

United Nations Convention on the Use of Electronic Communications in International Contracts, 2005

United Nations (UN)

copy @ lexmercatoria.org

Copyright © 2005 United Nations (UN)

Contents

United Nations Convention on the Use of Electronic Communications in International Contracts 1

[Preamble] 1

Chapter I - Sphere of Application 1

Article 1 - Scope of Application 1

Article 2 - Exclusions 1

Article 3 - Party Autonomy 2

Chapter II - General Provisions 2

Article 4 - Definitions 2

Article 5 - Interpretation 2

Article 6 - Location of the Parties 3

Article 7 - Information Requirements 3

Chapter III - Use of Electronic Communications in International Contracts 3

Article 8 - Legal Recognition of Electronic Communications 3

Article 9 - Form Requirements 3

Article 10 - Time and Place of Dispatch and Receipt of Electronic Communications 4

Article 11 - Invitation to Make Offers 4

Article 12 - Use of Automated Message Systems for Contract Formation 5

Article 13 - Availability of Contractual Terms 5

Article 14 - Error in Electronic Communications 5

Chapter IV - Final Provisions 5

Article 15 - Depositary 5

Article 16 - Signature, Ratification, Acceptance or Approval 5

Article 17 - participation by Regional Economic Integration Organizations 6

Article 18 - Effects in Domestic Territorial Units 6

Article 19 - Declaration on the Scope of Application 6

Article 20 - Communications Exchanged Under Other International Conventions 7

Article 21 - Procedure and Effects of Declarations 7

Article 22 - Reservations 7

Article 23 - Entry Into Force 8

Article 24 - Time of Application 8

Article 25 - Denunciations 8

[Post Provisions] 8

[Post Clauses (If any: Signed; Witnessed; Done; Authentic Texts; [Post Clauses (If any: Signed; Witnessed; Done; Authentic Texts; & Deposited Clauses)] Deposited Clauses)] 8

Metadata 9

SiSU Metadata, document information 9

1 **United Nations Convention on the Use of Electronic
Communications in International Contracts**

[Preamble]

2 *The States Parties to this Convention,*

3 *Reaffirming* their belief that international trade on the basis of
equality and mutual benefit is an important element in promoting
friendly relations among States,

4 *Noting* that the increased use of electronic communications im-
proves the efficiency of commercial activities, enhances trade con-
nections and allows new access opportunities for previously re-
mote parties and markets, thus playing a fundamental role in pro-
moting trade and economic development, both domestically and
internationally,

5 *Considering* that problems created by uncertainty as to the legal
value of the use of electronic communications in international con-
tracts constitute an obstacle to international trade,

6 *Convinced* that the adoption of uniform rules to remove obstacles
to the use of electronic communications in international contracts,
including obstacles that might result from the operation of existing
international trade law instruments, would enhance legal certainty
and commercial predictability for international contracts and help
States gain access to modern trade routes,

7 *Being of the opinion* that uniform rules should respect the freedom
of parties to choose appropriate media and technologies, taking
account of the principles of technological neutrality and functional
equivalence, to the extent that the means chosen by the parties
comply with the purpose of the relevant rules of law,

8 *Desiring* to provide a common solution to remove legal obstacles

to the use of electronic communications in a manner acceptable to
States with different legal, social and economic systems,

Have agreed as follows:

9

Chapter I - Sphere of Application

10

Article 1 - Scope of Application

11

1. This Convention applies to the use of electronic communications
in connection with the formation or performance of a contract be-
tween parties whose place of business are in different States.

12

2. The fact that the parties have their places of business in different
States is to be disregarded whenever this fact does not appear
either from the contract or from any dealings between the parties
or from information disclosed by the parties at any time before or
at the conclusion of the contract.

13

3. Neither the nationality of the parties nor the civil or commercial
character of the parties or of the contract is to be taken into con-
sideration in determining the application of this Convention.

14

Article 2 - Exclusions

15

1. This Convention does not apply to electronic communications
relating to any of the following:

16

(a) Contracts concluded for personal, family or household pur-
poses;

17

(b) (i) Transactions on a regulated exchange; (ii) foreign exchange
transactions; (iii) inter-bank payment systems, inter-bank payment
agreements or clearance and settlement systems relating to secu-
rities or other financial assets or instruments; (vi) the transfer of

18

security rights in sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary.

19 2. This Convention does not apply to bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money.

20 **Article 3 - Party Autonomy**

21 The parties may exclude the application of this Convention or derogate from or vary the effect of any of its provisions.

22 **Chapter II - General Provisions**

23 **Article 4 - Definitions**

24 For the purposes of this Convention:

25 (a) "Communication" means any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation of or performance of a contract;

26 (b) "Electronic communication" means any communication that the party make by means of data messages;

27 (c) "Data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy;

28 (d) "Originator" of an electronic communication means a party by whom, or on whose behalf, the electronic communication has been

sent or generated prior to storage, if any, but it does not include a party acting as an intermediary with respect to that electronic communication;

(e) "Addressee" of an electronic communication means a party who is intended by the originator to receive the electronic communication, but does not include a party acting as an intermediary with respect to that electronic communication; 29

(f) "Information system" means a system for generating, sending, receiving, storing or otherwise processing data messages; 30

(g) "Automated message system" means a computer program or an electronic or other automated means used to initiate an action or respond to data messages or performances in whole or in part, without review or intervention by a natural person each time an action is initiated or a response is generated by the system; 31

(h) "Place of business" means any place where a party maintains a non-transitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location. 32

33 **Article 5 - Interpretation**

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. 34

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. 35

36 **Article 6 - Location of the Parties**

37 1. For the purposes of this Convention, a party's place of business is presumed to be the location indicated by that party, unless another party demonstrates that the party making the indication does not have a place of business at that location.

38 2. If a party has not indicated a place of business and has more than one place of business, then the place of business for the purposes of this Convention is that which has the closest relationship to the relevant contract, having regard to the circumstances known to or contemplated by the parties at any time before the conclusion of the contract.

39 3. If a natural person does not have a place of business, reference is to be made to the person's habitual residence.

40 4. A location is not a place of business merely because that is: (a) where equipment and technology supporting an information system used by a party in connection with the formation of a contract are located; or (b) where the information system may be accessed by other parties.

41 5. The sole fact that a party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business is located in that country.

42 **Article 7 - Information Requirements**

43 Nothing in this Convention affects the application of any rule of law that may require the parties to disclose their identities, place of business or other information, or relieves a party from the legal consequences of making inaccurate, incomplete or false statements in that regard.

Chapter III - Use of Electronic Communications in International Contracts 44

Article 8 - Legal Recognition of Electronic Communications 45

46 1. A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication.

47 2. Nothing in this Convention requires a party to use or accept electronic communications, but a party's general agreement to do so may be inferred from the party's conduct.

Article 9 - Form Requirements 48

49 1. Nothing in this Convention requires a communication or a contract to be made or evidenced in any particular form.

50 2. Where the law requires that a communication or a contract should be in writing, or provides consequences for the absence of writing, that requirement is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.

51 3. Where the law requires a communication or a contract should be signed by a party, or provides consequences for the absence of a signature, that requirement is met in relation to an electronic communication if:

52 (a) A method is used to identify the party and to indicate that party's intention in respect of the information contained in the electronic communication; and

53 (b) The method used is either:

54 (i) As reliable as appropriate for the purpose for which the electronic

communication was generated or communicated, in the light of all the circumstances, including any equivalent agreement; or

(ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

4. Where the law requires that a communication or a contract should be made available or retained in its original form, or provides consequences for the absence of an original, that requirement is met in relation to an electronic communication if:

(a) There exists a reliable assurance as to the integrity of the information in contains from the time when it was first generated in its final form, as an electronic communication or otherwise; and

(b) Where it is required that the information it contains be made available, that information is capable of being displayed to the person to whom it is to be made available.

5. For the purposes of paragraph 4 (a):

(a) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display; and

(b) The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

Article 10 - Time and Place of Dispatch and Receipt of Electronic Communications

1. The time of dispatch of an electronic communication is the time when it leaves an information system under the control of the originator or of the party who sent it on behalf of the originator or, if

the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the time when the electronic communication is received.

2. The time of receipt of an electronic communication is the time when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee. The time of receipt of an electronic communication at another electronic address of the addressee is the time when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address. An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.

3. An electronic communication is deemed to be dispatched at the place where the originator has its place of business and is deemed to be received at the place where the addressee has its place of business, as determined in accordance with article 6.

4. Paragraph 2 of this article applies notwithstanding that the place where the information system supporting an electronic address is located may be different from the place where the electronic communication is deemed to be received under paragraph 3 of the article.

Article 11 - Invitation to Make Offers

A proposal to conclude a contract made through one or more electronic communications which is not addressed to one or more specific parties, but is generally accessible to parties making use of information systems, including proposals that make use of interactive applications for the placement of orders through such information systems, is to be considered as an invitation to make offers, unless

it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

69 **Article 12 - Use of Automated Message Systems for Contract Formation**

70 A contract formed by the interaction of an automated message system and a natural person, or by the interaction of automated message systems, shall not be denied validity or enforceability on the sole ground that no natural person reviewed or intervened in each of the individual actions carried out by the automated message systems or the resulting contract.

71 **Article 13 - Availability of Contractual Terms**

72 Nothing in this Convention affects the application of any rule of law that may require a party that negotiates some or all of the terms of a contract through the exchange of electronic communications to make available to the other party those electronic communications which contain the contractual terms in a particular manner, or relieves a party from the legal consequences of failure to do so.

73 **Article 14 - Error in Electronic Communications**

74 1. Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if:

75 (a) The person, or the party on whose behalf that person was act-

ing, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication; and

(b) The person, or the party on whose behalf that person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.

2. Nothing in this article affects the application of any rule of law that may govern the consequences of any error other than as provided for in paragraph 1.

Chapter IV - Final Provisions

Article 15 - Depositary

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

Article 16 - Signature, Ratification, Acceptance or Approval

1. This Convention is open for signature by all States at United Nations Headquarters in New York from 16 January 2006 to 16 January 2008.

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

3. This Convention is open for accession by all States that 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 Secretary-General of the United Nations.

86 **Article 17 - participation by Regional Economic Integration Organizations**

87 1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Contracting State, to the extent that that organization has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the regional economic integration organization shall not count as a Contracting State in addition to its member States that are Contracting States.

88 2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any change to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

89 3. Any reference to a “Contracting State” or “Contracting States” in this Convention applies equally to a regional economic integration organization where the context so requires.

90 4. This Convention shall not prevail over any conflicting rules of any regional economic integration organization as applicable to parties whose respective places of business are located in States members of any such organization, as set out by declaration made in accordance with article 21.

Article 18 - Effects in Domestic Territorial Units

91

92 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.

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

94 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 purpose of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the convention extends.

95 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 19 - Declaration on the Scope of Application

96

97 1. Any Contracting State may declare, in accordance with article 21, that it will apply this Convention only:

98 (a) When the States referred to in article 1, paragraph 1, are Contracting States to this Convention; or

99 (b) When the parties have agreed that it applies.

100 2. Any Contracting State may exclude from the scope of application

of this Convention the matters it specifies in a declaration made in accordance with article 21.

and to which a Contracting State to this Convention is or may become a Contracting State, applies, unless the State has declared, in accordance with article 21, that it will not be bound by this paragraph.

101 **Article 20 - Communications Exchanged Under Other**
 102 **International Conventions**

103 1. The provisions of this Convention apply to the use of electronic
 104 communications in connection with the formation or performance of
 105 a contract to which any of the following international conventions,
 106 to which a Contracting State to this Convention is or may become
 107 a Contracting State, apply:

103 <Convention on the Recognition and Enforcement of Foreign
 104 Arbitral Awards (New York, 10 June 1958)>;

104 <Convention on the Limitation Period in the International Sale
 105 of Goods (New York, 14 June 1974)> and <Protocol thereto
 106 (Vienna, 11 April 1980)>;

105 <United Nations Convention on Contracts for the International
 106 Sale of Goods (Vienna, 11 April 1980)>;

106 <United Nations Convention on the Liability of Operators of
 107 Transport Terminals in International Trade (Vienna, 19 April
 108 1991)>;

107 <United Nations Convention on Independent Guarantees and
 108 Stand-by Letters of Credit (New York, 11 December 1995)>;

108 <United Nations Convention on the Assignment of Receivables
 109 in International Trade (New York, 12 December 2001)>.

109 2. The provisions of this Convention Apply further to electronic
 communications in connection with the formation or performance
 of a contract to which another international convention, treaty or
 agreement not specifically referred to in paragraph 1 of this article,

3. A State that makes a declaration pursuant to paragraph 2 of this
 110 article may also declare that it will nevertheless apply the provisions
 of this Convention to the use of electronic communications in con-
 111 nection with the formation or performance of any contract to which
 a specified international convention, treaty or agreement applies to
 which the State is or may become a Contracting State.

4. Any State may declare that it will not apply the provisions of
 111 this Convention to the use of electronic communications in con-
 nection with the formation or performance of a contract to which
 any international convention, treaty or agreement specified in that
 State's declaration, to which the State is or may become a Con-
 112 tracting State, applies, including any of the conventions referred to
 in paragraph 1 of this article, even if such State has not excluded
 the application of paragraph 2 of this article by a declaration made
 in accordance with article 21.

112 **Article 21 - Procedure and Effects of Declarations**

113 1. Declarations under article 17, paragraph 4, article 19, para-
 114 graphs 1 and 2, and article 20, paragraphs 2, 3 and 4, may be made
 at any time. Declarations made at the time of signature are subject
 to confirmation upon ratification, acceptance or approval.

114 **Article 22 - Reservations**

115 No reservations may be made under this Convention.

Article 23 - Entry Into Force

- 117 1. This Convention enters into force the first day of the month following the expiration of six months after the date of deposit of the third instrument of ratification, acceptance, approval or accession
- 118 2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third 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 six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

119 Article 24 - Time of Application

- 120 This Convention and any declaration apply only to electronic communications that are made after the date when the Convention or the declaration enters into force or takes effect in respect of each Contracting State.

121 Article 25 - Denunciations

- 122 1. A Contracting State may denounce this Convention by a formal notification in writing addressed to the depositary.
- 123 2. The denunciation takes effect on the first day of the first 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.

116 *[Post Provisions]*

[Post Clauses (If any: Signed; Witnessed; Done; Authentic Texts; & Deposited Clauses)]

DONE at New York this twenty-third day of November two thousand and five, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic. 124

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention. 125

Metadata

SiSU Metadata, document information

Document Manifest @:

http://www.jus.uio.no/lm/un.use.of.electronic.communication.in.international.contracts.convention.2005/sisu_manifest.html

Title: United Nations Convention on the Use of Electronic Communications in International Contracts, 2005

Creator: United Nations (UN)

Rights: Copyright (C) 2005 United Nations (UN)

Publisher: SiSU <http://www.jus.uio.no/sisu> (this copy)

Date: 2005

Topics Registered: United Nations:communications:electronic:convention;-communications:electronic:convention;convention:electronic communications

Version Information

Sourcefile: un.use.of.electronic.communication.in.international.contracts.-convention.2005.sst

Filetype: SiSU text 2.0

Source Digest: SHA256(un.use.of.electronic.communication.in.international.contracts.convention.2005.sst)=49d3013e2ab997f55d0114bc00b3194ca321c2a5-79e24fb810ef7b55271ef35e

Skin Digest: SHA256(skin_lm.rb)=5acda64a9532f9ef6b71693da2b471d4efac2f23-a8499e68de066eec8ea9b8e9

Generated

Document (dal) last generated: Tue Sep 21 18:15:14 -0400 2010

Generated by: SiSU 2.6.3 of 2010w30/3 (2010-07-28)

Ruby version: ruby 1.8.7 (2010-08-16 patchlevel 302) [i486-linux]