

Excerpt from Allison E. Butler, "A PRACTICAL GUIDE TO THE CISG: NEGOTIATIONS THROUGH LITIGATION," Aspen Publishers (2007 Supplement 2). © Author. Reproduced with permission. For full text, see <<http://cisgw3.law.pace.edu/cisg/biblio/butler6.html>>.

FORM B-4

SELLER'S COMPLAINT FOR BREACH

Practical Application: This form is a generic template. Counsel should seek to modify to facts of case and include additional counts when warranted; verification of local federal laws should also be consulted prior to filing complaint.

[NAME OF COURT]

[PLAINTIFF'S NAME]
Plaintiff

v.

Case No. [INSERT NUMBER]
COMPLAINT

[DEFENDANT'S NAME]
Defendant

COMPLAINT AND MONETARY RELIEF SOUGHT

Plaintiff, [PLAINTIFF'S NAME], by and through undersigned counsel, files this Complaint against Defendant, [DEFENDANT'S NAME] and states as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant 18 U.S.C. § 1331 in that this is a civil action arising under the treaties of the United States, specifically the United Nations Convention on Contracts for the International Sale of Goods (hereinafter "CISG"), opened for signature April 11, 1980, S. Treaty Doc. No. 9, 98th Cong., 1st Sess. 22 (1983), 19 I.L.M. 671, reprinted at 15 U.S.C. app. 52 (1997).

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2. This Court has personal jurisdiction over Defendant because Defendant transacts business in this judicial district, and this claim arises out of Defendant's transaction of business in [INSERT STATE].

3. Venue is proper pursuant to 28 U.S.C. § 1391 as a substantial part of the events giving rise to the claims and causes of action occurred in this District.

THE PARTIES

4. Plaintiff, [PLAINTIFF'S NAME] (hereinafter referred to as "Seller") is a corporation existing under the laws of [STATE COUNTRY OR STATE], having its principal place or having a principal place of business and registered agent at [STATE ADDRESS].

5. Upon information and belief, Defendant, [DEFENDANT'S NAME] (hereinafter referred to as "Buyer"), at all relevant times to this Complaint, has been and is a corporation and existing under the laws of [STATE COUNTRY OR STATE].

FACTUAL BACKGROUND

[INSERT RELEVANT FACTS IN CHRONOLOGICAL ORDER]

EXAMPLE

AVOIDANCE (BREACH OF CONTRACT)

[Reference Articles 53-65]

6. On or about [INSERT DATE] Buyer and Seller entered into a written agreement (hereinafter referred to as "Agreement") for the purchase of [INSERT PRODUCT] with an agreed purchase price of [INSERT MONETARY AMOUNT AND CURRENCY] to be delivered to Buyer on [INSERT DATE] and the Buyer agreed to pay Seller [INSERT DATE] upon delivery. The Agreement was valid, enforceable, and binding under the CISG. A copy of the Agreement is attached hereto as "Exhibit A."

7. On or about [INSERT DATE], Seller delivered the goods pursuant to the terms of the Agreement. A copy of the confirmation is attached hereto as "Exhibit B."

8. On or about [INSERT DATE], a representative of Seller contacted Buyer and inquired as to payment. At said time, [INSERT NAME] indicated that payment would be sent within two (2) business days. This conversation was confirmed in writing in a facsimile sent on the same

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date. A copy of facsimile dated [INSERT DATE] is attached hereto as "Exhibit C."

9. On or about [INSERT DATE], Buyer contacted Seller and indicated that the goods did not conform to the Agreement.

10. The parties expressly agreed that all goods were to be delivered in conformity with the Agreement and that Buyer would notify Seller of any nonconformity within [INSERT TIME].

11. Buyer's failure to make payment resulted in a material breach of the Agreement. On [INSERT DATE], Seller contacted Buyer as to avoidance of the Agreement but the Buyer refused to respond to said letter. A copy attached hereto as "Exhibit D."

12. The actions of the Buyer constitute a fundamental breach and therefore Seller declares that it is entitled to avoidance of the Agreement.

WHEREFORE, Plaintiff, Buyer, respectfully requests for relief as follows:

1. The avoidance of the Agreement dated [INSERT DATE].
2. Lost profits in the amount of [INSERT AMOUNT].
3. The amount incurred by the Plaintiff with regard to the goods delivered in the amount of [INSERT AMOUNT]
4. Incidental damages.
5. Costs.
6. Attorney fees pursuant to [REFERENCE PROVISION IN CONTRACT, IF APPLICABLE].
7. Such other relief this Court shall deem just and necessary.

Dated: [INSERT DATE].

[SIGNATURE OF ATTORNEY]
[TYPED NAME OF ATTORNEY]

Attorney for Plaintiff
[ATTORNEY'S ADDRESS]
[ATTORNEY'S TELEPHONE AND FACSIMILE, IF WARRANTED
BY FEDERAL RULES]
[ATTORNEY'S BAR NUMBER]
[ELECTRONIC ADDRESS]