IV.5.7 - Merger clauses

(a) Where a contract in writing includes a term stating that the document contains all contract terms ("merger clause", "entire agreement clause"), any prior statements, undertakings or agreements which are not contained in the document do not form part of the contract.

(b) Unless the contract otherwise provides, a merger clause does not prevent the parties’ prior statements from being used to interpret the contract.

Commentary:
1 Merger clauses are also called "integration clauses" or "entire agreement clauses". The typical text of such a clause is as follows:

"This writing is understood and intended to be the final expression of the parties' agreement and is a complete and exclusive statement of the terms and conditions with respect thereto, superseding all prior agreements or representations, oral or written, and all other communication between the parties relating to the subject matter of this agreement."

2 The purpose of such a clause is to make sure that only the provisions contained in the written contract constitute the agreement between the parties. The merger clause is intended to provide for legal certainty during the performance of the contract because it prevents either party from going back after the contract is signed and claim that the written agreement is not complete.

3 However, statements or declarations made by the parties prior to the conclusion of their contract are not without significance even if a merger clause is contained in the contract. They may be used to interpret the contract in the light of these prior statements or declarations, which may result in the modification of the written text of the contract or in the assumption of an implied term.