IV.2.7 - Writings in confirmation

Content:

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If a writing which is sent within a reasonable time after the conclusion of the contract and which purports to be a confirmation of the contract contains additional or different terms, such terms become part of the contract, unless they materially alter the contract or the recipient objects to the discrepancy without undue delay.

Commentary:

1 A writing in confirmation must be strictly distinguished from an acceptance (sometimes called "Confirmation of Order" or "Acknowledgment of Order") with which the offeror concludes the contract. If, in the latter case, the acceptance contains alterations, modifications or limitations, Principle IV.2.6 applies.

2 A writing in confirmation is sent after a contract has been concluded. However, Principle IV.2.6 is also relevant here because its Subsection (c) provides a non-exhaustive list of situations in which the terms of an offer are materially altered, limited, or modified. That list can also be used to determine whether the party sending the writing in confirmation has materially altered the terms of the contract concluded between the parties. However, it must be noted that the list in Subsection (c) of Principle IV.2.6 is not exhaustive and that there may be other situations which are not listed there in which the circumstances of the case indicated that the terms of the contract were materially altered by the party sending the writing in confirmation. In these kind of situations, it would be against the Principle of good faith and fair dealing for the party sending the writing to expect that the recipient would accept the alteration because it remained silent.

3 If, however, the writing does not contain a material alteration of the terms of the contract, good faith dictates that the recipient must object to the discrepancy without undue delay. If he does not object without undue delay - a time period that must be determined according to the circumstances of each individual case - the content of the contract is fixed by the writing in confirmation even if that writing in confirmation deviates from the terms of the contract as initially agreed upon by the parties.