

THE STATES PARTIES TO THIS CONVENTION,

DESIRING to establish common provisions concerning agency in the international sale of goods,

BEARING IN MIND the objectives of the United Nations Convention on Contracts for the International Sale of Goods,

CONSIDERING that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States, bearing in mind the New International Economic Order,

BEING OF THE OPINION that the adoption of uniform rules which govern agency in the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

HAVE AGREED as follows:

Chapter I - Sphere of application and general provisions

Article 1

(1) This Convention applies where one person, the agent, has authority or purports to have authority on behalf of another person, the principal, to conclude a contract of sale of goods with a third party.

(2) It governs not only the conclusion of such a contract by the agent but also any act undertaken by him for the purpose of concluding that contract or in relation to its performance.

(3) It is concerned only with relations between the principal or the agent on the one hand, and the third party on the other.

(4) It applies irrespective of whether the agent acts in his own name or in that of the principal.

Article 2

(1) This Convention applies only where the principal and the third party have their places of business in different States and:

- (a) the agent has his place of business in a Contracting State, or
- (b) the rules of private international law lead to the application of the law of a Contracting State.

(2) Where, at the time of contracting, the third party neither knew nor ought to have known that the agent was acting as an agent, the Convention only applies if the agent and the third party had their places of business in different States and if the requirements of paragraph 1 are satisfied.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract of sale is to be taken into consideration in determining the application of this Convention.

Article 3

(1) This Convention does not apply to:

- (a) the agency of a dealer on a stock, commodity or other exchange;
- (b) the agency of an auctioneer;
- (c) agency by operation of law in family law, in the law of matrimonial property, or in the law of succession;
- (d) agency arising from statutory or judicial authorisation to act for a person without capacity to act;
- (e) agency by virtue of a decision of a judicial or quasi-judicial authority or subject to the direct control of such an authority.

(2) Nothing in this Convention affects any rule of law for the protection of consumers.

Article 4

For the purposes of this Convention:

- (a) an organ, officer or partner of a corporation, association, partnership or other entity, whether or not possessing legal personality, shall not be regarded as the agent of that entity in so far as, in the exercise of his functions as such, he acts by virtue of an authority conferred by law or by the constitutive documents of that entity;
- (b) a trustee shall not be regarded as an agent of the trust, of the person who has created the trust, or of the beneficiaries.

Article 5

The principal, or an agent acting in accordance with the express or implied instructions of the principal, may agree with the third party to exclude the application of this Convention or, subject to Article 11, to derogate from or vary the effect of any of its provisions.

Article 6

(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article 7

(1) The principal or the agent on the one hand and the third party on the other are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) They are considered, unless otherwise agreed, to have impliedly made applicable to their relations any usage of which they knew or ought to have known and which in international trade is widely known to, and regularly

observed by, parties to agency relations of the type involved in the particular trade concerned.

Article 8

For the purposes of this Convention:

- (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract of sale, having regard to the circumstances known to or contemplated by the parties at the time of contracting;
- (b) if a party does not have a place of business, reference is to be made to his habitual residence.

Chapter II - Establishment and scope of the authority of the agent

Article 9

- (1) The authorisation of the agent by the principal may be express or implied.
- (2) The agent has authority to perform all acts necessary in the circumstances to achieve the purposes for which the authorisation was given.

Article 10

The authorisation need not be given in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

Article 11

Any provision of Article 10, Article 15 of Chapter IV which allows an authorization, a ratification or a termination of authority to be made in any form other than in writing does not apply where the principal or the agent has his place of business in a Contracting State which has made a declaration

under Article 27. The parties may not derogate from or vary the effect of this paragraph.

Chapter III - Legal effects of acts carried out by the agent

Article 12

Where an agent acts on behalf of a principal within the scope of his authority and the third party knew or ought to have known that the agent was acting as an agent, the acts of the agent shall directly bind the principal and the third party to each other, unless it follows from the circumstances of the case, for example, by a reference to a contract of commission, that the agent undertakes to bind himself only.

Article 13

(1) Where the agent acts on behalf of a principal within the scope of his authority, his acts shall bind only the agent and the third party if:

(a) the third party neither knew nor ought to have known that the agent was acting as an agent, or

(b) it follows from the circumstances of the case, for example by a reference to a contract of commission, that the agent undertakes to bind himself only.

(2) Nevertheless:

(a) where the agent, whether by reason of the third party's failure of performance or for any other reason, fails to fulfil or is not in a position to fulfil his obligations to the principal, the principal may exercise against the third party the rights acquired on the principal's behalf by the agent, subject to any defences which the third party may set up against the agent;

(b) where the agent fails to fulfil or is not in a position to fulfil his obligations to the third party, the third party may exercise against the principal the rights which the third party has against the agent, subject to any defences which the

agent may set up against the third party and which the principal may set up against the agent.

(3) The rights under paragraph 2 may be exercised only if notice of intention to exercise them is given to the agent and the third party or principal, as the case may be. As soon as the third party or principal has received such notice, he may no longer free himself from his obligations by dealing with the agent.

(4) Where the agent fails to fulfil or is not in a position to fulfil his obligations to the third party because of the principal's failure of performance, the agent shall communicate the name of the principal to the third party.

(5) Where the third party fails to fulfil his obligations under the contract to the agent, the agent shall communicate the name of the third party to the principal.

(6) The principal may not exercise against the third party the rights acquired on his behalf by the agent if it appears from the circumstances of the case that the third party, had he known the principal's identity, would not have entered into the contract.

(7) An agent may, in accordance with the express or implied instructions of the principal, agree with the third party to derogate from or vary the effect of paragraph 2.

Article 14

(1) Where an agent acts without authority or acts outside the scope of his authority, his acts do not bind the principal and the third party to each other.

(2) Nevertheless, where the conduct of the principal causes the third party reasonably and in good faith to believe that the agent has authority to act on behalf of the principal and that the agent is acting within the scope of that authority, the principal may not invoke against the third party the lack of authority of the agent.

Article 15

- (1) An act by an agent who acts without authority or who acts outside the scope of his authority may be ratified by the principal. On ratification the act produces the same effects as if it had initially been carried out with authority.
- (2) Where, at the time of the agent's act, the third party neither knew nor ought to have known of the lack of authority, he shall not be liable to the principal if, at any time before ratification, he gives notice of his refusal to become bound by a ratification. Where the principal ratifies but does not do so within a reasonable time, the third party may refuse to be bound by the ratification if he promptly notifies the principal.
- (3) Where, however, the third party knew or ought to have known of the lack of authority of the agent, the third party may not refuse to become bound by a ratification before the expiration of any time agreed for ratification or, failing agreement, such reasonable time as the third party may specify.
- (4) The third party may refuse to accept a partial ratification.
- (5) Ratification shall take effect when notice of it reaches the third party or the ratification otherwise comes to his attention. Once effective, it may not be revoked.
- (6) Ratification is effective notwithstanding that the act itself could not have been effectively carried out at the time of ratification.
- (7) Where the act has been carried out on behalf of a corporation or other legal person before its creation, ratification is effective only if allowed by the law of the State governing its creation.
- (8) Ratification is subject to no requirements as to form. It may be express or may be inferred from the conduct of the principal.

Article 16

- (1) An agent who acts without authority or who acts outside the scope of his authority shall, failing ratification, be liable to pay the third party such compensation as will place the third party in the same position as he would have been in if the agent had acted with authority and within the scope of his authority.

(2) The agent shall not be liable, however, if the third party knew or ought to have known that the agent had no authority or was acting outside the scope of his authority.

Chapter IV - Termination of the authority of the agent

Article 17

The authority of the agent is terminated:

- (a) when this follows from any agreement between the principal and the agent;
- (b) on completion of the transaction or transactions for which the authority was created;
- (c) on revocation by the principal or renunciation by the agent, whether or not this is consistent with the terms of their agreement.

Article 18

The authority of the agent is also terminated when the applicable law so provides.

Article 19

The termination of the authority shall not affect the third party unless he knew or ought to have known of the termination or the facts which caused it.

Article 20

Notwithstanding the termination of his authority, the agent remains authorised to perform on behalf of the principal or his successors the acts which are necessary to prevent damage to their interests.

Chapter V - Final provisions

Article 21

The Government of Switzerland is hereby designated as the depositary for this Convention.

Article 22

(1) This Convention is open for signature at the concluding meeting of the Diplomatic Conference on Agency in the International Sale of Goods and will remain open for signature by all States at Berne until 31 December 1984.

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This 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 are to be deposited with the Government of Switzerland.

Article 23

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions of substantive law concerning the matters governed by this Convention, provided that the principal and the third party or, in the case referred to in Article 2, paragraph 2, the agent and the third party have their places of business in States parties to such agreement.

Article 24

(1) If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this Article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

(4) If a Contracting State makes no declaration under paragraph 1 of this Article, the Convention is to extend to all territorial units of that State.

Article 25

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 24 shall carry no implication as to the internal distribution of powers within that State.

Article 26

(1) Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply where the principal and the third party or, in the case referred to in Article 2, paragraph 2, the agent and the third party have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply where the principal and the third party or, in the case referred to in Article 2, paragraph 2, the agent and the third party have their places of business in those States.

(3) If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made

will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph 1, provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 27

A Contracting State whose legislation requires an authorization, ratification or termination of authority to be made in or evidenced by writing in all cases governed by this Convention may at any time make a declaration in accordance with Article 11 that any provision of Article 10, Article 15 or Chapter IV which allows an authorization, ratification or termination of authority to be other than in writing, does not apply where the principal or the agent has his place of business in that State.

Article 28

A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Article 2, paragraph 1 (b).

Article 29

A Contracting State, the whole or specific parts of the foreign trade of which are carried on exclusively by specially authorized organisations, may at any time declare that, in cases where such organisations act either as buyers or sellers in foreign trade, all these organisations or the organisations specified in the declaration shall not be considered, for the purposes of Article 13, paragraphs 2 (b) and 4, as agents in their relations with other organisations having their place of business in the same State.

Article 30

(1) A Contracting State may at any time declare that it will apply the provisions of this Convention to specified cases falling outside its sphere of application.

- (2) Such declaration may, for example, provide that the Convention shall apply to:
- (a) contracts other than contracts of sale of goods;
 - (b) cases where the places of business mentioned in Article 2, paragraph 1, are not situated in Contracting States.

Article 31

- (1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.
- (2) Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.
- (3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under Article 26 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.
- (4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.
- (5) A withdrawal of a declaration made under Article 26 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that Article.

Article 32

No reservations are permitted except those expressly authorised in this Convention.

Article 33

(1) This Convention enters into force on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.

(2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article 34

This Convention applies when the agent offers to sell or purchase or accepts an offer of sale or purchase on or after the date when the Convention enters into force in respect of the Contracting State referred to in Article 2, paragraph 1.

Article 35

(1) A Contracting State may denounce this Convention by a formal notification in writing to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve 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.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

DONE at Geneva this seventeenth day of February, one thousand nine hundred and eighty-three, in a single original, of which the English and French texts are equally authentic.