Content:
No. IV.2.6 - Modified acceptance

(a) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(b) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror without undue delay, objects to the discrepancy. If the offeror does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(c) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party’s liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

Commentary:
1 This Principle is reflected in Art. 19 CISG and constitutes a modification of Principle IV.2.1. A reply which purports to be an acceptance but which contains material additions, limitations or other modifications of the offer constitutes a rejection of that offer and a counter-offer. That counter-offer must be accepted by the party who issued the initial offer for the contract to be concluded.

2 Subsection (b) is a consequence of the Principle of good faith. The offeror may not refuse to be bound by its offer if the offeree’s acceptance does not materially alter, limit or modify the terms of the offer. Subsection (c) provides specific examples of situations in which an acceptance constitutes a material alteration, limitation or modification of the offer. It is obvious that an acceptance becomes a counter-offer if the addition, limitation or modification concerns essential elements of the contract such as the price or other monetary obligation, the goods sold or other kinds of performance etc. The language used in Subsection (c) ("among other things") makes it clear, however, that this list is not exhaustive and that other issues, similar to those listed in Subsection (c), may also be qualified as a material alteration, limitation or modification of the offer. The final judgement depends on the circumstances of each individual case and the usages and practices of the trade sector in which the parties are operating.

3 A modified acceptance must be distinguished from a writing in confirmation that contains material alterations or modifications. A writing in confirmation is not intended to conclude the contract but is sent after the contract has been concluded.