

Article 47

[Partial non-performance]

(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.

PRIOR UNIFORM LAW

ULIS, article 45.

Commentary

1. Article 47 states the buyer's remedies when the seller fails to perform only a part of his obligations.

Remedies in respect of the non-conforming part, paragraph (1)

2. Paragraph (1) provides that if the seller has failed to perform only a part of his obligations under the contract by delivering only a part of the goods or by delivering some goods which do not conform to the contract, the provisions of articles 42 to 46 apply in respect of the quantity which is missing or which does not conform to the contract. In effect, this paragraph provides that the buyer can avoid a part of the contract under article 45. This rule was necessary because in some legal systems a party cannot avoid only a part of the contract. In those legal systems the conditions for determining whether the contract can be avoided at all must be determined by reference to the entire contract. However, under article 47 (1) it is clear that under this Convention the buyer is able to avoid a part of the contract if the criteria for avoidance are met as to that part.

Remedies in respect of the entire contract, paragraph (2)

3. Paragraph (2) provides that the buyer may avoid the entire contract "only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract". Although this provision reiterates the rule which would otherwise be applied under article 45 (1) (a), it is useful that it be made clear.

4. The use of the word "only" in article 47 (2) also has the effect of negating the implication which might have been thought to flow from article 45 (1) (b) that the entire contract could be avoided on the grounds that the seller failed to deliver a part of the goods within the additional period of time fixed by the buyer in accordance with article 43 even though such failure to deliver did not in itself amount to a fundamental breach of the entire contract.