

**C. TEXT OF DRAFT CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS  
APPROVED BY THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW\***

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**PART I. SPHERE OF APPLICATION AND  
GENERAL PROVISIONS**

**CHAPTER I. SPHERE OF APPLICATION**

*Article 1*

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

- (a) when the States are Contracting States; or
- (b) when the rules of private international law lead to the application of the law of a Contracting State.

(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration.

*Article 2*

This Convention does not apply to sales:

- (a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
- (b) by auction;
- (c) on execution or otherwise by authority of law;
- (d) of stocks, shares, investment securities, negotiable instruments or money;
- (e) of ships, vessels or aircraft;
- (f) of electricity.

\* For relationship of the draft articles to the provisions in the United Nations Convention on Contracts for the International Sale of Goods, see the comparative table in part III of this volume.

\*\* See *Official Records of the General Assembly, Thirty-third Session, Supplement No. 17 (A/33/17)*; chap. II, para. 28.

*Article 3*

(1) This Convention does not apply to contracts in which the preponderant part of the obligations of the seller consists in the supply of labour or other services.

(2) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

*Article 4*

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided therein, this Convention is not concerned with:

- (a) the validity of the contract or of any of its provisions or of any usage;
- (b) the effect which the contract may have on the property in the goods sold.

*Article 5*

The parties may exclude the application of this Convention or, subject to article 11, derogate from or vary the effect of any of its provisions.

**CHAPTER II. GENERAL PROVISIONS**

*Article 6*

In the interpretation and application of the provisions of this Convention, regard is to be had to its international character and to the need to promote uniformity and the observance of good faith in international trade.

*Article 7*

(1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.

(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had in the same circumstances, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

#### Article 8

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

#### Article 9

For the purposes of this Convention:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

#### Article 10

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirements as to form. It may be proved by any means, including witnesses.

#### Article 11

Any provision of article 10, article 27 or Part II of this Convention that allows a contract of sale or its modification or abrogation or any offer, acceptance, or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in a Contracting State which has made a declaration under article (X) of this Convention. The parties may not derogate from or vary the effect of this article.

## PART II. FORMATION OF THE CONTRACT

#### Article 12

(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.

(2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

#### Article 13

(1) An offer becomes effective when it reaches the offeree.

(2) An offer may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer. It may be withdrawn even if it is irrevocable.

#### Article 14

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

(2) However, an offer cannot be revoked:

(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable, or

(b) if it was reasonable for the offeree to rely upon the offer as being irrevocable and the offeree has acted in reliance on the offer.

#### Article 15

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.

#### Article 16

(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence shall not in itself amount to acceptance.

(2) Subject to paragraph (3) of this article, acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed provided that the act is performed within the period of time laid down in paragraph (2) of this article.

*Article 17*

(1) A reply to an offer which purports to be an acceptance containing additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but which contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance unless the offeror objects to the discrepancy without undue delay. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(3) Additional or different terms relating, *inter alia*, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially, unless the offeree by virtue of the offer or the particular circumstances of the case has reason to believe they are acceptable to the offeror.

*Article 18*

(1) A period of time for acceptance fixed by an offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by an offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.

(2) If the notice of acceptance cannot be delivered at the address of the offeror due to an official holiday or a non-business day falling on the last day of the period for acceptance at the place of business of the offeror, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

*Article 19*

(1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror so informs the offeree orally or dispatches a notice to that effect.

(2) If the letter or document containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror informs the offeree orally that he considers his offer as having lapsed or dispatches a notice to that effect.

*Article 20*

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

*Article 21*

A contract is concluded at the moment when an acceptance of an offer is effective in accordance with the provisions of this Convention.

*Article 22*

For the purposes of Part II of this Convention an offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally to him or delivered by any other means to him, his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

## PART III. SALES OF GOODS

## CHAPTER I. GENERAL PROVISIONS

*Article 23*

A breach committed by one of the parties is fundamental if it results in substantial detriment to the other party unless the party in breach did not foresee and had no reason to foresee such a result.

*Article 24*

A declaration of avoidance of the contract is effective only if made by notice to the other party.

*Article 25*

Unless otherwise expressly provided in Part III of this Convention, if any notice, request or other communication is given by a party in accordance with Part III and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

*Article 26*

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court could do so under its own law in respect of similar contracts of sale not governed by this Convention.

*Article 27*

(1) A contract may be modified or abrogated by the mere agreement of the parties.

(2) A written contract which contains a provision requiring any modification or abrogation to be in writing may not be otherwise modified or abrogated. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

## CHAPTER II. OBLIGATIONS OF THE SELLER

*Article 28*

The seller must deliver the goods, hand over any documents relating thereto and transfer the property in the goods, as required by the contract and this Convention.

## SECTION I. DELIVERY OF THE GOODS AND HANDING OVER OF DOCUMENTS

*Article 29*

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

(a) if the contract of sale involves carriage of the goods — in handing the goods over to the first carrier for transmission to the buyer;

(b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place — in placing the goods at the buyer's disposal at that place;

(c) in other cases — in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

*Article 30*

(1) If the seller is bound to hand the goods over to a carrier and if the goods are not clearly marked with an address or are not otherwise identified to the contract, the seller must send the buyer a notice of the consignment which specifies the goods.

(2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for the carriage to the place fixed by means of transportation which are appropriate in the circumstances and according to the usual terms for such transportation.

(3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must provide the buyer, at his request, with all available information necessary to enable him to effect such insurance.

*Article 31*

The seller must deliver the goods:

(a) if a date is fixed by or determinable from the contract, on that date; or

(b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or

(c) in any other case, within a reasonable time after the conclusion of the contract.

*Article 32*

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract.

## SECTION II. CONFORMITY OF THE GOODS AND THIRD PARTY CLAIMS

*Article 33*

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract. Except where otherwise agreed, the goods do not conform with the contract unless they:

(a) are fit for the purposes for which goods of the same description would ordinarily be used;

(b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;

(c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;

(d) are contained or packaged in the manner usual for such goods.

(2) The seller is not liable under subparagraphs (a) to (d) of paragraph (1) of this article for any non-conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such non-conformity.

*Article 34*

(1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.

(2) The seller is also liable for any lack of conformity which occurs after the time indicated in paragraph (1) of this article and which is due to a breach of any of his obligations, including a breach of any express guarantee that the goods will remain fit for their ordinary purpose or for some particular purpose, or that they will retain specified qualities or characteristics for a specific period.

*Article 35*

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. The buyer retains any right to claim damages as provided for in this Convention.

*Article 36*

(1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

(2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.

(3) If the goods are redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such re-dispatch, examination may be deferred until after the goods have arrived at the new destination.

*Article 37*

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless such time-limit is inconsistent with a contractual period of guarantee.

*Article 38*

The seller is not entitled to rely on the provisions of articles 36 and 37 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

*Article 39*

(1) The seller must deliver goods which are free from any right or claim of a third party, other than one based on industrial or intellectual property, unless the buyer agreed to take the goods subject to that right or claim.

(2) The buyer does not have the right to rely on the provisions of this article if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he became aware or ought to have become aware of the right or claim.

*Article 40*

(1) The seller must deliver goods which are free from any right or claim of a third party based on industrial or intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that that right or claim is based on industrial or intellectual property:

(a) under the law of the State where the goods will be resold or otherwise used if it was contemplated by the parties at the time of the conclusion of the contract that

the goods would be resold or otherwise used in that State; or

(b) in any other case under the law of the State where the buyer has his place of business.

(2) The obligation of the seller under paragraph (1) of this article does not extend to cases where:

(a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or

(b) the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

(3) The buyer does not have the right to rely on the provisions of this article if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he became aware or ought to have become aware of the right or claim.

SECTION III. REMEDIES FOR BREACH OF CONTRACT  
BY THE SELLER*Article 41*

(1) If the seller fails to perform any of his obligations under the contract and this Convention, the buyer may:

(a) exercise the rights provided in articles 42 to 48;

(b) claim damages as provided in articles 70 to 73.

(2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

*Article 42*

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with such requirement.

(2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach and a request for substitute goods is made either in conjunction with notice given under article 37 or within a reasonable time thereafter.

*Article 43*

(1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.

(2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in the performance.

*Article 44*

(1) Unless the buyer has declared the contract avoided in accordance with article 45, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without such delay as will amount to a fundamental breach of contract and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. The buyer retains any right to claim damages as provided for in this Convention.

(2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.

(3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under paragraph (2) of this article, that the buyer make known his decision.

(4) A request or notice by the seller under paragraphs (2) and (3) of this article is not effective unless received by the buyer.

*Article 45*

(1) The buyer may declare the contract avoided:

(a) if the failure by the seller to perform any of his obligations under the contract and this Convention amounts to a fundamental breach of contract; or

(b) if the seller has not delivered the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 43 or has declared that he will not deliver within the period so fixed.

(2) However, in cases where the seller has made delivery, the buyer loses his right to declare the contract avoided unless he has done so within a reasonable time:

(a) in respect of late delivery, after he has become aware that delivery has been made; or

(b) in respect of any breach other than late delivery, after he knew or ought to have known of such breach, or after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 43, or after the seller has declared that he will not perform his obligations within such an additional period.

*Article 46*

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may declare the price to be reduced in the same proportion as the value that the goods actually delivered would have had at the time of the conclusion of the contract bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 44

or if he is not allowed by the buyer to remedy that failure in accordance with that article, the buyer's declaration of reduction of the price is of no effect.

*Article 47*

(1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, the provisions of articles 42 to 46 apply in respect of the part which is missing or which does not conform.

(2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

*Article 48*

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

## CHAPTER III. OBLIGATIONS OF THE BUYER

*Article 49*

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

## SECTION I. PAYMENT OF THE PRICE

*Article 50*

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any relevant laws and regulations to enable payment to be made.

*Article 51*

If a contract has been validly concluded but does not state the price or expressly or impliedly make provision for the determination of the price of the goods, the buyer must pay the price generally charged by the seller at the time of the conclusion of the contract. If no such price is ascertainable, the buyer must pay the price generally prevailing at the aforesaid time for such goods sold under comparable circumstances.

*Article 52*

If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight.

*Article 53*

(1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

- (a) at the seller's place of business; or
- (b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

(2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in the place of business of the seller subsequent to the conclusion of the contract.

*Article 54*

(1) The buyer must pay the price when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

(2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.

(3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

*Article 55*

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or other formality on the part of the seller.

## SECTION II. TAKING DELIVERY

*Article 56*

The buyer's obligation to take delivery consists:

- (a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
- (b) in taking over the goods.

SECTION III. REMEDIES FOR BREACH OF CONTRACT  
BY THE BUYER*Article 57*

(1) If the buyer fails to perform any of this obligations under the contract and this Convention, the seller may:

- (a) exercise the rights provided in articles 58 to 61;
- (b) claim damages as provided in articles 70 to 73.

(2) The seller is not deprived of any right he may have

to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

*Article 58*

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with such requirement.

*Article 59*

(1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.

(2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in the performance.

*Article 60*

(1) The seller may declare the contract avoided:

(a) if the failure by the buyer to perform any of his obligations under the contract and this Convention amounts to a fundamental breach of contract; or

(b) if the buyer has not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 59, performed his obligation to pay the price or taken delivery of the goods, or if he has declared that he will not do so within the period so fixed.

(2) However, in cases where the buyer has paid the price, the seller loses his right to declare the contract avoided if he has not done so:

(a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or

(b) in respect of any breach other than late performance, within a reasonable time after he knew or ought to have known of such breach, or within a reasonable time after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 59, or the declaration by the buyer that he will not perform his obligations within such an additional period.

*Article 61*

(1) If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with any requirement of the buyer that may be known to him.

(2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If the buyer fails to do so after receipt of such a communication, the specification made by the seller is binding.

CHAPTER IV. PROVISIONS COMMON TO THE OBLIGATIONS  
OF THE SELLER AND OF THE BUYER

SECTION I. ANTICIPATORY BREACH AND INSTALMENT  
CONTRACTS

*Article 62*

(1) A party may suspend the performance of his obligations if it is reasonable to do so because, after the conclusion of the contract, a serious deterioration in the ability to perform or in the creditworthiness of the other party or his conduct in preparing to perform or in actually performing the contract gives good grounds to conclude that the other party will not perform a substantial part of his obligations.

(2) If the seller has already dispatched the goods before the grounds described in paragraph (1) of this article become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. This paragraph relates only to the rights in the goods as between the buyer and the seller.

(3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice to the other party thereof and must continue with performance if the other party provides adequate assurance of his performance.

*Article 63*

If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach, the other party may declare the contract avoided.

*Article 64*

(1) In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.

(2) If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach will occur with respect to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

(3) A buyer, avoiding the contract in respect of any delivery, may, at the same time, declare the contract avoided in respect of deliveries already made or of future

deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

SECTION II. EXEMPTIONS

*Article 65*

(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if he is exempt under paragraph (1) of this article and if the person whom he has engaged would be so exempt if the provisions of that paragraph were applied to him.

(3) The exemption provided by this article has effect only for the period during which the impediment exists.

(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such nonreceipt.

(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

SECTION III. EFFECTS OF AVOIDANCE

*Article 66*

(1) Avoidance of the contract releases both parties from their obligations thereunder, subject to any damages which may be due. Avoidance does not affect any provisions of the contract for the settlement of disputes or any other provisions of the contract governing the respective rights and obligations of the parties consequent upon the avoidance of the contract.

(2) If one party has performed the contract either wholly or in part, he may claim from the other party restitution of whatever he has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

*Article 67*

(1) The buyer loses his right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

(2) Paragraph (1) of this article does not apply:



(a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which he received them is not due to an act or omission of the buyer; or

(b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 36; or

(c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered the lack of conformity or ought to have discovered it.

#### *Article 68*

The buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 67 retains all other remedies.

#### *Article 69*

(1) If the seller is bound to refund the price, he must also pay interest thereon from the date on which the price was paid.

(2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

(a) if he must make restitution of the goods or part of them; or

(b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

### SECTION IV. DAMAGES

#### *Article 70*

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters which he then knew or ought to have known, as a possible consequence of the breach of contract.

#### *Article 71*

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction and any further damages recoverable under the provisions of article 70.

#### *Article 72*

(1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if

he has not made a purchase or resale under article 71, recover the difference between the price fixed by the contract and the current price at the time he first had the right to declare the contract avoided and any further damages recoverable under the provisions of article 70.

(2) For the purposes of paragraph (1) of this article, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at another place which serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

#### *Article 73*

The party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount which should have been mitigated.

### SECTION V. PRESERVATION OF THE GOODS

#### *Article 74*

If the buyer is in delay in taking delivery of the goods and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He may retain them until he has been reimbursed his reasonable expenses by the buyer.

#### *Article 75*

(1) If the goods have been received by the buyer and he intends to reject them, he must take such steps as are reasonable in the circumstances to preserve them. He may retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that he can do so without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination.

#### *Article 76*

The party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

#### *Article 77*

(1) The party who is bound to preserve the goods in accordance with articles 74 or 75 may sell them by any appropriate means if there has been an unreasonable

delay by the other party in taking possession of the goods or in taking them back or in paying the cost of preservation, provided that notice of the intention to sell has been given to the other party.

(2) If the goods are subject to loss or rapid deterioration or their preservation would involve unreasonable expense, the party who is bound to preserve the goods in accordance with articles 74 or 75 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.

(3) The party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

#### CHAPTER V. PASSING OF RISK

##### *Article 78*

Loss or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

##### *Article 79*

(1) If the contract of sale involves carriage of the goods and the seller is not required to hand them over at a particular destination, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer. If the seller is required to hand the goods over to a carrier at a particular place other than the destination, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of risk.

(2) Nevertheless, if the goods are not clearly marked with an address or otherwise identified to the contract, the risk does not pass to the buyer until the seller sends the buyer a notice of the consignment which specifies the goods.

##### *Article 80*

The risk in respect of goods sold in transit is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents controlling their disposition. However, if at the time of the conclusion of the contract the seller knew or ought to have known that the goods had been lost or damaged and he has not disclosed such fact to the buyer, such loss or damage is at the risk of the seller.

##### *Article 81*

(1) In cases not covered by articles 79 and 80 the risk passes to the buyer when the goods are taken over by him or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

(2) If, however, the buyer is required to take over the goods at a place other than any place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

(3) If the contract relates to a sale of goods not then identified, the goods are deemed not to be placed at the disposal of the buyer until they have been clearly identified to the contract.

##### *Article 82*

If the seller has committed a fundamental breach of contract, the provisions of articles 79, 80 and 81 do not impair the remedies available to the buyer on account of such breach.