

Seminar no. 4

Conformity of the goods. Examination of the goods. Fundamental breach. CISG. Arbitration proceedings

Preparation for the seminar

- Carefully read the relevant articles of the CISG, Articles 35 to 52, 61 to 73.
- learn to work with INCOTERMS 2020 and INCOTERMS 2010 clauses
- PMO cast - CISG can help you to prepare: <https://www.youtube.com/watch?v=dq1Zd9IUC-g>

Case study

Douha (established under Czech law, registered office, and place of business in the Czech Republic) is a manufacturer of pumps. On November 19, 2021, Douha received an email from Strelča (incorporated under Bulgarian law, place, and registered office in Burgas). The companies have traded together several times in the past for the supply of pumps. This time the order was made for 1000 pieces of pumps; pump specifications incl. the prices were made by reference to the Douha catalog, delivery was requested in five deliveries of 200 pieces - February 2022, April 2022, June 2022, August 2022, and October 2022. Douha responded on 1 December 2021 that it would deliver the ordered goods within the specified months. Douha attached its terms and conditions in a separate PDF file, which was not linked to in the body of the email. The terms and conditions contained the following provisions:

- *DDP buyer's registered office*
- *The seller guarantees to the buyer that the goods will have the agreed specifications (incl. power consumption) for 4 years from delivery. For submersible pumps, the pump retains its specifications up to an immersion depth of 15 meters.*
- *In case of delay in payment of the purchase price, the seller is entitled to charge interest on arrears in the amount of 4% p.a. without special request from the due date of the purchase price until payment of the purchase price.*
- *This contract is governed by the Czech Law.*
- *Disputes arising from this contract or arising in connection with it will be resolved in arbitration proceedings that will take place in the Czech Republic*

Strelča immediately replied that it agreed.

1. Qualify and determine the legal regime of the contract, including the legal regime of the gaps (loopholes) of the potentially applied direct norms.
2. Analyze the stages of the contracting process and specify as precisely as possible the time at which the contract was concluded.
3. Analyze whether Doha's terms and conditions became part of the contract. Regardless of your answer, assume that the terms and conditions became part of the contract.
4. Would the answer to question 2 change if Strelča did not explicitly say that it agreed, but paid the purchase price after receiving answers from Douha?
5. Analyze the delivery condition. Does it have any defects? If so, how can they be overcome? Analyse the moment of the passing of risk.
6. The terms and conditions contain a contractual warranty. Explain the difference between liability for defects under the CISG and a contractual warranty. Also, deal with what constitutes a defect in the goods within the meaning of the CISG.
7. The first delivery was delivered to the buyer's premises on February 12, 2022. The buyer duly accepted the delivery. Since he did not intend to sell the pumps to customers until the spring, he put the pumps in storage. On March 20, 2022, he unpacked the pumps and found that five pumps were missing (195 were delivered). He reported the defects by phone the same day and

- described them to the seller. Qualify defects, determine who is responsible for them and why, and thoroughly analyse the claims process in all aspects.
8. Regardless of the result you reached in the previous question, analyse whether it was a breach of contract. Analyse what claims the buyer could make in this case.
 9. The second delivery was delivered on April 9, 2022, and the dimensions of all pieces did not correspond to the contract. Defects were notified in writing to the seller on the fourth day after delivery. The seller offered to correct the error and deliver pumps of the correct dimensions within 5 working days. Qualify these defects, determine who is responsible for them and why, and thoroughly analyze the claims process in all aspects.
 10. Address whether the breach of duty described in the previous question was a substantial breach of contract. If the seller does not offer the buyer to correct the mistake, indicate what claims the buyer could make and analyse which claim/claims make sense for the buyer in the given situation.
 11. The Strelča company took over the third delivery in June 2022. Following the experience with previous deliveries, the company checked the number, colour and parameters of the pumps and performed technological testing on 10 randomly selected units (regarding performance, draft, etc.). Since the inspection did not reveal any defects, the company sold the pumps to its customers. They soon sold all the pumps. However, some customers started to complain about the pumps after about 3 months (the submersible pumps could not be started/or turned off after a short period of use, which was caused by a defect in the foot valve and a leaky membrane of the pressure vessel - i.e. defects not covered by the contractual guarantee). The buyer reported the defects on October 10, 2022. Qualify the defects, determine who is responsible for them and why, and thoroughly analyze the claims process in all aspects.
 12. Regardless of the result you reached in the previous question, deal with whether it was a substantial breach of contract. List what claims the buyer could make and analyse which claim/claims make sense for the buyer in the given situation.
 13. Shortly after the delivery of the fourth delivery (August 2022), the lawyer of the Bulgarian company Anton contacted the seller, saying that the same structural and technical solution of the pumps supplied by the Czech company is protected by patents granted by the relevant Bulgarian authority. For this reason, Strelča cannot resell the pumps to end customers in Bulgaria. The Strelča company immediately informed the Douha company. Qualify the situation, state what obligation of the seller was violated and analyze whether the seller is liable.
 14. Assume that the seller is responsible for the situation described in the previous question. Also, consider whether this would constitute a substantial breach of contract. Indicate what are the conditions for exercising the buyer's claims in this case. State what claims the buyer could make and analyse which claims make sense for the buyer in this situation.
 15. The Czech company supplies pumps to various countries. In September 2022, the contract was also concluded with the Slovak company Čerxo (headquarters and place of business in Bratislava). By the delivery conditions, the goods were delivered to the buyer's headquarters on October 3, 2022. The Slovak company learned that the Slovak technical safety requirements for pumps, which derive from the relevant EU directives intended for all member states, are not met. The Slovak company informed about this situation the Czech company. The Czech company refused to deal with it because it is not obliged to find out the public law standards and regulations of the country to which it delivers goods. Analyze whether the goods have a defect in this case, what kind and whether the seller is responsible for this defect.
 16. Due to the above-mentioned problems, the Bulgarian company withdrew from the contract and demanded compensation for damages. But here.
 17. State how the arbitration proceedings will be commenced and at what point the arbitration is deemed to have commenced. Also, deal with the question of how to proceed if a Bulgarian company files a lawsuit in a Czech court in violation of the arbitration clause.
 18. Can the parties agree on how the proceedings will proceed? If so, to what extent and with what limits?