



FEES & BURGESS, P.C.
SUPPLY CHAIN MANAGEMENT
MEMO



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THE ROLE OF THE UNCISG IN THE INTERNATIONAL CONTRACTING LANDSCAPE

Fees & Burgess, P.C., Emphasizes:

The United Nations Convention on Contracts for the International Sale of Goods (UNCISG) was originally signed in 1980 in order to facilitate international commerce by standardizing contract terms applicable to the sale of goods. It went into effect on January 1, 1988. The UNCISG applies to international contracts for the sale of most goods (certain types of goods, such as consumer goods, aircraft, and goods sold at auction are excluded). It does not apply to service contracts, and it does not apply to contracts between buyers and sellers from locations within the same country.

The UNCISG applies to contracts for the sale of goods between parties in two separate nations that have adopted the UNCISG (referred to as “contracting states”), unless the parties expressly state that the UNCISG will not apply to the contract. Simply saying that the law of a particular country will apply is generally insufficient to disclaim the application of the UNCISG, especially when the specified country is a contracting state. The UNCISG must be specifically mentioned and its application disclaimed, or it will apply.

When contracting between a buyer location and a seller location in two countries outside the United States (if one of the parties is located in the United States, the UNCISG only applies if the other party is also in a contracting state), the UNCISG may even apply if only one of the parties is located within a contracting state. In that situation, if the contract does not specify a choice of law, general choice of law principles come into play, which can require an extremely complex legal analysis. If, under that analysis, the law of a contracting state were to apply, the UNCISG would be treated as the law of the contracting state and govern the transaction, unless expressly disclaimed in the contract. The same result occurs if the parties do specify a choice of law in the contract, and the chosen law is that of a contracting state.

When the UNCISG does apply, it provides a set of basic contracting rules similar to those found in Article 2 of the Uniform Commercial Code (UCC), which has been adopted in some form by almost every state in the United States (Louisiana is the exception). However, there are some important differences between the UNCISG and the UCC, so it is important to read up on the UNCISG and understand how it works if you may be entering into transactions which it governs.

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THE ROLE OF THE UNCISG IN THE INTERNATIONAL CONTRACTING LANDSCAPE
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An example of where the UNCISG differs from the UCC is with respect to situations in which the buyer or the seller submits an offer and the other party responds with an acceptance that includes conflicting or different terms. Prior to the UCC, courts in the United States would generally treat any acceptance that was not a mirror image of the offer as a rejection and counteroffer. This is the approach used under the UNCISG, although it only applies if there are differences in material contract terms, such as price, quantity, or terms assigning liability. The UCC generally favors honoring an acceptance that includes conflicting or different terms, so as to create a binding contract, unless the offering or the accepting party takes the additional step of saying there will be no contract unless you agree to my terms as stated. To the extent that there are conflicting or different terms in the acceptance, the UCC provides a set of rules for determining which of these terms becomes part of the contract and which ones do not. The UNCISG approach is simpler, but can prevent the parties from having a legally binding contract when, despite their disagreement regarding the terms, some form of contract was intended.

Another major difference between the UNCISG and the UCC is the requirement that contracts for the purchase of goods worth a certain dollar amount be in writing. Under the UCC, a contract for the purchase of \$500 worth of goods or more must be in writing, unless the contract is acknowledged by the parties or the goods are received and payment is made for same. The UNCISG has no writing requirement, so oral contracts are enforceable regardless of the amount involved.

In determining whether you want the UNCISG to apply to your company's international contracts for the purchase or sale of goods, you should keep in mind that the UNCISG does not have a particularly well-developed body of case law interpreting its provisions. The UNCISG has been in effect for a little over twenty years, but its interpretation is not as frequently litigated as many of the provisions of the UCC. In addition, you should consider that the case law interpreting the UNCISG comes from courts in each of the contracting states, and can be conflicting between contracting states. So, if you choose to allow the UNCISG to govern a particular contract, it might be wise to also include a provision in the contract specifying where disputes will be brought if they must be litigated or arbitrated. This allows you to know going into the transaction that if there is a dispute your agreement will be governed by the UNCISG as interpreted by the courts in a particular country. While those courts can certainly look to how other contracting states have interpreted the UNCISG in making their decision, their tendency will likely be to side with their own country's interpretation if there is an inconsistency between the courts of different contracting states.

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THE ROLE OF THE UNCISG IN THE INTERNATIONAL CONTRACTING LANDSCAPE (continued from page 2)

Currently, over 70 contracting states have signed, ratified, or otherwise adopted the UNCISG. In addition to the United States, some other notable contracting states include: China, Japan, Canada, Mexico, the Russian Federation, France, Germany, Singapore, and Hungary. Notably, the United Kingdom has not adopted the UNCISG.

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Fees & Burgess, P.C., Calendar of Events for 2010

Click on the seminar name for more information.

February 17, 2010 ~ March 17, 2010 ~ April 21, 2010 ~ May 12, 2010

11:30 AM to 1:00 PM — Huntsville, Alabama

[International Commercial Contracting: Identifying, Avoiding, and Managing Risk Areas](#)

This four-part course provides a practical introduction to international contracting, focusing particularly on risk identification and avoidance. Attendees will gain an understanding of the laws and provisions governing international agreements, and how international contractual relationships differ from domestic counterparts. The course will provide a solid grasp of the concepts, theories, and practical considerations necessary for drafting, interpreting, and negotiating international contracts. This course will be held at Holiday Inn, Research Park and can be used toward ISM and NCMA recertification credit.

Session 1: [Introduction to International Contracting](#) ~ February 17, 2010; 11:30 AM to 1:00 PM

Session 2: [Drafting 101](#) ~ March 17, 2010; 11:30 AM to 1:00 PM

Session 3: [Drafting 101 \(Continued\)](#) ~ April 21, 2010; 11:30 AM to 1:00 PM

Session 4: [Special Considerations in International Contracting](#) ~ May 12, 2010; 11:30 AM to 1:00 PM

February 24, 2010; 8:00 AM to 3:15 PM — Huntsville, Alabama

[Uniform Commercial Code/ CCCM Certification](#) — This program consists of 6 hours of training in one day covering an overview of the Uniform Commercial Code, Articles 1, 2, and 2A. This training, similar to the basic material presented by the same presenters for the National Contract Management Association at its 2009 World Congress held in Long Beach, California, was used as a FastTrack study session as preparation for the Certified Commercial Contracts Manager exam.

March 16, 2010; 11:00 AM - 1:00 PM CST — Webinar

[Negotiation and Resolution of Federal Government Contractor Claims under the Contracts Disputes Act Webinar](#) — Attendees of this program will learn how to prepare, negotiate, and submit contract disputes to the government for resolution under the Contract Disputes Act of 1978, as well as options for appealing claims denied by the government. This course is designed to meet the requirements of the National Contract Management Association's (NCMA) certification programs for 1 hour of CPE.



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SPEAKERS

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Fees & Burgess, P.C., also publishes *F&B Quarterly Bytes* focusing on multiple practice areas and *F&B HR Corner* focusing on human resource issues. To receive any of these e-newsletters, please contact newsletters@feesburgess.com.

Michael L. Fees
mfees@feesburgess.com

C. Gregory Burgess
gburgess@feesburgess.com

Allen L. Anderson
anderson@feesburgess.com

Jeffrey L. Roth
jroth@feesburgess.com

FEES & BURGESS, P.C.
213 Green Street
Huntsville, Alabama 35801

Telephone (256) 536-0095
Facsimile (256) 536-4440

www.feesburgess.com

Stacy L. Moon
smoon@feesburgess.com

Leah M. Green
lgreen@feesburgess.com

Nori D. Horton
nhorton@feesburgess.com

Ryan G. Blount
rblount@feesburgess.com

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