the contract.

Article 13

In the absence of an express clause to the contrary, the law of the State where inspection of the goods take place applies to the

law determining that issue as unreasonable, it is to be determined under the law specified in the preceding paragraphs.

第 11 條

- (1) 同國當事人間訂立之買賣契約，如符合本公約規定之規範該契約之法律規定，或符合契約訂立地國法律之規定，則其方式即屬有效。
- (2) 不同國當事人間訂立之買賣契約，如符合本公約規定之規範該契約之法律規定，或符合該國家其中之一國之法律規定，則其方式即屬有效。
- (3) 由代理人訂立之買賣契約，代理人之行為地國即是上述條款所指之有關國家。
- (4) 擬使已訂立或擬訂立之買賣契約發生法律效力之行為，若符合本公約規範該契約之法律規定，或符合該行為地國之法律規定，則該行為之方式即屬有效。
- (5) 若契約一方當事人於契約訂立時，其營業所所在地國已根據第 21 條第 1 項 c 款規定作出保留，則本公約不適用於該契約之方式效力問題。

第二節 準據法範圍

第 12 條

依據第 7 條、第 8 條或第 9 條，買賣契約之準據法可具體規範下列事項：

- (a) 契約之解釋；
- (b) 當事人權利義務及契約之履行；
- (c) 買方有權從貨物中取得產品、產物或貨品滋生收入之時間；
- (d) 買方對貨物承擔風險之時間；
- (e) 當事人間保留對貨物所有權條款之合法性及效力；
- (f) 未履行契約之後果，包括可取得損害賠償之損失類型，然不得影響法院地之相關程序法律；
- (g) 債務及時效之各種消滅方法；
- (h) 契約無效之後果。

第 13 條

於無明示相反約定之情況下，有關檢驗方式及程序規定，適用貨物檢驗地國之

modalities and procedural requirements for such inspection.

法律。

CHAPTER 3 - General Provisions

第三章 一般條款

Article 14

第 14 條

- (1) If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract.
- (2) If a party does not have a place of business, reference is to be made to his habitual residence.

- (1) 如當事人設有超過一以上營業所，則應考慮當事人於訂立契約前或訂立契約時所知或所設想之情況，以與契約及其履行具有最密切關係之營業所為其有關之營業所。
- (2) 如當事人無營業所，則可考慮其慣居地。

Article 15

第 15 條

In the Convention "law" means the law in force in a State other than its choice of law rules.

本公約“法律”一詞，係指不包括準據法選擇規則在內之國家現行法律。

Article 16

第 16 條

In the interpretation of the Convention, regard is to be had to its international character and to the need to promote uniformity in its application.

於解釋本公約時，應考慮公約之國際性質及適用時能促進統一性之需要。

Article 17

第 17 條

The Convention does not prevent the application of those provisions of the law of the forum that must be applied irrespective of the law that otherwise governs the contract.

本公約並不阻止適用那些不論法律對契約另有如何規定，而仍必須適用之法院地法。

Article 18

第 18 條

The application of a law determined by the Convention may be refused only where such application would be manifestly incompatible with public policy (ordre public).

本公約所決定之準據法，僅於其適用有明顯地與公共政策(公共秩序)相抵觸時，才可拒絕其適用。

Article 19

第 19 條

For the purpose of identifying the law applicable under the Convention, where a State comprises several territorial units each of which has its own system of law or its own rules of law in respect of contracts for the sale of goods, any reference to the law of that State is to be construed as referring to the law in force in the territorial unit in question.

為識別本公約所指定之準據法，於一國家擁有數領域，而每領域有其自己的法律制度或於貨物買賣契約方面有其自己之法律規則時，則所謂該國法律應解釋為該領域之現行法律。

Article 20

第 20 條

A State within which different territorial units have their own systems of law or their own rules of law in respect of contracts of sale is not bound to apply the Convention to conflicts between the laws in force in such units.

一國內不同領域有其自己法律制度或於貨物買賣契約方面有其自己的法律規則之國家，並無須將本公約適用於該領域間之法律衝突。

Article 21

- (1) Any State may, at the time of signature, ratification, acceptance, approval or accession make any of the following reservations:
 - (a) that it will not apply the Convention in the cases covered by sub-paragraph b of Article 1;
 - (b) that it will not apply paragraph 3 of Article 8, except where neither party to the contract has his place of business in a State which has made a reservation provided for under this sub-paragraph;
 - (c) that, for cases where its legislation requires contracts of sale to be concluded in or evidenced by writing, it will not apply the Convention to the formal validity of the contract, where any party has his place of business in its territory at the time of conclusion of the contract
 - (d) that it will not apply sub-paragraph g of Article 12 in so far as that subparagraph relates to prescription and limitation of actions.
- (2) No other reservation shall be permitted.
- (3) Any Contracting State may at any time withdraw a reservation which it has made; the reservation shall cease to have effect on the first day of the month following the expiration of three months after notification of the withdrawal.

Article 22

- (1) This Convention does not prevail over any convention or other international agreement which has been or may be entered into and which contains provisions determining the law applicable to contracts of sale, provided that such instrument applies only if the seller and buyer have their places of business in States Parties to that instrument.
- (2) This Convention does not prevail over any international convention to which a Contracting State is, or becomes, a Party, regulating the choice of law in regard to any particular category of contracts of sale within the scope of this Convention.

Article 23

This Convention does not prejudice the application:

- (a) of the United Nations Conventions on contracts for the international sale of goods (Vienna, 11 April 1980);
- (b) of the Convention on the limitation period in the international sale of goods (New York, 14 June 1974), or the Protocol amending that Convention (Vienna, 11 April 1980).

Article 24

The Convention applies in a Contracting State to contracts of sale concluded after its entry into force for that State.

第 21 條

- (1) 任何國家於簽字、批准、接受、核准或參加時，可對下列事項做出保留：
 - (a) 第 1 條 b 項規定之情況不適用本公約；
 - (b) 不適用第 8 條第 3 項；然契約當事人各方均未於依本項規定作出保留之國家設立營業所者除外；
 - (c) 如一國法律要求買賣契約必須以書面方式訂立或證明，而任何一方當事人於契約訂立時在該國領域內設有營業所，則本公約不適用於該契約方式之有效性。
 - (d) 不適用第 12 條 g 款有關訴訟時效問題。
- (2) 其他事項不允許做出保留。
- (3) 任何締約國均可於任何時候撤回其已作出之保留；自撤回通知滿三個月後之次月首日起該項保留停止生效。

第 22 條

- (1) 本公約對業已締結或可能締結的，並載有確定買賣契約法律條款之任何公約或其他國際協定並不具有優先效力，然以該公約僅於買賣雙方在該公約之締約國內設有營業所始予以適用為限。
- (2) 本公約對於某締約國係參加國或成為參加國，對屬於本公約範圍內之具體種類之買賣契約之準據法為規定之任何國際性公約，並不具有優先效力。

第 23 條

本公約不影響下列公約之適用：

- (a) 聯合國國際貨物買賣契約公約(維也納 1980 年 4 月 11 日)；
- (b) 國際貨物買賣時效期間公約(紐約，1974 年 6 月 14 日)，或對該公約修正議定書(維也納，1980 年 4 月 11 日)。

第 24 條

本公約適用於其在締約國生效後所達成之買賣契約。

CHAPTER 4 - Final Clauses

Article 25

- (1) The Convention is open for signature by all States.
- (2) The Convention is subject to ratification, acceptance or approval by the signatory States.
- (3) The Convention is open for accession by all States which are not signatory States as from the date it is open for signature.
- (4) Instruments of ratification, acceptance, approval and accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 26

- (1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
- (2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
- (3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 27

- (1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the fifth instrument of ratification, acceptance, approval or accession referred to in Article 25.
- (2) Thereafter the Convention shall enter into force:
 - (a) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
 - (b) for a territorial unit to which the Convention has been extended in conformity with Article 26 on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 28

For each State Party to the Convention on the Law Applicable to International Sales of Goods, done at The Hague on 15 June 1955, which has consented to be bound by this Convention and for which this Convention is in force, this Convention shall replace the said Convention of 1955.

Article 29

Any State which becomes a Party to this Convention after the entry

第四章 最後條款

第 25 條

- (1) 本公約對所有國家開放簽署。
- (2) 簽署國可對本公約批准、接受或核准。
- (3) 從開放簽署之日起，本公約對所有非簽署國家開放加入。
- (4) 批准書、接受書或核准書及加入書由荷蘭王國外交部保存。

第 26 條

- (1) 如一國擁有二或二以上之領域，該領域對本公約規定事項適用不同法律制度時，則該國可在簽署、批准、接受、核准或參加時聲明本公約適用於其所有之領域或僅適用於一或數領域，且可隨時提出另一聲明以修改其所作出之聲明。
- (2) 該聲明必須通知保存人，且必須明確說明適用本公約之領域。
- (3) 如一國未依本條提出聲明，則本公約適用於該國之所有領域。

第 27 條

- (1) 本公約自第 25 條規定之第五份批准書、接受書、核准書或加入書交存之日起三個月後之次月首日生效。
- (2) 此後，本公約於下列情況生效：
 - (a) 對每一後來批准、接受、核准或加入公約之國家，自其批准書、接受書、核准書或加入書交存之日起三個月後之次月首日生效。
 - (b) 每一依照第 26 條規定適用本公約之領域，自其依該條規定做出通知時起三個月後之次天生效。

第 28 條

對任一同意接受 1955 年 6 月 15 日於海牙簽訂之國際貨物買賣法律適用公約拘束之參加國，本公約對其生效，並取代上述之 1955 年公約。

第 29 條

任何修正本公約之文書生效後參加之國

into force of an instrument revising it shall be considered to be a Party to the Convention as revised. 家，視為修正後公約之參加國。

Article 30

- (1) A State Party to this Convention may denounce it by a notification in writing addressed to the depositary.
- (2) The denunciation takes effect on the first day of the month following the expiration of three months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 31

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have signed, ratified, accepted, approved or acceded in accordance with Article 25, of the following:

- (a) the signatures and ratifications, acceptances, approvals and accessions referred to in Article 25;
- (b) the date on which the Convention enters into force in accordance with Article 27;
- (c) the declarations referred to in Article 26;
- (d) the reservations and the withdrawals of reservations referred to in Article 21;
- (e) the denunciations referred to in Article 30.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at The Hague, on the twenty-second day of December 1986, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law as of the date of its Extraordinary Session of October 1985, and to each State which participated in that Session.

第 30 條

- (1) 本公約締約國可以書面方式通知公約保存人退出本公約。
- (2) 退出自保存人收到通知三個月後次月首日生效。凡在通知中訂明退出於更長時間後生效的，則退出於保存人收到此通知後之該更長時間屆滿時生效。

第 31 條

保存人應將下列事項通知海牙國際私法會議之成員國及依據第 25 條對本公約簽字、批准、接受、核准或加入之國家：

- (a) 依據第 25 條之簽字及批准、接受、核准及加入；
- (b) 本公約依照第 27 條生效之日期；
- (c) 依第 26 條所作出之聲明；
- (d) 依第 21 條所作出之保留及保留的撤回；
- (e) 依第 30 條所作出之退出。

經正式授權之各國代表，業已在公約上簽字，以資證明。

1986 年 12 月 22 日訂於海牙，以英文及法文寫成，二文本均具有同等效力，一副本存放於荷蘭王國檔案處，一驗證無誤之副本經由外交途徑，送交於 1985 年 10 月特別會議期間之海牙國際私法會議之所有會員會，及參加該會議之所有國家。