



*OCW: Business Law for managers and entrepreneurs*

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**CASE STUDY – BLOCK 1**

After several years manufacturing chargers and similar products, **CHARGING, S.L.** decided to take a new step in its expansion strategy. Partners have decided that they must diversify their business and consider the possibility of commencing the manufacture of smart elements, such as smart lights, security cameras, sensors, etc. Most components used in the manufacturing of this kind of products are acquired in United States. From one year ago, CHARGING is regularly contracting with a mid-west company -MOD-HOME- for the purchase of several parts of its products.

Due to the announcement of APPLE to take out a new hub for the control of smart devices -Homekit-, CHARGING has decided to accelerate the manufacture of one of its most successful products, a led smart light, which in turn commits to sell to other company, also Spanish, reseller of electronics products.

On 15 May, CHARGING phones MOD-HOME to let them know its intention of placing a large order, unusually including not only components and spare parts but also full electronic equipment. The mid-west company expresses its initial willingness to serve the order but warns the Spanish company that a firm order should be sent as soon as possible in order to assess the availability of stocks and agree delivery period and conditions of sales.

Just after this first phone call, successions of written communications (by email) are exchanged between the parties.

STATEMENTS OF FACTS	DESCRIPTION
15 May: phone call from CH to M-H	First contact: intention to place a large order. Prompt order to check availability
16 May: email from CH to M-H	Request for information on prices
18 May: email from M-H to CH	List of prices. Available until May 29
1 June: email from CH to M-H	Confirming the order. Interest in assuring date of delivery before 14 August <i>Clause: We are especially interested in assuring that the goods will be received in our premises before 14 August. The remainder of the terms will be the usual ones included in our agreements.</i>
3 July: email from M-H to CH	No guarantee on delivery date. <i>According to our logistic agreements to supply to European purchasers, a date of delivery sooner than 16 August cannot be guaranteed.</i>



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	Some modifications of prices.
5 July: email from CH to M-H	Importance of receiving goods before 14 August  <i>We have to stress the importance of receiving the goods before 14 August since we need the products prior to the beginning of the championship to be held by the Tarifa beaches. We would wish you to confirm us the delivery within the stipulated period.</i>  Modification of order.
9 July: email from M-H to CH	Confirming availability (new ordered products). No guarantee on being delivered before 16 August

On 9 August, MOD-HOME proceeds to dispatch the goods (by sea), emailing a confirmation letter stating amounts, models and prices. According to this, the delivery date is 16 August. Under the contractual conditions, some clause has been incorporated.

STATEMENTS OF FACTS	DESCRIPTION
9 August: email from M-H to CH	Letter of confirmation. Including delivery conditions, exoneration of liability and delivery date  <b>CONDITIONS. FOB Sale</b> <i>The supplier shall not be liable for any loss or damage occurred during carriage between the place of departure and the stipulated place of destination.</i>  <i>The supplier shall not be liable for any loss or damage caused to the purchaser arising from the delayed delivery, unless longer than 72 hours.</i>  <i>The expected date of delivery is 16 August.</i>

MOD-HOME does not have the goods requested by CHARGING in its warehouses, so it requests them from one of its main supplier companies -to avoid delays in delivery-, which sends them directly from its premises -located in Miami-. Thus, on August 9, MOD-HOME proceeds to request that the order be sent. The voyage is Miami-Cádiz (by sea) and Cádiz-Madrid (by road).



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The dispatched goods are received at the warehouse of the Spanish company located in Madrid on 19 August. On its reception, the consignment was immediately unpacked to check and several damages on the equipment, as well as the fact that the received goods and the ordered ones did not tally, were revealed. Lack of conformity was alleged by the Director on an email sent on 19 August.

STATEMENTS OF FACTS	DESCRIPTION
19 August: email from CH to M-H	Goods were received at the premises on 19 August. The delay caused significant costs  Unpacked: revealing some damages.  Notifying lack of conformity after examining the goods  List with detected mistakes and damages.

A few hours later, the vendor replied expressing its full willingness to solve the problem but reminding that according to the contract terms agreed by the parties, the supplier shall not be liable for any damage on the goods during the transportation or arising from the delayed delivery.

CHARGING wishes to promptly settle the dispute and avoid, as far as possible, that the conflict could cause the commercial relationships between the parties to deteriorate. In particular, certain questions would require to be answered:

- 1. MOD-HOME wishes that the dispute be settled according to its national legislation: Is that request legally founded? Is that legislation known by CHARGING? Which is the most beneficial legislation for CHARGING in order to protect its interests?**
- 2. Due to the fact that parties did not include any choice of law provision in this *international* transaction, please explain if uniform legislation can apply to this case. Which international instrument would be applicable so?**
- 3. Could parties decide to exclude the application of CISG and opt for a national legislation (Spanish laws or USA laws)? Under your opinion, what should be the rules applicable to this claim? Explain briefly the reasons.**
- 4. When the contract has been concluded between both parties? On which terms?**



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- 5. If parties had agreed on an CIF Sale instead, what does change respect the current case in case of evidence reveals that goods were damaged during the shipment? And under an EXW Sale (if evidence reveals goods were damaged in the truck transporting equipment from vendor's premises to the port of shipment? Is your answer different? Who is liable in that case?**
- 6. Why the INCOTERMS are important in this case? What are the legal consequences in applying one or another?**
- 7. The mid-west company alleges the exoneration liability clause included in the confirmation letter in order to reduce, and even, exonerate from his liability over the goods. Why does that clause work for his benefit? Is the said clause part of the contract?**
- 8. Are the goods delivered conform with the agreement? If not, please explained in detail the lack of conformity**
- 9. Could MOD-HOME resort to force majeure or third-party actions in order to exonerate his liability?**
- 10. Once concluded that CISG is the applicable law, please propose which actions or remedies can and should CHARGING exercise? Are all of them applicable to the current case?**
- 11. Could you claim against the carrier? And against the carrier's insurer company? In such a case, could the carrier try to exonerate himself from his liability for total or partial damage over the goods? Is it relevant that the products have been carried from Miami by another supplier company that is not part of the main contract?**