



**UIA**

Union Internationale des Avocats  
International Association of Lawyers  
Unión Internacional de Abogados

# Drafting Effective International Contracts: Workshop-seminar on International Sales, Agency and Distributorship Contracts

FRIDAY, SEPTEMBER 9 & SATURDAY, SEPTEMBER 10, 2016



**GERMANY**



#UIAContract

Seminar organised by the UIA

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*For over 85 years, the Union Internationale des Avocats (UIA - International Association of Lawyers) has been defending the legal profession and facilitating international contacts, cooperation and the exchange of knowledge among lawyers, while respecting their cultural and professional diversity.*

Today, the UIA brings together several thousand members – lawyers or law professionals – and hundreds of bars, federations and associations.

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## Introduction

Selling its products and services is of key importance for almost every business. These sales and promotion activities often require the deployment of agents, distributors or other distribution intermediaries. This does not only apply to sales and promotion on a national level, but even more on an international level, as a growing number of companies is expanding internationally.

In doing so, they face new issues regarding the negotiation and drafting of international contracts. Even within a common market, such as the European Union, laws differ from country to country. Businesses selling in other countries are forced to deal with complex issues which arise in international contracts. Choosing one's own national law does often not avoid these complex issues.

The workshop-seminar on international commercial contracts organised by UIA in Munich will analyze the basic issues of cross-border contracts with reference to three types of contracts more commonly used by those who approach a foreign market (sales, commercial agency, distributorship), and at the same time focus on the drafting of the clauses more commonly used. The seminar intends to give the participants a clear overview of the basic principles governing international contracts, together with a practical discussion and exercise on the implementation of such principles through clear and effective contractual clauses. In respect to international sales contracts it is important to know the Vienna Convention on International Sales of Goods and Incoterms of the International Chamber of Commerce.

In order to attain this goal, a group of highly qualified speakers having at the same time a high-level profile and a practical experience in drafting and negotiating International contracts has been selected.

The participants will receive in advance the materials and the examples of clauses which will be discussed during the seminar.

The main arguments discussed during the seminar will be:

International sales contracts. General conditions of sale and negotiation of the respective clauses. Clauses regarding delivery. Incoterms. Non conformity. Limitation of liability. Arbitration. Choice of court agreement under EU Regulation 1215/2012.

Agency and distribution contracts. Protection of agents in the EU. Exclusivity and non-competition clauses. Recent trends in goodwill indemnity. EU antitrust rules. Internet sales.



Thursday | September 8 | 2016

19:30 WELCOME COCKTAIL

Kindly offered by BEITEN BURKHARDT law firm

Ganghoferstrasse 33  
80339 Munich, Germany



## 08:30 – 09:00 REGISTRATION OF PARTICIPANTS

**Maritim Hotel München**  
Goethestraße 7, 80336 Munich, Germany

## 09:00 – 09:15 WELCOME AND OPENING OF THE SEMINAR

- **Jean-Jacques UETTWILLER**, *UIA President, UGGC Avocats, Paris, France – or his Representative*
- **Horst BECKER**, *Ariathes Rechtsanwälte, Munich, Germany*
- **Jean-Paul VULLIÉTY**, *President of the UIA International Sale of Goods commission, Lalive, Geneva, Switzerland*

**Chair of the morning sessions:** • **Horst BECKER**, *Ariathes Rechtsanwälte, Munich, Germany*

## 09:15 – 09:45 International Sales Contracts: Practical Introduction to the CISG

- General introduction to the CISG
- When does the CISG apply?
- Reasons for not excluding the CISG
- Issues covered and not covered by CISG
- **Marie-Christine CIMADEVILLA**, *Cimadevilla Avocats, Paris, France*

## 09:45 – 10:15 The Use of General Conditions of Sale (or Purchase). When are they Effective?

- The rules on formation of contracts of sale
- Battle of the forms: “last shot” rule against “knock-out” doctrine
- Problems of validity of general conditions under certain national laws
- **Burghard PILTZ**, *Counsellor to the UIA President, Ahlers & Vogel, Hamburg, Germany*

## 10:15 – 10:30 Q&A with Participants

- **Jean-Paul VULLIÉTY**, *President of the UIA International Sale of Goods commission, Lalive, Geneva, Switzerland*
- **Burghard PILTZ**, *Counsellor to the UIA President, Ahlers & Vogel, Hamburg, Germany*

## 10:30 – 11:00 COFFEE BREAK

## 11:00 – 11:45 Workshop-discussion with Participants on Clauses Regarding Delivery

- Delivery, place of delivery, passing of risk
- Liability of the seller in case of late delivery; possible limitation clauses
- **Fabio BORTOLOTTI**, *Buffa, Bortolotti & Mathis, Turin, Italy*
- **Burghard PILTZ**, *Counsellor to the UIA President, Ahlers & Vogel, Hamburg, Germany*

## 11:45 – 13:00 Claims for Non-conformity of the Goods? How to Address them in the Contract? How to Deal with them once a Non-conformity is Discovered? What about Liability Limitation?

**The theoretical approach:**

- The notion of non-conformity in Article 35 CISG
- Notification of non-conformity. Determining the “reasonable time” after which claims are forfeited. Case law on non-conformity and time limits for notice
- Limiting contractually the seller’s liability for damages
- **Jean-Paul VULLIÉTY**, *President of the UIA International Sale of Goods commission, Lalive, Geneva, Switzerland*
- **Stephen SIDKIN**, *UIA Co-Director of Communications, Fox Williams LLP, London, UK*

**Workshop - The practical approach:**

- Seller’s liability for damages arising out of non-conformity
- The primary importance of limiting the extent of liability
- Effectiveness of limitation clauses under the applicable law
- Drafting and discussing limitation of liability clauses with the participants
- **Jean-Paul VULLIÉTY**, *President of the UIA International Sale of Goods commission, Lalive, Geneva, Switzerland*
- **Stephen SIDKIN**, *UIA Co-Director of Communications, Fox Williams LLP, London, UK*

## 13:00 – 14:30 LUNCH

**Chair of the afternoon sessions:** • **Jean-Paul VULLIÉTY**, *President of the UIA International Sale of Goods commission, Lalive, Geneva, Switzerland*

## 14:30 – 15:15 How to Choose the Right Incoterm?

- The Incoterms 2010 of the ICC
- Reasons for avoiding the term “ex works”
- The passing of risk under the various incoterms
- Q & A
- **Burghard PILTZ**, *Counsellor to the UIA President, Ahlers & Vogel, Hamburg, Germany*

## 15:15 – 16:00 Dispute Resolution in International Contracts of Sale

**The recourse to international arbitration**

- Arbitration or court jurisdiction?
- Effectiveness of arbitration clauses
- Provisional measures, simplified proceedings
- The relevance of the place(s) of enforcement of the award
- **Martin WIEBECKE**, *Anwaltsbüro Wiebecke, Zurich, Switzerland*

**The recourse to national courts**

- Choice of forum clauses: conditions for effectiveness
- How does EU Regulation 1215/2012 affect decisions on validity of choice of forum clauses?
- Clauses which determine the place of delivery (art. 7(1)(b) Regulation 1215/2012)
- **Fabio BORTOLOTTI**, *Buffa, Bortolotti & Mathis, Turin, Italy*

## 16:00 – 16:30 Workshop-discussion with Participants on Choice of Law and Jurisdiction Clauses in Contracts of Sale

- **Fabio BORTOLOTTI**, *Buffa, Bortolotti & Mathis, Turin, Italy*
- **Martin WIEBECKE**, *Anwaltsbüro Wiebecke, Zurich, Switzerland*

## 16:30 – 16:50 COFFEE BREAK

## 16:50 – 17:30 General Introduction to the Session on Distribution: Organizing an International Distribution Network. The Main Options

**The recourse to international arbitration**

- Intermediaries v. resellers: the main option between agents and distributors
- Subsidiary/joint venture
- Controlling retail distribution (franchising, selective distribution)
- The need for flexibility
- **Jaap VAN TILL**, *Van Till Advocaten, Amsterdam, The Netherlands*
- **Milagros POAL-MANRESA CANTARELL**, *President of the UIA Contract Law Commission, Centell-Folch Abogados Asociados, Barcelona, Spain*

## 17:30 – 18:00 The Rules Protecting Commercial Agents in the European Directive and in the Laws of the Member States. A General Overview.

- The directive harmonizes but does not unify the national rules
- Need to adapt the contract to the applicable domestic law
- Is it possible to minimize the impact of the rules on goodwill indemnity
- The choice of a law other than the agent’s one. When is such choice effective?
- The choice of the law of a third country: the Ingmar case
- **Horst BECKER**, *Ariathes Rechtsanwälte, Munich, Germany*

## 18:00 – 18:30 Brexit: what does it Mean it for Agency and Distributorship Agreements?

- **Stephen SIDKIN**, *UIA Co-Director of Communications, Fox Williams LLP, London, UK*

## 20:00 OPTIONAL DINNER

**Venue to be confirmed**

## 08:45 – 09:00 REGISTRATION OF PARTICIPANTS

**Maritim Hotel München**  
Goethestraße 7  
80336 Munich, Germany

**Chair of the sessions:** • **Nicole VAN CROMBRUGGHE**, *LVP Law, Brussels, Belgium*

## 09:00 – 09:30 Workshop-discussion with Participants on Exclusivity and Non-competition Clauses in Commercial Agency and Distributorship Contracts

– Granting exclusive rights and possible exceptions: excluded customers; right of the principal/supplier to make direct sales, etc.  
– Analyzing examples of non-competition clauses

- **Fabio BORTOLOTTI**, *Buffa Bortolotti & Mathis, Turin, Italy*
- **Jaap VAN TILL**, *Van Till Advocaten, Amsterdam, The Netherlands*

## 09:30 – 10:00 Goodwill Indemnity and Similar Rights in Agency and Distributorship Contracts: Analyzing Recent Trends

– The goodwill indemnity for agents: different criteria of calculation in various countries  
– The application by analogy of the agents' indemnity to distributors in various countries  
– The trend towards recognizing an indemnity (or compensation for insufficient term of notice: *rupture brutale*) to distributors

- **Ignacio ALONSO**, *Even Abogados, Madrid, Spain*

## 10:00 – 10:30 COFFEE BREAK

## 10:30 – 11:10 Workshop Discussion on the Critical Issues in Contracts with Distributors

– Distributorship v. simple supply agreement  
– The rules governing sales from supplier to distributor – payment conditions  
– How to limit the financial risk

- **Nicole VAN CROMBRUGGHE**, *LVP Law, Brussels, Belgium*
- **Babak TABESHIAN**, *Ariathes Rechtsanwälte, Munich, Germany*

## 11:10 – 11:40 Complying with EU Antitrust Rules

– No vertical price fixing/recommended prices/maximum prices  
– Export prohibitions: active/passive sales  
– Non-compete clauses: 5 years' limitation and prohibition of post-contractual obligations

- **Susanne MARGOSSIAN**, *UP International SA, Geneva, Switzerland*

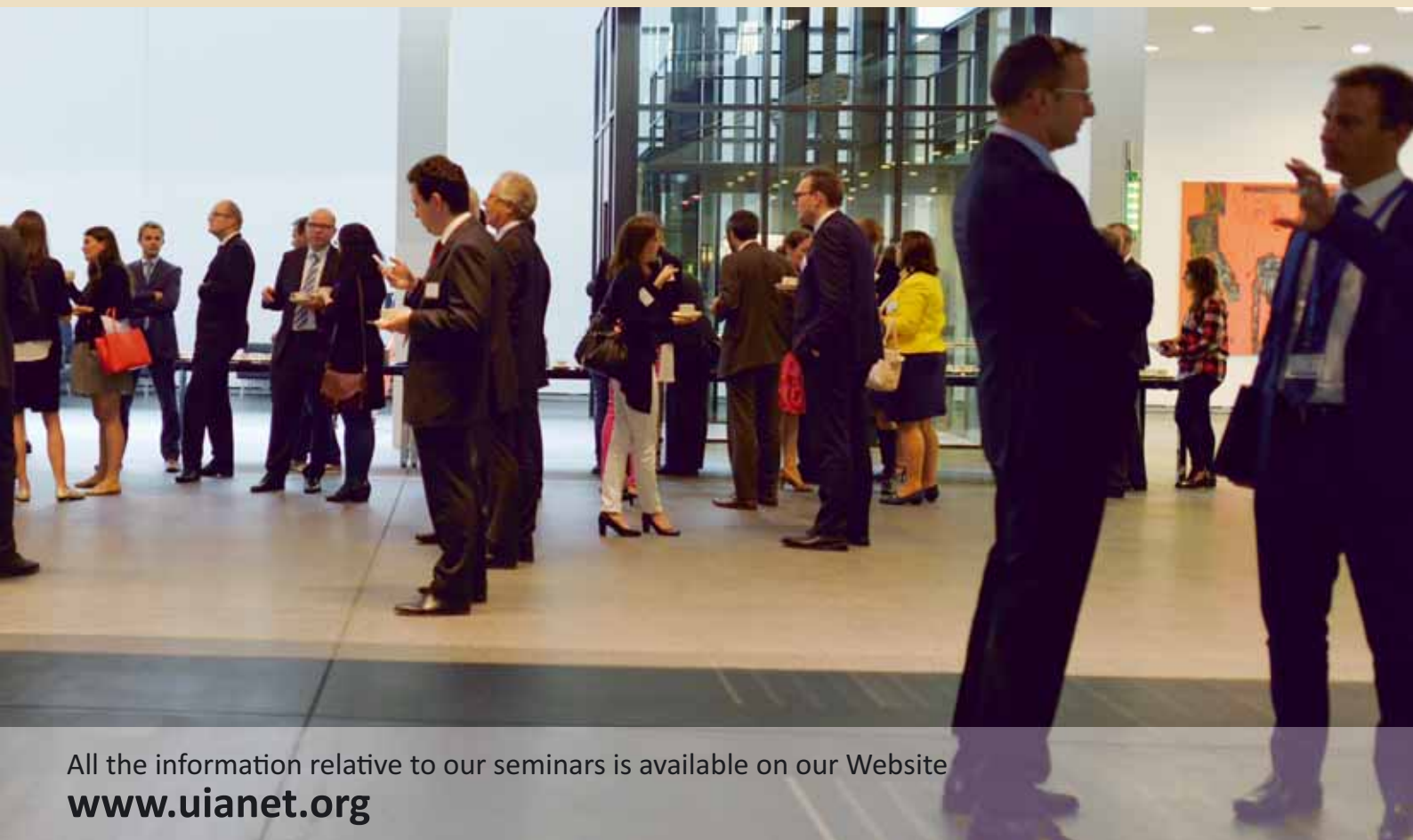
## 11:40 – 12:10 Hot Issues Regarding Sales on the Internet

– Selling through the Internet : Possible impact on the existing network  
– Limiting sales through Internet by distributors: trademark and antitrust issues  
– Adapting to price differences in different countries – Geo-blocking

- **Maria Elena GIORCELLI**, *Buffa Bortolotti & Mathis, Turin, Italy*

## 12:10 – 12:30 CLOSING REMARKS

• **Milagros POAL-MANRESA CANTARELL**, *President of the UIA Contract Law Commission, Centell-Folch Abogados Asociados, Barcelona, Spain*  
• **Jean-Paul VULLIÉTY**, *President of the UIA International Sale of Goods commission, Lalive, Geneva, Switzerland*





# Organising Committee

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*Buffa Bortolotti & Mathis*  
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E f.bortolotti@bbmpartners.com

## General Information

### SEMINAR VENUE

**Maritim Hotel München**  
Goethestraße 7  
80336 Munich, Germany  
T +49 (0) 89 55235-0

### REGISTRATION FEES

	UIA Member		Non Member	
	≤ 09.08.2016	> 10.08.2016	≤ 09.08.2016	> 10.08.2016
<b>STANDARD REGISTRATION</b>	<b>€ 390*</b>	<b>€ 440*</b>	<b>€ 440*</b>	<b>€ 490*</b>
<b>YOUNG LAWYER (&lt;35)**</b>	<b>€ 340*</b>	<b>€ 390*</b>	<b>€ 390*</b>	<b>€ 440*</b>

\* The VAT (19%) can be applied to the amount here above according to the European Directive 2006/112/CE of November 28, 2006. For more information, please contact the UIA.

\*\* Please attach proof of age to the registration form to benefit from young lawyers fee.

These fees cover participation in the welcome cocktail, participation in the seminar, coffee breaks, lunch on Friday, September 9, 2016 as well as the documentation of the seminar. The dinner on Friday night, September 9, 2016, is optional and at additional charge. Please note that the number of places at the seminar is limited. The organisers reserve the right to refuse registrations in the event of excess applications.

### CONTINUING LEGAL EDUCATION

Every participant attending the seminar will receive a "Certificate of Participation" at the end of the event that may be used for obtaining "Credits" for "Continuing Legal Education" – "Continuing Professional Development" purposes, depending on national rules. For more information, please contact the UIA.

### LANGUAGE

The working language will be **English** without simultaneous translation.



## HOTEL ROOM RESERVATION

A limited number of rooms has been pre-booked at a preferential rate. Reservations should be made directly through the hotel. Credit card details must be given in order to secure your reservation. Please note that the number of rooms is limited. We recommend that you proceed with your reservations as soon as possible.

Hotel	Rates	
<b>Maritim Hotel München</b> Goethestraße 7 80336 Munich, Germany T +49 (0) 89 55235-0 F +49 (0) 89 55235-900 E info.mun@maritim.de www.maritim.com	Classic Single room	€ 99
	Classic Double room	€ 147
	Comfort Single room	€ 114
	Comfort Double room	€ 162
	Superior Single room	€ 134
	Superior Double room	€ 182
	<b>Breakfast and taxes included</b>	

Please download the hotel reservation form from our Website: [www.uianet.org](http://www.uianet.org)

## CANCELLATION CONDITIONS

All cancellations will be subject to a 50% deduction and will have to be sent in writing, to be received by the Union Internationale des Avocats **no later than August 9, 2016**. No refund will be made for cancellations received after this date.

## VISAS

Anyone who requires a visa invitation letter in order to attend the seminar should register and pay their registration fees **no later than August 9, 2016** to ensure there is enough time to obtain a visa.

All cancellations will be refunded in full, minus €50 + VAT to cover administrative costs, provided that the UIA has received the registration documents and **total registration fees no later than August 9, 2016**.

If you register after this date, only 50% of the amount paid minus €50 + VAT to cover administrative costs will be refunded for cancellations due to visa refusals.

All cancellations due to a visa refusal must be sent in writing and reach the UIA **before the seminar**. Cancellations must be accompanied by a **proof of visa refusal**.

If your visa is issued after the seminar date or if you do not have proof of visa refusal, you will not be entitled to a refund.

## GENERAL CONDITIONS

All registrations received by the Union Internationale des Avocats (UIA) along with the full payment of fees corresponding to the events selected will be confirmed in writing.

The UIA reserves the right to cancel or postpone the seminar to a later date, change the seminar venue and/or programme, make any corrections or modifications in the information published in the seminar programme and cancel any invitation to participate in the seminar, at any time and at their entire discretion, without having to provide any reasons for the same.

Neither the UIA, nor any of its managers, employees, agents, members or representatives shall be held responsible for any loss or damage, of any nature, suffered (directly or indirectly) by a delegate, accompanying person or a third party following any cancellations, changes, postponements or modifications.

**The UIA strongly advises participants to subscribe to modifiable and/or refundable services, as well as to take out a cancellation insurance.**

Neither the UIA, nor any of its managers, employees, agents, members or representatives shall be held responsible for any loss or damage, of any nature whatever, suffered (directly or indirectly) by a delegate or accompanying person, except in case of death or personal injury due to gross negligence by the UIA.

The contractual relations between the UIA and each participant (delegate or accompanying person) in relation to the seminar are subject to French law and jurisdiction, to the exclusion of any other law. Paris is the city of jurisdiction.

## FORMALITIES

It is the responsibility of participants to ensure compliance with police, customs and health formalities for their journey. Participants unable to take part in the seminar because of their inability to take a flight or any other means of transportation due to being unable to provide the documents required (passport, visa, vaccination certificate, etc.) cannot claim any reimbursement.

## FORCE MAJEURE

“Force majeure” means any events external to the parties, of both an unforeseeable and insurmountable nature that prevents either the client or the participants, or the agency or service providers involved in organising the seminar, from executing all or part of the obligations provided for in the present agreement. By express agreement, such will be the case in the event of a strike affecting the means of transport, hotel staff, air traffic controllers, an insurrection, a riot or any prohibition whatever decreed by Governmental or public authorities.

It is expressly agreed that for the parties, a case of force majeure would suspend the execution of their reciprocal obligations. At the same time, each of the parties shall bear the burden of all the expenses incumbent upon them, resulting from the case of force majeure.

## HEALTH

The organisers decline any responsibility in case of any health problems existing prior to the seminar that may lead to complications or be aggravated during the entire period of the stay: pregnancy, cardio-vascular problems, any allergies, special diets, any disorders under treatment and not yet consolidated on the day the seminar starts, psychic or mental or depressive illness, etc. (Non exhaustive list).



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# Drafting Effective International Contracts: Workshop-seminar on International Sales, Agency and Distributorship Contracts

Friday, September 9 & Saturday, September 10, 2016

**MUNICH, GERMANY**

## REGISTRATION FORM

Register online at: [www.uianet.org](http://www.uianet.org)

or please complete and return this form, by email, fax or post, to:

**UNION INTERNATIONALE DES AVOCATS**

25 rue du Jour, 75001 Paris, France

Tel: +33 1 44 88 55 66 ■ Fax: +33 1 44 88 55 77 ■ Email: [uiacentre@uianet.org](mailto:uiacentre@uianet.org)



Register online

**UIA INDIVIDUAL MEMBERS: M I - - - - -**

*Please specify your membership number (Please check your membership card or membership fees)*

Family Name: .....

First Name: .....

Firm: .....

Address: .....

Post Code: ..... City: .....

Country: .....

Tel: ..... Fax: .....

Email: .....

Date of Birth: .....

EU VAT ID – Number: .....

Special requests (special diet, allergies, handicap...): .....

Arrival/departure times & flight numbers: .....

Hotel: .....

### A. SEMINAR REGISTRATION FEES

	UIA Member		Non Member	
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\*\* Please attach proof of age to the registration form to benefit from young lawyer fee.

## B. SEMINAR SOCIAL ACTIVITIES

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Please indicate below whether you plan to attend the following events **included** in the cost of your registration.

- Welcome Cocktail – Thursday, September 8, 2016  
 Lunch – Friday, September 9, 2016

## C. OPTIONAL ACTIVITY

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(**not included** in the registration fees)

- Optional Dinner – Friday, September 9, 2016

• Please book ..... person(s) for the dinner

€ 65 (Excl. VAT) x \_\_\_ / pers

Total (C) (Excl. VAT) € .....

## D. TOTAL

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TOTAL (A) Excl. VAT – Registration Fees € .....

TOTAL (C) Excl. VAT – Optional Activity € .....

TOTAL (A+C) Excl. VAT € .....

VAT if applicable (19%)\* € .....

TOTAL (A+C+VAT) € .....

\* The VAT (19%) can be applied to the amount here above according to the European Directive 2006/112/CE of November 28, 2006. For more information, please contact the UIA.

## E. CANCELLATION CONDITIONS

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I, the Undersigned, confirm that I have read and accepted the **cancellation conditions** as well as the **general conditions** given on page 6 of the registration programme. My registration will only be taken into account on receipt of the payment.

Participants are aware that their image and/or voice may be photographed, recorded or filmed throughout the duration of the seminar. They hereby assign to the UIA, with the signature of this form, the right to exploit, reproduce and disseminate the images and recordings by all means, both known and unknown, using all media, for an unlimited term and free of charge.

## F. METHOD OF PAYMENT

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- By cheque in € payable to the UIA, addressed to: UIA – 25 rue du Jour – 75001 Paris – France  
 By bank transfer in €, without charges to the payee, in favour of the Union Internationale des Avocats, quoting “2016 Munich Seminar”, to the following bank and account:

**Société Générale – Paris Elysées Entreprise**  
**91 avenue des Champs Elysées – 75008 Paris – France**  
**BIC / SWIFT N°: SOGEFRPP**  
**IBAN: FR76 3000 3033 9200 0503 4165 164**

*Kindly attach a copy of your bank transfer order to your registration form*

- By credit card:       Visa       Mastercard

Card N°: \_ \_ \_ \_ \_

Expiry date: \_ \_ / \_ \_      3 digits: \_ \_ \_

Name of card holder: .....

I authorise the Union Internationale des Avocats to debit the above mentioned credit card in the amount of € (EUR) .....

Date: ..... / ..... / .....

Signature: .....