

Table of Contents

Preface	V
List of Abbreviations	IX
Introduction	XIII
 A. General Part	 1
I. Role and impact of the law governing a sales contract	1
II. The suggested choice of law for the present International Sales Terms	4
III. The CISG	6
1. Part I of the CISG: Scope of application and other general provisions	7
2. Part II of the CISG: The formation of the sales contract	9
3. Part III of the CISG: Obligations, rights and remedies of the parties	11
IV. Swiss law as the supplementary governing law of choice	27
1. Overview on the relevant issues	27
2. Relevant Swiss contract and tort laws	28
3. Validity of the contract	29
4. Limitation of actions	32
5. Set-off	34
6. Assignment	34
7. Contractual penalties and liquidated damages	35
8. Concurring claims under tort (product liability)	38
V. Outlook: The Proposal for a Common European Sales Law (CESL) – a potential alter- native for the CISG?	39
VI. Relevant laws beyond the governing law of the contract	41
1. Mandatory rules: General issues	41
2. Proprietary aspects: The transfer of property in the goods sold	46
3. Competition and antitrust laws	47
4. Export control regulations	50
5. Exchange control regulations	54
6. Product liability towards third parties	55
 B. The Main Contract Document	 57
I. The benefit of a countersigned main contract document	58
1. Requirements for the incorporation of general terms into international contracts	58
2. The “battle of forms” problem	59
II. Price	61
III. Payment Terms	62
1. The legal position under the CISG	62
2. The preferred payment method: The letter of credit	63
IV. Delivery and Trade Terms	67
1. The role of standardized trade terms in international sales transactions	67
2. The Incoterms © 2010	68
 C. The International Sales Terms	 75
I. General Provisions	75
1. The suggested clause	75
2. Annotations	75
II. Payment Terms	77
1. The suggested clause	77
2. Annotations	78

Table of Contents

III. Delivery Terms	80
1. The suggested clause	80
2. Annotations	82
IV. Retention of Title	86
1. The suggested clause	86
2. Annotations	86
V. Product Defects	88
1. The suggested clause	88
2. Annotations	90
VI. Exclusion/Limitation of Damages Claims	98
1. The suggested clause	98
2. General background	99
3. Annotations	102
VII. Limitation of Actions	109
1. The suggested clause	109
2. General background	110
3. Annotations	113
VIII. Export Control Regulations	116
1. The suggested clause	116
2. Annotations	117
IX. Avoidance by the Seller	118
1. The suggested clause	118
2. Annotations	118
X. Confidentiality Obligations	119
1. The suggested clause	119
2. Annotations	119
XI. Force Majeure	121
1. The suggested clause	121
2. General background	121
3. Annotations	123
XII. Entire Agreement, Written Form, Severability and Anti-Assignment Clause	124
1. The suggested clause	124
2. Annotations	124
XIII. The governing law of the contract	130
1. The suggested clause	130
2. Annotations	130
XIV. Arbitration and Litigation	134
1. The suggested clause	134
2. General background	135
3. Annotations	139
Appendix	147
I. The Sales Documentation Put Together	147
II. The United Nations Convention on Contracts for the International Sale of Goods	156
III. Excerpts from the Swiss Code of Obligations (Obligationenrecht) and other relevant Swiss statutes	174
Index	179