Part One: Scope of Application

Article 1

These Rules apply to international contracts in which the parties have agreed that, upon a failure of performance by one party (the obligor), the other party (the obligee) is entitled to an agreed sum from the obligor, whether as a penalty or as compensation.

Article 2

For the purposes of these Rules:

(a) A contract shall be considered international if, at the time of the conclusion of the contract, the parties have their places of business in different States;
(b) 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, or from information disclosed by, the parties at any time before or at the conclusion of the contract;
(c) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of these Rules.

Article 3

For the purposes of these Rules:

(a) If a party has more than one place of business, his 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;
(b) If a party does not have a place of business, reference is to be made to his habitual residence.
Article 4

These Rules do not apply to contracts concerning goods, other property or services which are to be supplied for the personal, family or household purposes of a party, unless the other party, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the contract was concluded for such purposes.

PART TWO: SUBSTANTIVE PROVISIONS

Article 5

The obligee is not entitled to the agreed sum if the obligor is not liable for the failure of performance.

Article 6

(1) If the contract provides that the obligee is entitled to the agreed sum upon delay in performance, he is entitled to both performance of the obligation and the agreed sum.

(2) If the contract provides that the obligee is entitled to the agreed sum upon a failure of performance other than delay, he is entitled either to performance or to the agreed sum. If, however, the agreed sum cannot reasonably be regarded as compensation for that failure of performance, the obligee is entitled to both performance of the obligation and the agreed sum.

Article 7

If the obligee is entitled to the agreed sum, he may not claim damages to the extent of the loss covered by the agreed sum. Nevertheless, he may claim damages to the extent of the loss not covered by the agreed sum if the loss substantially exceeds the agreed sum.

Article 8

The agreed sum shall not be reduced by a court or arbitral tribunal unless the agreed sum is substantially disproportionate in relation to the loss that has been suffered by the obligee.

Article 9

The Parties may derogate from or vary the effect of articles 5, 6 and 7 of these Rules.

1 The text of the Rules was adopted by the Commission in paragraph 76 of the report. The title was provisionally adopted by the Commission in paragraph 75 of the report.

2 See table of correspondence between articles as numbered the Rules as adopted, and the Rules as discussed in the Commission

Referring Principles:

VI.4 - Promise to pay in case of non-performance