Contents

List of contributors	xxiii
Abbreviations	xxv
Table of Transnational Instruments	xli
Table of National Instruments	lxxi
Table of Cases	lxxxix
UNIDROIT Principles of International Commercial Contracts (2010):	
Full Text in all Official Language Versions	cxvii
Table of Correspondence of the Articles of the 1994, 2004, and 2010	
Editions of the PICC	cclxxix
General Bibliography	cclxxxiv
INTRODUCTION (Vogenauer)	. 1
PREAMBLE I: PURPOSES, LEGAL NATURE, AND SCOPE OF THE PICC; APPLICABILITY BY COURTS; USE OF THE PICC FO	
AND AS A MODEL (Michaels)	31
PREAMBLE II: THE USE OF THE PICC IN ARBITRATION (Scho	erer) 110
CHAPTER 1: GENERAL PROVISIONS	150
Introduction to Chapter 1 of the PICC (Vogenauer)	150
General Provisions I: Arts 1.1–1.3—Fundamental principles	154
Art 1.1 (Freedom of contract) (Vogenauer)	155
Art 1.2 (No form required) (Vogenauer)	159
Art 1.3 (Binding character of contract) (Vogenauer)	163
General Provisions II: Arts 1.4–1.5—Mandatory rules	166
Art 1.4 (Mandatory rules) (Cuniberti)	167
Art 1.5 (Exclusion or modification by the parties) (Cuniberti)	175
General Provisions III: Arts 1.6–1.12—Application of the PICC	180
Art 1.6 (Interpretation and supplementation of the Principles) (Vogenauet)	181
Art 1.7 (Good faith and fair dealing) (Vogenauer)	205
Art 1.8 (Inconsistent behaviour) (Vogenauer)	226
Art 1.9 (Usages and practices) (Vogenauer)	232

xiv Contents

Art 1.10 (Notice) (Vogenauer)	241
Art 1.11 (Definitions) (Vogenauer)	247
Art 1.12 (Computation of time set by parties) (Vogenauer)	249
CHAPTER 2: FORMATION AND AUTHORITY OF AGENTS	252
Section 1: Formation	252
Introduction to Arts 2.1.1–2.1.14 (Anderson)	253
Formation I: Arts 2.1.1–2.1.5—Offer	262
Art 2.1.1 (Manner of formation) (Nottage)	262
Art 2.1.2 (Definition of offer) (Nottage)	266
Art 2.1.3 (Withdrawal of offer) (Nottage)	273
Art 2.1.4 (Revocation of offer) (Nottage)	276
Art 2.1.5 (Rejection of offer) (Nottage)	283
Formation II: Arts 2.1.6-2.1.14—Acceptance	285
Art 2.1.6 (Mode of acceptance) (Anderson)	285
Art 2.1.7 (Time of acceptance) (Anderson)	300
Art 2.1.8 (Acceptance within a fixed period of time) (Anderson)	305
Art 2.1.9 (Late acceptance. Delay in transmission) (Anderson)	307
Art 2.1.10 (Withdrawal of acceptance) (Anderson)	313
Art 2.1.11 (Modified acceptance) (Anderson)	314
Art 2.1.12 (Writings in confirmation) (Anderson)	321
Art 2.1.13 (Conclusion of contract dependent on agreement on specific matters or in a particular form) (Anderson)	328
Art 2.1.14 (Contract with terms deliberately left open) (Anderson)	332
Formation III: Arts 2.1.15–2.1.16—Negotiations	342
Art 2.1.15 (Negotiations in bad faith) (Zuloaga Rios)	344
Art 2.1.16 (Duty of confidentiality) (Zuloaga Rios)	364
Formation IV: Arts 2.1.17-2.1.18—Integrity of writing	371
Art 2.1.17 (Merger clauses) (Vogenauer)	371
Art 2.1.18 (Modification in a particular form) (Vogenauer)	375
Formation V: Arts 2.1.19–2.1.22—Standard terms	380
Introduction to Arts 2.1.19-2.1.22 (Naudé)	382
Art 2.1.19 (Contracting under standard terms) (Naudé)	384
Art 2.1.20 (Surprising terms) (Naudé)	398
Art 2.1.21 (Conflict between standard terms and non-standard terms) (Naudé)	405
Art 2.1.22 (Battle of forms) (Naudé)	408

Contents	xv
Section 2: Authority of agents	415
Art 2.2.1 (Scope of the Section) (Krebs)	416
Art 2.2.2 (Establishment and scope of the authority of the agent) (Krebs)	422
Art 2.2.3 (Agency disclosed) (Krebs)	426
Art 2.2.4 (Agency undisclosed) (Krebs)	431
Art 2.2.5 (Agent acting without or exceeding its authority) (Krebs)	436
Art 2.2.6 (Liability of agent acting without or exceeding its authority) (Krebs)	443
Art 2.2.7 (Conflict of interests) (Krebs)	446
Art 2.2.8 (Sub-agency) (Krebs)	450
Art 2.2.9 (Ratification) (Krebs)	454
Art 2.2.10 (Termination of authority) (Krebs)	460
CHAPTER 3: VALIDITY	462
Introduction to Chapter 3 of the PICC (Huber)	462
Section 1: General provisions	464
Art 3.1.1 (Matters not covered) (Huber)	464
Art 3.1.2 (Validity of mere agreement) (Huber)	466
Art 3.1.3 (Initial impossibility) (Huber)	469
Art 3.1.4 (Mandatory character of the provisions) (du Plessis)	472
Section 2: Grounds for avoidance	475
Art 3.2.1 (Definition of mistake) (Huber)	475
Art 3.2.2 (Relevant mistake) (Huber)	478
Art 3.2.3 (Error in expression or transmission) (Huber)	489
Art 3.2.4 (Remedies for non-performance) (Huber)	494
Art 3.2.5 (Fraud) (du Plessis)	497
Art 3.2.6 (Threat) (du Plessis)	505
Art 3.2.7 (Gross disparity) (du Plessis)	511
Art 3.2.8 (Third persons) (du Plessis)	519
Art 3.2.9 (Confirmation) (Huber)	524
Art 3.2.10 (Loss of right to avoid) (Huber)	527
Art 3.2.11 (Notice of avoidance) (Huber)	530
Art 3.2.12 (Time limits) (Huber)	532
Art 3.2.13 (Partial avoidance) (Huber)	535
Art 3.2.14 (Retroactive effect of avoidance) (du Plessis)	538
Art 3.2.15 (Restitution) (du Plessis)	540

xvi Contents

Art 3.2.16 (Damages) (Huber)	551
Art 3.2.17 (Unilateral declarations) (Huber)	555
Section 3: Illegality	556
Introduction to Section 3.3 of the PICC (Cuniberti)	557
Art 3.3.1 (Contracts infringing mandatory rules) (Cuniberti)	558
Art 3.3.2 (Restitution) (Cuniberti)	565
CHAPTER 4: INTERPRETATION	568
Introduction to Chapter 4 of the PICC (Vogenauer)	570
Art 4.1 (Intention of the parties) (Vogenauer)	575
Art 4.2 (Interpretation of statements and other conduct) (Vogenauer)	583
Art 4.3 (Relevant circumstances) (Vogenauer)	587
Art 4.4 (Reference to contract or statement as a whole) (Vogenauer)	599
Art 4.5 (All terms to be given effect) (Vogenauer)	601
Art 4.6 (Contra proferentem rule) (Vogenauer)	604
Art 4.7 (Linguistic discrepancies) (Vogenauer)	608
Art 4.8 (Supplying an omitted term) (Vogenauer)	611
CHAPTER 5: CONTENT, THIRD PARTY RIGHTS	
AND CONDITIONS	617
Section 1: Content	617
Art 5.1.1 (Express and implied obligations) (Vogenauer)	618
Art 5.1.2 (Implied obligations) (Vogenauer)	619
Art 5.1.3 (Co-operation between the parties) (Vogenauer)	620
Art 5.1.4 (Duty to achieve a specific result. Duty of best efforts) (Vogenauer)	620
Art 5.1.5 (Determination of kind of duty involved) (Vogenauer)	630
Art 5.1.6 (Determination of quality of performance) (Vogenauer)	632
Art 5.1.7 (Price determination) (Vogenauer)	635
Art 5.1.8 (Contract for an indefinite period) (Vogenauer)	643
Art 5.1.9 (Release by agreement) (Vogenauer)	648
Section 2: Third party rights	654
Introduction to Section 5.2 of the PICC (Vogenauer)	655
Art 5.2.1 (Contracts in favour of third parties) (Vogenauer)	658
Art 5.2.2 (Third party identifiable) (Vogenauer)	674
Art 5.2.3 (Exclusion and limitation clauses) (Vogenauer)	677

Contents	xvii
Art 5.2.4 (Defences) (Vogenauer)	679
Art 5.2.5 (Revocation) (Vogenauer)	681
Art 5.2.6 (Renunciation) (Vogenauer)	685
Section 3: Conditions	688
Introduction to Section 5.3 of the PICC (Rowan)	689
Art 5.3.1 (Types of condition) (Rowan)	690
Art 5.3.2 (Effect of conditions) (Rowan)	696
Art 5.3.3 (Interference with conditions) (Rowan)	700
Art 5.3.4 (Duty to preserve rights) (Rowan)	708
Art 5.3.5 (Restitution in case of fulfilment of a resolutive condition) (Rowan)	711
CHAPTER 6: PERFORMANCE	715
Section 1: Performance in general	715
Art 6.1.1 (Time of performance) (Atamer)	716
Art 6.1.2 (Performance at one time or in instalments) (Atamer)	725
Art 6.1.3 (Partial performance) (Atamer)	727
Art 6.1.4 (Order of performance) (Atamer)	734
Art 6.1.5 (Earlier performance) (Atamer)	741
Art 6.1.6 (Place of performance) (Atamer)	745
Art 6.1.7 (Payment by cheque or other instrument) (Atamer)	756
Art 6.1.8 (Payment by funds transfer) (Atamer)	762
Art 6.1.9 (Currency of payment) (Atamet)	768
Art 6.1.10 (Currency not expressed) (Atamer)	774
Art 6.1.11 (Costs of performance) (Atamer)	776
Art 6.1.12 (Imputation of payments) (Atamer)	780
Art 6.1.13 (Imputation of non-monetary obligations) (Atamer)	788
Art 6.1.14 (Application for public permission) (Atamer)	789
Art 6.1.15 (Procedure in applying for permission) (Atamer)	798
Art 6.1.16 (Permission neither granted nor refused) (Atamer)	801
Art 6.1.17 (Permission refused) (Atamer)	803
Section 2: Hardship	806
Introduction to Section 6.2 of the PICC (McKendrick)	808
Art 6.2.1 (Contract to be observed) (McKendrick)	812
Art 6.2.2 (Definition of hardship) (McKendrick)	814
Art 6.2.3 (Effects of hardship) (McKendrick)	819

xviii Contents

CHAPTER 7: NON-PERFORMANCE	823
Section 1: Non-performance in general	823
Introduction to Section 7.1 of the PICC (Schelhaas)	825
Art 7.1.1 (Non-performance defined) (Schelhaas)	829
Art 7.1.2 (Interference by the other party) (Schelhaas)	833
Art 7.1.3 (Withholding performance) (Schelhaas)	837
Art 7.1.4 (Cure by non-performing party) (Schelhaas)	845
Art 7.1.5 (Additional period for performance) (Schelhaas)	851
Art 7.1.6 (Exemption clauses) (Schelhaas)	858
Art 7.1.7 (Force majeure) (Pichonnaz)	864
Section 2: Right to performance	881
Introduction to Section 7.2 of the PICC (Schelhaas)	883
Art 7.2.1 (Performance of monetary obligation) (Schelhaas)	884
Art 7.2.2 (Performance of non-monetary obligation) (Schelhaas)	887
Art 7.2.3 (Repair and replacement of defective performance) (Schelhaas)	904
Art 7.2.4 (Judicial penalty) (Schelhaas)	909
Art 7.2.5 (Change of remedy) (Schelhaas)	913
Section 3: Termination	916
Introduction to Section 7.3 of the PICC (Huber)	918
Art 7.3.1 (Right to terminate the contract) (Huber)	920
Art 7.3.2 (Notice of termination) (Huber)	942
Art 7.3.3 (Anticipatory non-performance) (Huber)	946
Art 7.3.4 (Adequate assurance of due performance) (Huber)	950
Art 7.3.5 (Effects of termination in general) (Huber)	955
Art 7.3.6 (Restitution with respect to contracts to be performed at one time) (Huber)	958
Art 7.3.7 (Restitution with respect to contracts to be performed over a period of time) (Huber)	969
Section 4: Damages	972
Introduction to Section 7.4 of the PICC (McKendrick)	973
Art 7.4.1 (Right to damages) (McKendrick)	976
Art 7.4.2 (Full compensation) (McKendrick)	980
Art 7.4.3 (Certainty of harm) (McKendrick)	988
Art 7.4.4 (Foreseeability of harm) (McKendrick)	993
Art 7.4.5 (Proof of harm in case of replacement transaction) (McKendrick)	997
Art 7.4.6 (Proof of harm by current price) (McKendrick)	1002
Art 7.4.7 (Harm due in part to aggrieved party) (McKendrick)	1005
Art 7.4.8 (Mitigation of harm) (McKendrick)	1008

Contents	xix
Art 7.4.9 (Interest for failure to pay money) (McKendrick)	1012
Art 7.4.10 (Interest on damages) (McKendrick)	1018
Art 7.4.11 (Manner of monetary redress) (McKendrick)	1021
Art 7.4.12 (Currency in which to assess damages) (McKendrick)	1023
Art 7.4.13 (Agreed payment for non-performance) (McKendrick)	1025
CHAPTER 8: SET-OFF	1033
Introduction to Chapter 8 of the PICC (Pichonnaz)	1035
Art 8.1 (Conditions of set-off) (Pichonnaz)	1038
Art 8.2 (Foreign currency set-off) (Pichonnaz)	1054
Art 8.3 (Set-off by notice) (Pichonnaz)	1060
Art 8.4 (Content of notice) (Pichonnaz)	1067
Art 8.5 (Effect of set-off) (Pichonnaz)	1072
CHAPTER 9: ASSIGNMENT OF RIGHTS, TRANSFER OF OBLIGATIONS, ASSIGNMENT OF CONTRACTS	1076
Introduction to Chapter 9 of the PICC (Mazza)	1077
Section 1: Assignment of rights	1081
Art 9.1.1 (Definitions) (Mazza)	1081
Art 9.1.2 (Exclusions) (Mazza)	1086
Art 9.1.3 (Assignability of non-monetary rights) (Mazza)	1087
Art 9.1.4 (Partial assignment) (Mazza)	1090
Art 9.1.5 (Future rights) (Mazza)	1092
Art 9.1.6 (Rights assigned without individual specification) (Mazza)	1096
Art 9.1.7 (Agreement between assignor and assignee sufficient) (Mazza)	1098
Art 9.1.8 (Obligor's additional costs) (Mazza)	1101
Art 9.1.9 (Non-assignment clauses) (Mazza)	1103
Art 9.1.10 (Notice to the obligor) (Mazza)	1107
Art 9.1.11 (Successive assignments) (Mazza)	1112
Art 9.1.12 (Adequate proof of assignment) (Mazza)	1115
Art 9.1.13 (Defences and rights of set-off) (Mazza)	1117
Art 9.1.14 (Rights related to the right assigned) (Mazza)	1125
Art 9.1.15 (Undertakings of the assignor) (Mazza)	.1127
Section 2: Transfer of obligations	1130
Art 9.2.1 (Modes of transfer) (Mazza)	1130
Art 9.2.2 (Exclusion) (Mazza)	1133

xx Contents

Art 9.2.3 (Requirement of obligee's consent to transfer) (Mazza)	1134
Art 9.2.4 (Advance consent of obligee) (Mazza)	1135
Art 9.2.5 (Discharge of original obligor) (Mazza)	1136
Art 9.2.6 (Third party performance) (Mazza)	1138
Art 9.2.7 (Defences and rights of set-off) (Mazza)	1139
Art 9.2.8 (Rights related to the obligation transferred) (Mazza)	1143
Section 3: Assignment of contracts	1145
Art 9.3.1 (Definitions) (Mazza)	1145
Art 9.3.2 (Exclusion) (Mazza)	1147
Art 9.3.3 (Requirement of consent of the other party) (Mazza)	1148
Art 9.3.4 (Advance consent of the other party) (Mazza)	1149
Art 9.3.5 (Discharge of the assignor) (Mazza)	1150
Art 9.3.6 (Defences and rights of set-off) (Mazza)	1152
Art 9.3.7 (Rights transferred with the contract) (Mazza)	1153
CHAPTER 10: LIMITATION PERIODS	1154
Introduction to Chapter 10 of the PICC (Wintgen)	1155
Art 10.1 (Scope of the Chapter) (Wintgen)	1156
Art 10.2 (Limitation periods) (Wintgen)	1160
Art 10.3 (Modification of limitation periods by the parties) (Wintgen)	1165
Art 10.4 (New limitation period by acknowledgement) (Wintgen)	1169
Art 10.5 (Suspension by judicial proceedings) (Wintgen)	1172
Art 10.6 (Suspension by arbitral proceedings) (Wintgen)	1176
Art 10.7 (Alternative dispute resolution) (Wintgen)	1179
Art 10.8 (Suspension in case of force majeure, death or incapacity) (Wintgen)	1182
Art 10.9 (The effects of expiration of limitation period) (Wintgen)	1187
Art 10.10 (Right of set-off) (Wintgen)	1190
Art 10.11 (Restitution) (Wintgen)	1192
CHAPTER 11: PLURALITY OF OBLIGORS AND OF OBLIGEES	1193
Introduction to Chapter 11 of the PICC (Meier)	1193
Section 1: Plurality of obligors	1194
Introduction to Section 11.1 of the PICC (Meier)	1195
Art 11.1.1 (Definitions) (Meier)	1196
Art 11.1.2 (Presumption of joint and several obligations) (Meier)	1202
Art 11.1.3 (Obligee's rights against joint and several obligors) (Meier)	1204

Contents	xxi
Art 11.1.4 (Availability of defences and rights of set-off) (Meier)	1206
Art 11.1.5 (Effect of performance or set-off) (Meier)	1209
Art 11.1.6 (Effect of release or settlement) (Meier)	1211
Art 11.1.7 (Effect of expiration or suspension of limitation period) (Meier)	1216
Art 11.1.8 (Effect of judgment) (Meier)	1220
Art 11.1.9 (Apportionment among joint and several obligors) (Meier)	1223
Art 11.1.10 (Extent of contributory claim) (Meier)	1225
Art 11.1.11 (Rights of the obligee) (Meier)	1229
Art 11.1.12 (Defences in contributory claims) (Meier)	1234
Art 11.1.13 (Inability to recover) (Meier)	1240
Section 2: Plurality of obligees	1242
Introduction to Section 11.2 of the PICC (Meier)	1243
Art 11.2.1 (Definitions) (Meier)	1244
Art 11.2.2 (Effects of joint and several claims) (Meier)	1255
Art 11.2.3 (Availability of defences against joint and several obligees) (Meier)	1258
Art 11.2.4 (Allocation between joint and several obligees) (Meier)	1264
Appendix I: Synopsis of Instruments: UNIDROIT Principles of	
International Commercial Contracts (2010), International Uniform Law	
Conventions, and Principles of European Contract Law	1267
Appendix II: Bibliography	1389
Index	1445