

CONTENTS

Foreword 5

Preface 15

SECTION I

MAIN ELEMENTS OF COMMERCIAL TRANSACTIONS

1. PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 17

1.1 Freedom of contract 17

1.2 Lex mercatoria 20

1.3 Mandatory law 23

2. INTERNATIONAL CONTRACTS OF SALE 25

2.1 The origin of CISG 25

2.2 The applicability of CISG and choice of law 25

2.3 The formation of the contract of sale 27

2.4 Interpretation of contracts 33

2.5 The gap-filling function of custom of the trade and non-mandatory law 35

3. THE TRANSACTIONS 37

3.1 The sale of tangibles 37

3.2 The sale of intangibles and mixed contracts 39

4. PAYMENT MODALITIES 42

4.1 Simultaneous exchange of goods for money 42

4.2 Payment in advance 43

4.3 Documentary credit 43

4.4 COD and CAD 43

4.5 The right of stoppage in transit 44

4.6 Retention of title 46

5. PROTECTION AGAINST BREACHES OF CONTRACT AND CHANGED CIRCUMSTANCES 47
 - 5.1 Bid bonds, performance bonds, first demand-guarantees 47
 - 5.2 Changed conditions and the principle of binding contracts (*pacta sunt servanda*) 48
 - 5.3 Exemption, force majeure and relief clauses 50
 - Force majeure clauses 50
 - Hardship clauses 54
 - Price adjustment and currency clauses 55
6. TRADE TERMS AND THE CONTRACT OF CARRIAGE 57
 - 6.1 The variants (from EXW to DDP) 57
 - Incoterms 58
 - 6.2 Changed routines for the performance of the contract of carriage 59
7. THE RISK OF LOSS, DAMAGE OR DELAY DURING CARRIAGE OF THE GOODS 60
 - 7.1 General principles of risk distribution 60
 - 7.2 Transport insurance 61
 - 7.3 The insurer's recourse actions 63
8. THE CO-ORDINATION OF THE CONTRACTS OF SALE, CARRIAGE, INSURANCE AND FINANCING 65
 - 8.1 The interrelation between the different contracts 65
 - 8.2 The traditional importance of the bill of lading 65
 - 8.3 The risks inherent in the bill of lading-system 66
 - 8.4 Sea waybills 69
 - 8.5 Electronic bills of lading 72
9. RESOLUTION OF DISPUTES 75
 - 9.1 Conciliation 75
 - 9.2 Court proceedings or arbitration? 75
 - 9.3 Some salient features of arbitration 80
 - 9.4 Check-list of some important questions in arbitration 86

SECTION II

SALES TRANSACTIONS

1. THE SELLER'S PERFORMANCE 89
 - 1.1 Specification of the goods and the seller's obligation to ensure conformity 89
 - 1.2 The four categories of trade terms (E-, F-, C- and D- Incoterms 1990) 95
 - 1.3 The A- and B- classification of seller's and buyer's obligations to deliver and take delivery 102
 - 1.4 The main elements of the 13 Incoterms 103
 - EXW 103
 - FCA 104
 - FAS 106
 - FOB 107
 - CFR 110
 - CIF 113
 - CPT 114
 - CIP 115
 - DES 115
 - DEQ 116
 - DAF 116
 - DDU 117
 - DDP 118
 - 1.5 How to choose the optimal trade term 119
 - 1.6 Cost distribution systems 120
2. GENERAL PRINCIPLES RELATING TO THE BUYER'S REMEDIES FOR THE SELLER'S BREACH OF CONTRACT 122
 - 2.1 The buyer's right to require specific performance 122
 - 2.2 The buyer's right of avoidance 123
 - 2.3 The buyer's right of compensation 126
 - 2.4 Exemption from liability for breach 130
3. THE SELLER'S LIABILITY FOR FAILURE TO DELIVER CONFORMING GOODS 132
 - 3.1 The buyer's obligation to examine the goods and notify non-conformity 132

- 3.2 The seller's obligation to cure defects 134
- 3.3 The seller's right to cure defects 135
- 3.4 The buyer's right to price reduction 136
- 3.5 The seller's product liability 137
- 3.6 Exemption and limitation of liability clauses 138

- 4. THE BUYER'S PERFORMANCE 142
 - 4.1 The buyer's payment obligation and the determination of the price 142
 - 4.2 The ICC Uniform Customs and Practice for Documentary Credits (UCP 500) 143
 - 4.3 The buyer's failure to co-operate or to take delivery 151
 - 4.4 The buyer's breach of ancillary obligations 152
 - 4.5 The seller's right to require the buyer to pay the price 153
 - 4.6 The seller's right of avoidance in case of the buyer's breach 154
 - 4.7 The seller's right to default interest and damages 155

- 5. ANTICIPATORY BREACHES OF CONTRACT 159
 - 5.1 Right to suspend performance 159
 - 5.2 Right of avoidance in case of anticipatory breach 159

- 6. EFFECTS OF AVOIDANCE 161
 - 6.1 Avoidance requires notice to the other party (CISG art. 26) 161
 - 6.2 Release from and restitution of performance 162
 - 6.3 Preservation of the goods in case of the buyer's failure to take delivery or rejection of the goods 164

SECTION III

CONTRACTS OF CARRIAGE AND RELATED CONTRACTS

- 1. THE MARKET FOR TRANSPORTATION SERVICES 167
 - 1.1 Charterparty and liner trade for carriage of goods by sea 167
 - 1.2 Carriage over land and by air 170
 - 1.3 Multimodal transport 170
 - 1.4 Freight forwarders and cargo consolidation 171
 - 1.5 Freight forwarder documents (the FIATA-documents) 172

2. THE PARTICULAR RISK DISTRIBUTION UNDER
CONTRACTS OF CARRIAGE BY SEA 174
 - 2.1 The marine adventure and cost distribution in general average 174
 - 2.2 Mandatory minimum liability under the 1924 Bill of Lading convention (the Hague Rules) 175
 - 2.3 The 1978 Hamburg Rules and the resistance to change 178

3. THE CARRIER'S LIABILITY FOR CARRIAGE OF GOODS BY
AIR, RAIL, ROAD AND MULTIMODAL TRANSPORT 181
 - 3.1 The contract of carriage determines the scope of application of the respective conventions 181
 - 3.2 Air transport 181
 - 3.3 Rail transport 182
 - 3.4 Road transport 182
 - 3.5 Declarations of value 183
 - 3.6 The liability of the multimodal transport operator (MTO) 184
 - 3.7 The 1991 UNCTAD/ICC Rules for Multimodal Transport Documents 185

4. THE LIABILITY OF TERMINAL OPERATORS 187
 - 4.1 Freedom of contract prevails 187
 - 4.2 The 1991 OTT-convention 187

5. THE LIABILITY OF FREIGHT FORWARDERS 189
 - 5.1 The 1967 UNIDROIT draft convention 189
 - 5.2 The freight forwarder's liability as carrier 190
 - 5.3 The 1996 FIATA Model Rules for Freight Forwarding Services 191

6. THE INTERRELATION BETWEEN THE CONTRACT OF
SALE AND CONTRACTS WITHIN THE TRANSPORT
SECTOR 193

INDEX 539