



International Distribution Institute

International Sale Contracts B2B & B2C

Conditions on Exclusion/Limitation of Liability –
Warranty/Guarantee

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International B2B Contracts

General Principle

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Freedom of Contract

(both under most domestic laws as well as f.e. under article 6 of the Convention on Contracts International Sale of Goods (CISG) and Article 1.1 UNIDROIT Principles)



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International B2C Contracts

General Principle

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Consumers Deserve Special Protection

(Scope of Protection often also broadened to SME's)

(e.g. EU Directives 93/13, 1999/44 and 2011/83; Framework Act on Consumers, South Korea; Consumer Act, Philippines; Consumer Law Brazil; Law on Consumer Protection, Ecuador; Consumer Protection Law, Uruguay)

Exclusion and Limitation of Liability and Warranty Clauses (B2B and B2C) General Principle

>--Clauses may not be unfair/unreasonable;

>Minimum Adequate Remedy Option(s) required;

*>Exclusion/limitation of liability prohibited in case
explicit warranty/guarantee is given and/or in case of
death or personal injury*

*(e.g. Unfair Contract Terms Act, England & Scotland; Uniform Commercial Code
(U.C.C. in the USA); Article 7(2) CISG; UNIDROIT Principles article 7.1.6)*



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I What to do with International B2B Sales?

Uniformity and predictability

Submit the Contract of Sale to the CISG or to domestic law and ensure that Standard T&C's apply, which meet with the standards of reasonableness and fairness.

(Be aware that the UK, Portugal, Malta and India are not Contracting States!)



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II What to do with International B2B Sales

Standard T&C's under the C.I.S.G.

Opinion No.13 of the C.I.S.G. Council:

“if the offeror clearly informs the offeree that it wants the contract to be subject to its standard terms, the standard terms will become part of their contract if the offeree accepts the offer, provided that the offeree has been given a reasonable opportunity to take notice of the contents of the standard terms”



III What to do with International B2B Sales

Exclusion or limitation of liability clauses under the
C.I.S.G

Opinion No. 17 of the C.I.S.G. Council:

“As per Article 4, second sentence (a), the CISG is not concerned with the validity of the contract. It follows that protection mechanisms established by the otherwise applicable law or rules of law remain generally applicable to limitation clauses in contracts governed by the Convention. Thus, from the perspective of the CISG, all of these protection mechanisms affect the substantive validity of exemption and limitation of liability clauses.”



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IV What to do with International B2B Sales

Exclusion or limitation of liability clauses under the
C.I.S.G.

Opinion No.17 of the C.I.S.G. Council:

“What is considered to be a validity issue under the Convention is not to be decided by the otherwise applicable law or rules of law, but by the CISG itself.”



V What to do with International B2B Sales

Exclusion or limitation of liability clauses under the C.I.S.G.

Opinion No. 17 of the C.I.S.G. Council:

“As limitation and exclusion clauses fall under the CISG scope, their uniform interpretation is required under Article 7(1) and governed by Articles 8 and 9 CISG. Therefore, cases involving a challenge to the validity of such clauses under the otherwise applicable law or rules of law call for an interpretation in accordance with the general principles on which the CISG is based (Article 7(2)). Among such principles, the principle of reasonableness stands as the most important.”



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What to do with International B2C Sales?

No Uniform Solution Available

Opt for a national law (CISG does not apply)
Check T&C's on compliance with domestic laws



Don't forget the jurisdiction clause!

Within the EU: Brussels I

When Supplier is not established in and has no branch, agency or establishment in a Member State within the meaning of 17 (2)
Brussels I



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Thank you
for
your attention