No. IV.5.1 - Intentions of the parties

The construction of a contract has to determine the common intention of the parties or, if no such intention can be determined, the meaning that reasonable parties of the same kind as the parties would give to it in the same circumstances, taking into account, in particular, the nature and purpose of the contract, the conduct of the parties and the meaning commonly given to contract terms and expressions in the trade concerned.

Commentary:
1 This principle results from the application of the overriding general Principle of good faith. Contract interpretation must not stop at the literal meaning of the terminology used by the parties in their contract, but must seek to determine their true intentions at the moment of contract conclusion, taking into account the circumstances of the case. This task involves ascertaining what a reasonable person would have understood the parties to have meant. The relevant reasonable person for that purpose is one who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

2 The standard of reasonableness and the presumption of professional competence of the parties must also be observed. The effect of the last two Principles mentioned is that in interpreting an international commercial contract, one must assume that the parties intended to establish a reasonable distribution of contractual rights and duties between them, aimed at achieving their common commercial objective.

3 The conduct of a party subsequent to the conclusion of the contract may also be taken into account since such conduct may reflect that party's own understanding of the meaning of certain contractual terms or terminology. Also, previous contracts of the same kind concluded between the parties may provide additional guidance.