国际货物销售合同适用法律公约(1986年)

辽宁电子图书有限责任公司编

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国际货物销售合同适用法律公约（１９８６年）

本公约各缔约国，

期望统一国际货物销售合同法律选择规则，

铭记１９８０年４月１１日在维也纳订立的联合国国际货物销售合同公约，

兹协议如下：

第一章 适用范围

第１条

本公约确定适用于货物销售合同的法律：

ａ） 在其营业所设在不同国家的当事人之间签订的合同；

ｂ） 所有涉及在不同国家的法律之间进行选择的其它情况，除非这种选择仅仅是根据当事人对适用法律作出的规定，甚至对法院或仲裁庭也一并作出了选择。

第２条

本公约不适用于：

ａ） 由于执行而进行的销售或其他依法律授权的销售。

ｂ） 公债、股票、投资证券、流通票据或货币的销售；但适用于根据单据进行的货物销售。

ｃ） 对于供私人、家人或家庭使用的货物销售；但如果卖方在订立合同时既不知道也没有理由知道这些货物是供这种使用时，应当适用。

第３条

在本公约范围内，“ 货物 ”包括：

ａ） 船舶，船只，小船、气垫船和飞机；

ｂ） 电力。

第４条

（１） 供应尚待制造或生产的货物的合同应视为销售合同，除非订购货物的当事人承担供应这种制造或生产所需的大部分原材料。

（２） 若提供劳务或其它服务为供货方的主要义务，则这种合同不应视为销售合同。

第５条

本公约不确定下列事项所适用的法律：

ａ） 当事人的行为能力或由于当事人无行为能力而导致合同无效的后果；

ｂ） 关于某一代理人是否能约束某一本人，或某一机构是否能约束某一公司或法人团体或非社团组织的问题；

ｃ） 所有权的转移：但第１２条明确提到的问题应受本公约指定的适用法律管辖；

ｄ） 销售对当事人以外的任何人的效力；

ｅ） 仲裁协议或法院选择协议。尽管这种协议包含在销售合同之中。

第６条

本公约确定的法律，不论是否某一缔约国的法律，均予以适用。

第二章 适用法律

第一节 适用法律的确定

第７条

（１） 销售合同受当事人选择的法律管辖。当事人的选择协议必须是明示的或者从合同的规定和当事人的行为整体来看可以明显地推断出来。这种选择可以仅限于合同的某一部分。

（２） 当事人可在任何时候约定，其销售合同全部或部分适用原来所没规定的法律，而不管原来适用的法律是不是由当事人所选择。销售合同订立后，当事人对适用法律的任何变更不得有损于合同在形式上的有效性或第三人的权利。

第８条

（１） 在未按照第７条选择销售合同适用法律时，合同应受卖方在订立合同时设有营业所的国家的法律管辖。

（２） 但是，销售合同应受买方在订立合同时设有营业所的国家的法律管辖，如果：

ａ） 谈判在该国家进行，并且参加谈判的各当事人在该国订立了合同；或

ｂ） 合同明确规定卖方须在该国履行其交货义务；或

ｃ） 合同主要依买方确定的条件和应买方向投标人发出的投标邀请（招标）而订立。

（３） 作为例外，如果根据整个情况，例如双方当事人之间的任何业务关系，合同明显地与本条第１或第２款应适用于合同的法律以外的另一法律有更密切的联系，则合同受该另一法律的管辖。

（４） 如果在合同订立时，买方和卖方营业所所在国据第２１条第１款ｂ项作了保留，则第３款不予适用。

（５） 如果在合同订立时，买方和卖方在不同国家设有营业所，营业所所在国均为联合国国际货物销售合同公约的缔约国，则凡属该公约调整的事项不适用于第３款。

第９条

凡拍卖地国的法律或交易所所在地国法律不禁止选择时，则因拍卖而进行的销售或商品交易所或其它交易所内的销售，受当事人根据第７条选择的法律管辖。若当事人未作出选择，或禁止作出此种选择时，则适用拍卖地国法律或交易所所在地国的法律。

第１０条

（１） 凡选择符合第７条规定的，则有关当事人对适用法律选择的同意是否存在，是否具有实质上的效力的问题由所选择的法律来确定。如果根据该项法律，选择是无效的，则适用于合同的法律按第８条的规定来确定。

（２） 销售合同或其任何条款是否存在，是否具有实质上的效力问题由按本公约规定应适用于合同或条款的法律来确定。

（3） 但是如果依据情况，按照前项所规定的法律确定这个问题不合理时，则为了确定他并没有同意对合同或者任何合同条款的法律选择，当事人可以依据他设有营业所的国家的法律。

第１１条

（1） 同一国内的当事人之间订立的销售合同，如果符合本公约规定的管辖该合同的法律规定，或符合合同订立地国法律的规定，则在形式上有效。

（2） 不同国家的当事人之间订立的销售合同，如果符合本公约规定的管辖该合同的法律规定，或符合那些国家其中之一国的法律规定，则在形式上有效。

（3） 由代理人订立的销售合同，代理人的行为地国即是上述款项所指的有关国家。

（4） 拟使已经订立或拟订立的销售合同产生法律效力的行为，若符合本公约管辖合同的法律规定，或符合该行为地国的法律规定，则该行为在形式上有效。

（5） 若合同一方当事人在合同订立时，其营业所所在地国已根据第２１条第１款Ｃ项的规定作了保留。则本公约不适用于该合同的形式上的效力问题。

第二节 适用法律的范围

第１２条

根据第７条、第８条或第９条，销售合同适用的法律具体地管辖：

ａ）合同的解释；

ｂ）当事人的权利和义务以及合同的履行；

ｃ）买方有权从货物中取得产品、产物和收入的时间：

ｄ）买方对货物承担风险的时间；

ｅ）当事人之间保留对货物所有权条款的合法性和效力；

ｆ）不履行合同的后果，包括可取得损害赔偿金的损失类别，但不得影响法院地程序法；

ｇ）债务及时效的各种消灭方法；

ｈ）合同无效的后果。

第１３条

若无明示条款作出相反规定，则对检查的方式和程序的规定，运用货物检验地国的法律。

第三章 一般条款

第１４条

（1）如果当事人设有一个以上营业所，则考虑到当事人在订立合同前或订立合同时所知道或所设想的情况，以与合同及其履行具有最密切关系的营业所作为其有关的营业所。

（2）如果当事人设有营业所，则可考虑其惯常住所。

第１５条

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本公约中的“法律”一词，是指不包括法律选择规则在内的国家的现行法律。

第１６条

在解释本公约时，要考虑公约的国际性质和适用时促进统一性的需要。

第１７条

无论合同的适用法律如何，本公约不阻止适用那些必须适用的法院地法。

第１８条

本公约确定适用的法律，只有在其适用明显地与公共政策（公共秩序）相抵触时，才可拒绝适用。

第１９条

为识别本公约所指定的法律，在一个国家拥有数个领土单位，而每个领土单位有其自己的法律制度或在货物销售合同方面有其自己的法律规则时，则所谓该国法律应解释为该领土单位的现行法律。

第２０条

一国内不同领土单位有其自己的法律制度或在货物销售合同方面有其自己的法律规则的国家，并不必须将本公约适用于这些单位现行法律之间的冲突。

第２１条

（1）任何国家在签字、批准、接受、核准或参加时，可对下列条款做出保留：

a）第１条b项规定的情况不适用本公约；

b）不适用第８条第３款；除非合同当事人各方都没有在依本项规定作出保留的国家设立营业所；

c）如果一国法律要求销售合同必须以书面形式订立或证明，而任何一方当事人在合同订立时在该国领土内设有营业所，则本公约不适用于该合同的形式上的有效性；

d）不适用第１２条g项有关诉讼时效问题。

（2）不允许做出其它保留。

（3）任何缔约国均可在任何时候撤回其已做的保留；自撤回通知满三个月后的第一个月的第一天起该项保留停止生效。

第２２条

（1）本公约对业已缔结或可能缔结的、并载有销售合同法律条款的任何公约或其他国际协定并不具有优先效力，但以这种文件只有在买卖双方在该文件的缔约国内设有营业所才适用为限。

（2）本公约对于某缔约国是参加国的或成为参加国的、对属于本公约范围内的具体种类的销售合同的法律选择做了规定的任何国际性公约，并不具有优先效力。

第２３条

本公约不得影响：

a）联合国国际货物销售合同公约的适用（维也纳１９８０年４月１１日）；

b）国际货物销售时效公约（纽约，１９７４年６月１４日），或对该公约修正议定书（维也纳，１９８０年４月１１日）的适用。

第２４条

本公约适用于其在缔约国生效后达成的销售合同。

第四章 最后条款

第２５条

（１）本公约对所有国家开放签字。

（２）签字国可对本公约批准、接受或核准。

（３）从开放签字之日起，本公约对所有非签字国家开放加入。

（４）批准书、接受书或核准书和加入书由荷兰王国外交部公约保管人保存。

第２６条

（１）如果一个国家拥有两个或两个以上的领土单位，这些领土单位对本公约规定的事项适用不同的法律制度，则该国可在签字、批准、接受、核准或参加时声明本公约适用于其所有的领土单位或仅适用于一个或数个领土单位，并且，可以随时提出另一个声明来修改其所做的声明。

（２）这种声明必须通知保管人，而且必须明确说明适用本公约的领土单位。

（３）如果一个国家未按本条提出声明，则本公约适用于该国的所有领土单位。

第２７条

（１）本公约自第２５条规定的第五份批准书、接受书、核准书或加入书交存之日起三个月后的第一个月的第一天生效。

（２）在此以后，本公约：

ａ）对于每一个后来批准、接受、核准或加入公约的国家自其批准书、接受书、核准书或加入书交存之日起三个月后的第一个月的第一天生效。

ｂ）每一个按照第２６条的规定适用本公约的领土单位自其按该条规定做出通知时起三个月后的第一个月的第一天生效。

第２８条

对每一个同意接受１９５５年６月１５日在海牙签订的国际货物销售适用法律公约约束的参加国，本公约对其生效，并取代上述的１９５５年公约。

第２９条

任何在修改本公约的文件生效后参加的国家，视为修改后公约的参加国。

第３０条

（１）本公约缔约国可以书面形式通知公约保管人退出本公约。

（２）退出，自保管人收到通知三个月后第一个月的第一天生效。凡在通知中订明退出于更长时间后生效的，则退出于保管人收到此通知后该更长时间期满时生效。

第３１条

保管人应将下列事项通知海牙国际私法会议的成员国以及根据第２５条对本公约签字、批准、接受、核准或加入的国家：

ａ）依据第２５条做出的签字和批准，接受、核准和加入；

ｂ）本公约依照第２９条生效的日期；

ｃ）依第２６条作出的声明；

ｄ）依第２１条做出的保留和保留的撤回；

e）依据第３０条所做的退出。

兹证明经正式授权的各国代表，业已在公约上签字。

１９８５年１０月３０日以英、法两种文字订于海牙，两种文本具有同等效力，一份文本存在荷兰王国政府档案馆，一份经核证无误的文本通过外交途经，送交１９８５年１０月特别会议时是海牙国际私法会议成员的每一个国家以及参加该届会议的每一个国家。

CONVENTION ON THE LAW APPLICABLE TO CONTRACT FOR THE INTERNATIONALSALE OF GOODS

(Concluded December 22, 1986)

The States Parties to the present Convention,

Desiring to unify the choice of law rules relating to contracts for the international sale of goods,

Bearing in mind the United Nations Convention on contracts for the international sale of goods, concluded at Vienna on 11 April 1980,

Have agreed upon the following privisions --

CHAPTER I SCOPE OF THE CONVENTION

Article 1

This Convention determines the law applicable to contracts of sale of goods --

a) between parties having their places of business in differen States;

b) in all other cases involving a choice between the laws of different States, unless such a choice arises solely from a stipulation by the parties as to the applicable law, even if accompanied by a choice of court or arbitration.

Article 2

The Convention does not apply to --

a) sales by way of execution or otherwise by authority of law;

b) sales of stocks, shares, investment securities, negotiable instruments or money; it does, however, apply to the sale of goods based on documents;

c) sales of goods bought for personal, family or household use; it does, however, apply if the seller at the time of the conclusion of the contract neither knew nor ought to have known that the goods were bought for any such use.

Article 3

For the purposes of the Convention, 'goods' includes --

a) ships, vessels, boats, hovercraft and aircraft;

b) electricity.

Article 4

(1) Contracts for the supply of goods to be manufactured or produced are to be considered contracts of sale unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(2) Contracts in which the preponderant part of the obligations of the party who furnishes goods consists of the supply of labor or other services are not to be considered contracts of sale.

Article 5

The Convention does not determine the law applicable to --

a) the capacity of the parties or the consequences of nullity or invalidity of the contract resulting from the incapacity or invalidity of the contract resulting from the incapacity of a party;

b) the question whether an agent is able to bind a principal. or an organ to bind a company or body corporate or un-incorporate;

c) the transfer of ownership; nevertheless, the issues specifically mentioned in Article 12 are governed by the law applicable to the contract under the Convention;

d) the effect of the sale in respect of any person other than the parties;

e) agreements on arbitration or on choice of court, even if such an agreement is embodied in the contract of sale.

Article 6

The law determined under the Convention applies whether or not it is the law of a Contracting State.

CHAPTER II APPLICABLE LAW

Section 1 Determination of the applicable law

Article 7

(1) A contract of sale is governed by the law chosen by the parties. The parties' agreement on this choice must be express or be clearly demonstrated by the terms of the contract and the conduct of the parties, viewed in their entirety. Such a choice may be limited to a part of the contract.

(2) The parties may at any time agree to subject the contract in whole or in part to a law other than that which previously governed it, whether or not the law previously governing the contract was chosen by the parties. Any change by the parties of the applicable law made after the conclusion of the contract does not prejudice its formal validity or the rights of third parties.

Article 8

(1) To the extent that the law applicable to a contract of sale has not been chosen by the parties in accordance with Article 7, the contract is governed by the law of the State where the seller has his place of business at the time of conclusion of the contract.

(2) However, the contract is governed by the law of the State where the buyer has his place of business at the time of conclusion of the contract, if --

a) negotiations were conducted, and the contract concluded by and in the presence of the parties, in that State; or

b) the contract provides expressly that the seller must perform his obligation to deliver the goods in that State; or

c) the contract was concluded on terms determined mainly by the buyer and in response to an invitation directed by the buyer to persons invited to bid (a call for tenders).

(3) By way of exception, where, in the light of the circumstances as a whole, for instance any business relations between the parties, the contract is manifestly more closely connected with a law which is not the law which would

otherwise be applicable to the contract under paragraphs 1 or 2 of this Article, the contract is governed by that other law.

(4) Paragraph 3 does not apply if, at the time of the conclusion of the contract, the seller and the buyer have their places of business in States having made the reservation under Article 21 paragraph 1 subparagraph b).

(5) Paragraph 3 does not apply in respect of issues regulated in the United Nations Convention on contracts for the international sale of goods (Vienna, 11 April 1980) where, at the time of the conclusion of the contract, the seller and the buyer have their places of business in different States both of which are Parties to that Convention.

Article 9

A sale by auction or on a commodity or other exchange is governed by the law chosen by the parties in accordance with Article 7 to the extent to which the law of the State where the auction takes place or the exchange is located does not prohibit such choice. Failing a choice by the parties, or to the extent that such choice is prohibited, the law of the State where the auction takes place or the exchange is located shall apply.

Article 10

(1) Issues concerning the existence and material validity of the consent of the parties as to the choice of the applicable law are determined, where the choice satisfies the requirements of Article 7, by the law chosen. If under that law the choice is invalid, the law governing the contract is determined under Article 8.

(2) The existence and material validity of a contract of sale, or of any term thereof, are determined by the law which under the Convention would govern the contract or term if it were valid.

(3) Nevertheless, to establish that he did not consent to the choice of law, to the contract itself, or to any term thereof, a party may rely on the law of the State where he has his place of business, if in the circumstances it is not reasonable to determine that issue under the law specified in the preceding paragraphs.

Article 11

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(1) A contract of sale concluded between persons who are in the same State is formally valid if it satisfies the requirements either of the law which governs it under the Convention or of the law of the State where it is concluded.

(2) A contract of sale concluded between persons who are in different States is formally valid if it satisfies the requirements either of the law which governs it under the Convention or of the law of one of those States.

(3) Where the contract is concluded by an agent, the State in which the agent acts is the relevant State for the purposes of the preceding paragraphs.

(4) An act intended to have legal effect relating to an existing or contemplated contract of sale is formally valid if it satisfies the requirements either of the law which under the Convention governs or would govern the contract, or of the law of the State where the act was done.

(5) The Convention does not apply to the formal validity of a contract of sale where one of the parties to the contract has, at the time of its conclusion, his place of business in a State which has made the reservation provided for in Article 21 paragraph 1 sub-paragraph c).

Section 2 Scope of the applicable law

Article 12

The law applicable to a contract of sale by virtue of Articles 7,8 or 9 governs in particular --

a) interpretation of the contract;

b) the rights and obligations of the parties and performance of the contract;

c) the time at which the buyer becomes entitled to the products, fruits and income deriving from the goods;

d) the time from which the buyer bears the risk with respect to the goods;

e) the validity and effect as between the parties of clauses reserving title to the goods;

f) the consequences of non-performance of the contract, including the categories of loss for which compensation may be recovered, but without prejudice to the procedural law of the forum;

g) the various ways of extinguishing obligations, as well as prescription and limitation of actions;

h) the consequences of nullity or invalidity of the contract.

Article 13

In the absence of an express clause to the contrary, the law of the State where inspection of the goods takes place applies to the modalities and procedural requirements for such inspection.

CHAPTER III GENERAL PROVISIONS

Article 14

(1) If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract.

(2) If a party does not have a place of business, reference is to be made to his habitual residence.

Article 15

In the Convention 'law' means the law in force in a State other than its choice of law rules.

Article 16

In the interpretation of the Convention, regard is to be had to its international character and to the need to promote uniformity in its application.

Article 17

The Convention does not prevent the application of those provisions of the law of the forum that must be applied irrespective of the law that otherwise governs the contract.

Article 18

The application of a law determined by the Convention may be refused only where such application would be manifestly in compatible with public policy (order public).

Article 19

For the purpose of identifying the law applicable under the convention, where a State comprises several territorial units each of which has its own system of law or its own rules of law in respect of contracts for the sale of goods, any reference to the law of that State is to be construed as referring to the law in force in the territorial unit in question.

Article 20

A State within which different territorial units have their own systems of law or their own rules of law in respect of contracts of sale is not bound to apply the Convention to conflicts between the laws in force in such units.

Article 21

(1) Any State may, at the time of signature, ratification, acceptance, approval or accession make any of the following reservations

a) that it will not apply the Convention in the cases covered by subparagraph b) of Article 1;

b) that it will not apply paragraph 3 of Article 8, except where neither party to the contract has his place of business in a State which has made a reservation provided for under this sub-paragraph;

c) that, for cases where its legislation requires contracts of sale to be concluded in or evidenced by writing, it will not apply the Convention to the formal validity of the contract, where any party has his place of business in its territory at the time of conclusion of the contract;

d) that it will not apply subparagraph g) of Article 12 in so far as that sub-paragraph relates to prescription and limitation of actions.

(2) No other reservation shall be permitted.

(3) Any Contracting State may at any time withdraw a reservation which it has made; the reservation shall cease to have effect on the first day of the month following the expiration of three months after notification of the withdrawal.

Article 22

(1) This Convention does not prevail over any convention or other international agreement which has been or may be entered into and which contains provisions determining the law applicable to contracts of sale, provided that

such instrument applies only if the seller and buyer have their places of business in States Parties to that instrument.

(2) This Convention does not prevail over any international convention to which a Contracting State is, or becomes, a Party, regulating the choice of law in regard to any particular category of contracts of sale within the scope of this Convention.

Article 23

This Convention does not prejudice the application --
a) of the United Nations Convention on contracts for the international sale of goods (Vienna, 11 April 1980);
b) of the Convention on the limitation period in the international sale of goods (New York, 14 June 1974), or the Protocol amending that Convention (Vienna, 11 April 1980).

Article 24

The Convention applies in a Contracting State to contracts of sale concluded after its entry into force for that State.

CHAPTER IV FINAL CLAUSES

Article 25

(1) The Convention is open for signature by all States.

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

(3) The 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 shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 26

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession

declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

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

Article 27

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the fifth instrument of ratification, acceptance, approval or accession referred to in Article 25.

(2) Thereafter the Convention shall enter into force --

a) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b) for a territorial unit to which the Convention has been extended in conformity with Article 26 on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 28

For each State Party to the Convention on the law applicable to international sales of goods, done at The Hague on 15 June 1955, which has consented to be bound by this Convention and for which this Convention is in force, this Convention shall the said replace Convention of 1955.

Article 29

Any State which becomes a Party to this Convention after entry into force of an instrument revising it shall be considered to be a Party to the Convention as revised.

Article 30

(1) A State Party to this Convention may denounce it by a notification in writing addressed to the depositary.

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

Article 31

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have signed, ratified, accepted, approved or acceded in accordance with Article 25, of the following --

a) the signatures and ratifications, acceptances, approvals and accessions referred to in Article 25;

b) the date on which the Convention enters in to force in accordance with Article 27;

c) the declarations referred to in Article 26;

d) the reservations and the withdrawals of reservations referred to in Article 21;

e) the denunciations referred to in Article 30. In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 22nd day of December, 1986, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law as of the date of its Extraordinary Session of October 1985, and to each State which participated in that Session.

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