Part two. Formation of the contract

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

INTRODUCTION

1. Article 23 provides that a contract is concluded when an acceptance of an offer becomes effective. Except as provided in article 18 (3), an acceptance is effective at the moment it reaches the offeror in accordance with article 18 (2). The exception in article 18 (3) provides that an acceptance is effective at the moment the offeree performs an act if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree is authorized to indicate its acceptance of the offer by an act without notice to the offeror.

INTERPRETATION AND THE TIME OF CONCLUSION OF A CONTRACT

2. A contract is concluded when the communications between and actions of the parties, as provided in article 18 and as interpreted in accordance with article 8, establish that there has been an effective acceptance of an offer.\(^1\)

PLACE OF CONCLUSION OF A CONTRACT

4. Article 23 does not address where a contract is concluded. One court deduced from article 23 that the contract was concluded at the place of business where the acceptance reached the offeror.\(^5\)

Notes

\(^1\)Comisión para la Protección del Comercio Exterior de México, Mexico, 29 April 1996, Unilex (contract concluded when acceptance reached buyer-offeror); CLOUT case No. 134 [Oberlandesgericht München, Germany, 8 March 1995] (although Part II not applicable because of art. 92 declaration, court finds contract concluded by intention of the parties); CLOUT case No. 158 [Cour d’appel, Paris, France, 22 April 1992] (contract concluded when acceptance reached offeror); CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990] (exchange of communications, interpreted in accordance with art. 8, established parties’ intent to conclude contract) (see full text of the decision).


\(^4\)CLOUT case No. 395 [Tribunal Supremo, Spain, 28 January 2000] (proposal to modify price not accepted); CLOUT case No. 193 [Handelsgericht des Kantons Zürich, Switzerland, 10 July 1996] (proposal to modify price not accepted by silence, citing art. 18 (1)); CLOUT case No. 203 [Cour d’appel, Paris, France 13 December 1995] (confirmation letter sent after contract concluded not accepted).

\(^5\)CLOUT case No. 308 [Federal Court of Australia, 28 April 1995] (German law applied because acceptance reached offeror at its place of business in Germany) (see full text of the decision).