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Act of 3 April 1964 (No. 1) concerning International Private Law Rules for Sales of Goods

THE SALE OF GOODS ACT

of 13 May 1988 (Act No. 27)

Chapter I. Range of application

§ 1. General range of application

- (1) This Act applies to sales except as otherwise provided by statute. It does not apply to the sale of real property.
- (2) This Act applies also to the exchange of goods wherever appropriate.

§ 2. Manufacturing sales. Service contracts

- (1) This Act applies to contracts for the supply of goods to be manufactured unless the party who orders the goods undertakes to supply substantial parts of the materials. This Act does not apply to contracts for the construction of buildings or other facilities on real property.
- (2) This Act does not apply to contracts which impose on the supplier of the goods an obligation also to perform work or other service, and this constitutes a preponderant part of his obligations.

§ 3. Contract and trade usage

The provisions of this Act apply except as otherwise resulting from contract, established practice between the parties, or trade usage or other custom which must be regarded as binding between the parties.

§ 4. Consumer sales

- (1) In consumer sales, conditions may not be agreed or applied which would be less favourable to the buyer than those following from the provisions of this Act.
- (2) «Consumer sales» are sales from a professional seller when the goods are mainly intended for the personal use of the buyer, his family, household or acquaintances, unless the seller at the conclusion of the contract neither knew nor ought to have known that the goods were bought for any such use. Sales of claims and rights are not regarded as consumer sales.
- (3) Sales are made by a professional seller when the seller or his representative acts as a professional seller.

§ 5. International sales

- (1) International sales are subject to this Act with the special rules contained therein, especially Chapter XV below.
- (2) The special rules concerning international sales are not applicable to sales where the seller has his place of business in Norway, Denmark, Finland, Iceland or Sweden and the buyer has his place of business in another of these countries (Nordic sales).

- (3) Nor are the special rules applicable to:
 - (a) consumer sales or similar sales between consumers,
 - (b) sales by auction,
 - (c) sales on execution or otherwise by authority of law,
 - (d) sales of stocks, shares, investment securities, money, claims or rights,
 - (e) sales of ships, vessels, aircraft or hovercraft.

Chapter II. The delivery

§ 6. Collection sales

- (1) The goods shall be kept ready for collection at the place where the seller had his place of business (in the case of residence see § 83 below) at the time the contract was concluded. If the parties at the time of concluding the contract knew that the goods or the consignment or production place from which the goods were to be taken, was elsewhere, the goods shall be kept ready for collection there.
- (2) The goods are delivered when taken over by the buyer.

§ 7. Local sales and shipment sales

- (1) If the goods are to be brought to the buyer in the same place or within the same area to which the seller normally undertakes to bring such goods (local sale), the delivery is made when the goods are received there.
- (2) If the goods are to be shipped to the buyer (shipment sale) and if not otherwise provided by transport clause or other agreement, delivery will be made by the goods being handed over to the carrier who undertakes to transport them from the place of shipment. If the seller undertakes the transport himself, the delivery is effected only when the goods are received by the buyer.
- (3) If the goods have been sold «free», «delivered» or «delivered free» with the indication of a specific place, the goods are not regarded as delivered until they have arrived at that place.
- (4) In consumer sales, the goods are delivered when they are received by the buyer. However, if the buyer is to collect the goods at the destination, delivery shall be regarded as effected when he is obliged to collect them at the destination.

§ 8. Additional obligations in shipment sales

- (1) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the destination.

tion in an appropriate manner and according to the usual terms for such transportation.

- (2) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.
- (3) If the seller hands the goods over to a carrier and if they are not clearly identified by markings, in shipping documents or otherwise as being intended for the buyer, the seller must give the buyer notice of the consignment specifying the goods.

§ 9. Delivery time

- (1) If the goods are not to be delivered on demand or without delay, and the delivery time is not otherwise specified by contract, the goods shall be delivered within a reasonable time after the conclusion of the contract.
- (2) If a period for delivery has been agreed, the seller may choose the time unless circumstances indicate that the buyer has the choice.
- (3) If in the case of a collection sale the seller has the right to choose the time of delivery, he shall give the buyer timely notice of the time at which the goods can be collected.

§ 10. The seller's retention

- (1) If the seller has not granted credit or deferral of payment, he is not obliged to hand over the goods or any document or otherwise transfer control over the goods without simultaneous payment of the price.
- (2) If the seller is to ship the goods to another place, he may however not refrain from shipping them but he may prevent the buyer from obtaining control over them until the price has been paid.

§ 11. Costs

- (1) The seller pays the costs of the goods until they are delivered. The provisions of this section do not apply to costs arising from delayed delivery due to circumstances on the part of the buyer.
- (2) When in consumer sales the goods are to be shipped to the buyer, the parties may agree, notwithstanding the provisions of § 4 above, that the shipping costs shall be paid by the buyer in addition to the price.

Chapter III. The risk in respect of the goods.

§ 12. What the risk involves

When the risk in respect of the goods has passed to the buyer, his obligation to pay the price does not cease by reason of the goods being subsequently lost, damaged or reduced as a consequence of any event which is not due to the seller.

§ 13. Passage of the risk

- (1) The risk passes to the buyer when the goods

have been delivered as agreed or in accordance with §§ 6 or 7 above.

- (2) If the goods are not collected or received in due time, and if this is due to the buyer or to circumstances on his part, the risk passes to him when the goods have been placed at his disposal and his failure to take delivery of the goods constitutes breach of contract. In consumer sales, however, the buyer does not carry the risk of an accidental event which occurs while the goods are in the possession of the seller and is not due to properties of the goods themselves.
- (3) If the buyer is to collect the goods elsewhere than at the seller's place of business, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at the place of delivery.

§ 14. Identification of the goods

The risk does not pass to the buyer until the goods have been identified by markings, in the transport document or otherwise as intended for the buyer.

§ 15. Transit

- (1) If the contract applies to goods in transit, the risk passes on conclusion of the contract unless the conditions indicate that the buyer has undertaken the risk already from the time the goods were handed over to the carrier who has issued the transport document. The seller carries in any case the risk of any loss or damage which he knew or ought to have known of at the time the contract was concluded, but failed to report to the buyer.
- (2) This section does not apply to consumer sales.

§ 16. Return of goods

If goods have been bought and delivered for trial or otherwise with a right of return, the buyer carries the risk under the rules of this chapter until the goods have been taken back by the seller. The foregoing provision notwithstanding, the buyer may return the goods under the Purchase Reconsideration Act of 24 March 1972 No. 11 or similar reconsideration under a consumer sales contract.

Chapter IV. Properties of the goods; non-conformity etc.

§ 17. Properties of the goods

- (1) The objects shall be in conformity with the requirements of kind, quantity, quality, other properties and packaging which are provided by the contract.
- (2) Except as otherwise provided by the contract, the goods shall:
 - (a) be fit for the purposes for which goods of the same description would ordinarily be used;
 - (b) be fit for any particular purpose of which the seller knew or could not be unaware

at the time the contract was concluded, 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 judgment;

- (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;
 - (d) be contained or packaged in the customary or other proper manner adequate to preserve and protect the goods.
- (3) In consumer sales the goods shall likewise be in conformity with public law requirements imposed by the legislation or official resolutions pursuant to statute at the time the contract is concluded, unless the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgment.
- (4) The goods lack conformity if they are not in accordance with the requirements of this section.

§ 18. Information on properties or use

- (1) The rules of non-conformity apply also when the goods are not in accordance with information which the seller, in his marketing or otherwise, has furnished about the goods, their properties or use and which may presumably have influenced the sale.
- (2) The rules of the preceding paragraph apply similarly when the goods are not in accordance with information which any person other than the seller has furnished on the packaging of the goods, in advertising or other marketing on behalf of the seller or prior sales stages. In sales other than consumer sales this does not apply if the seller neither knew nor ought to have known that the information had been given.
- (3) The rules of the two preceding paragraphs do not apply when the information was clearly rectified in due time.

§ 19. Goods sold «as they are». Auction sales

- (1) Even where the goods are sold «as they are» or subject to a similar general reservation, they lack conformity when
 - (a) the goods are not in accordance with information which the seller has furnished about the goods, their properties or use and which may presumably have influenced the sale,
 - (b) the seller on concluding the contract failed to furnish information about fundamental conditions of the goods or their use of which he could not have been unaware and which the buyer could reasonably expect to obtain, if the failure presumably influenced the sale, or
 - (c) the goods are in substantially worse condition than the buyer had reason to expect in view of the price and other circumstances.

- (2) Where used goods are sold at auction, the rules of the preceding paragraph apply similarly wherever appropriate.

§ 20. The buyer's bad faith, prior examination etc.

- (1) The buyer cannot invoke any lack of conformity of which he knew or could not be unaware at the time the contract was concluded.
- (2) If before the contract was concluded the buyer had examined the goods or without good reason failed to comply with the seller's invitation to examine them, the buyer cannot invoke anything which he ought to have discovered in the examination, unless the seller has acted with gross negligence or otherwise in conflict with honesty and good faith.
- (3) The preceding rules apply similarly when the buyer, before the contract was concluded, had been given an opportunity to examine a sample and the lack of conformity refers to a property which would appear from the sample.

§ 21. Time of lack of conformity

- (1) In determining whether goods lack conformity, the time when the risk passes to the buyer shall be applied, even if the lack of conformity becomes apparent only after that time.
- (2) The seller is also liable for any lack of conformity which occurs later if due to his breach of contract. The seller is likewise liable if by guarantee or otherwise he has undertaken that the goods will have certain properties or remain fit for their ordinary purpose or for some particular purpose for a period after delivery.

Chapter V.

The buyer's right following the seller's breach of contract

Delay

§ 22. Introductory provision

- (1) If the goods are not delivered or are delivered too late, and this is not due to the buyer or circumstances on his part, he may under §§ 23 to 29 below demand performance, cancel the contract and claim damages, and keep back payment of the price under § 42 below. He is not deprived of any right he may have to claim damages by exercising his rights to other remedies or by these rights not being exercisable.
- (2) If the seller fails to perform his other obligations in due time under the contract, the provisions regarding delay apply similarly wherever appropriate, except § 25 (2) and (3) below. Other provisions may be agreed also in consumer sales.

§ 23. Right of performance

- (1) The buyer may maintain the contract and demand performance. This rule does not apply

if there is any impediment which the seller is unable to overcome, or if the performance would entail such considerable inconvenience or cost to the seller as to be substantially disproportionate to the buyer's interest in the seller's performance.

- (2) If the difficulties cease within a reasonable time, the buyer may demand performance unless after the time that has elapsed such performance would be substantially more burdensome or of a different nature than the seller could have foreseen or it would otherwise be unreasonable to demand performance.
- (3) The buyer loses his right to demand performance if he postpones such demand for an unreasonable length of time.

§ 24. Inquiry

If the seller asks the buyer whether he is willing to take delivery despite the delay, or notifies the buyer that he will deliver within a stated time, but the buyer fails to reply within a reasonable time after receiving the notice, he cannot cancel if performance is effected within the stated time.

§ 25. Cancellation

- (1) The buyer may cancel the contract when the delay amounts to a fundamental breach of contract.
- (2) The contract may moreover be cancelled if the seller fails to make delivery within an additional period of time of reasonable length which the buyer has fixed for performance.
- (3) In the course of such additional period the buyer may not cancel, unless the seller has declared that he will not perform within the period so fixed.

§ 26. Cancellation of manufacturing sale

If the contract concerns goods that are to be manufactured specifically for the buyer in accordance with his statements or requests, and if the seller for that reason cannot otherwise dispose of the goods without substantial loss, the buyer can only cancel if the delay substantially frustrates his purpose in concluding the contract. This provision does not apply to international sales.

§ 27. Damages

- (1) The buyer may claim damages for the loss he sustains as a consequence of the seller's delay. However, he may not do so as long as the seller shows that the delay was due to an impediment beyond his control which he could not reasonably be expected to take into account at the time the contract was concluded or to avoid or overcome the consequences of.
- (2) If the delay is due to a third party whom the seller has assigned to perform all or part of the contract, the seller avoids liability only if also the third party would have been exempt under the rule of the preceding paragraph.

The same rule applies if the delay is due to a supplier whom the seller has employed, or to any other person in a prior sales stage.

- (3) The exemption from liability is effective for the duration of the impediment. If the impediment ceases, the seller may be held liable if he is then obliged to perform but fails to do so.
- (4) The above rules of this section do not comprise such indirect losses as mentioned in § 67 (2) below. In international sales however, the rules comprise also indirect losses except as otherwise provided by § 70 (3) below.
- (5) The buyer may in any case claim damages if the delay or loss is due to the fault or neglect of the seller.

§ 28. Notification of impediment

If the seller is prevented from performing the contract in due time, he shall notify the buyer of the impediment and of its effect on the possibility of performing. If the buyer fails to receive such notification within reasonable time after the seller was informed or ought to have been informed of the impediment, the buyer may claim damages for the loss which could have been avoided if he had been notified in time.

§ 29. Period allowed for cancellation

If the goods have been delivered too late, the buyer may not cancel the contract unless he gives the seller notification of the claim within a reasonable time after he was informed of the delivery.

Lack of conformity

§ 30. Introductory provision

- (1) In the event of lack of conformity which is not due to the buyer or circumstances on his part, he may under §§ 31 to 40 below demand rectification, delivery of substitute goods, reduction in the price, cancellation and damages and retain payment of the price under § 42 below. The buyer is not deprived of any right he may have to claim damages by exercising his rights to other remedies or by these rights not being exercisable.
- (2) Other faults in the seller's performance come under the rules of lack of conformity wherever appropriate. Other rules may be agreed also in consumer sales.

§ 31. The buyer's examination after delivery

- (1) After delivery the buyer shall as soon as he has a reasonable opportunity to do so, examine the goods as required by good practice.
- (2) If it is apparent that the goods are to be transported from the place of delivery, the buyer may defer the examination thereof until the goods have arrived at their destination.
- (3) If the goods are redirected in transit or 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 redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

- (4) This section does not apply to consumer sales.

§ 32. Complaints

- (1) The buyer loses his right to invoke lack of conformity if he fails within a reasonable time after he discovered or ought to have discovered it, to complain to the seller of the lack of conformity involved.
- (2) If the buyer fails to complain within two years from the day he took delivery of the goods, he may not subsequently invoke the lack of conformity. This rule does not apply if the seller has undertaken by guarantee or other agreement more prolonged liability for lack of conformity.
- (3) In consumer sales, the period provided in the preceding paragraph is similarly applicable. When goods or parts of them are intended by ordinary use to last considerably longer, the period allowed for complaining is five years. Complaint of the lack of conformity can in consumer sales be given to the person who under agreement with the seller has undertaken to rectify any lack of conformity.

§ 33. Exception from the complaint rules

Notwithstanding the provisions of §§ 31 and 32 above, the buyer may invoke the lack of conformity if the seller has been grossly negligent or otherwise acted in conflict with honesty and good faith.

§ 34. Demand for rectification and delivery of substitute goods (remedy)

- (1) The buyer may require the seller for his own account to rectify any lack of conformity if the seller can do so without incurring unreasonable cost or inconvenience. The seller may instead deliver substitute goods under § 36 below.
- (2) The buyer may demand the delivery of substitute goods when the lack of conformity is fundamental. This rule does not apply in the event of any impediment or disproportion as mentioned in § 23 above. Nor may the buyer demand delivery of substitute goods when the contract applies to goods which exist at the time the contract was concluded and they have such properties that in view of the parties' assumptions they cannot reasonably be replaced by others.
- (3) If the seller fails to perform his obligation to rectify or deliver substitute goods, the buyer may claim damages for the expenses he has reasonably incurred in rectifying the lack of conformity.

§ 35. Notification of demand for rectification or delivery of substitute goods (remedy)

- (1) The buyer loses his right to have the lack of conformity rectified or substitute goods delivered if he fails to notify the seller of such claim together with the complaint under § 32 or within a reasonable time thereafter. The foregoing provision notwithstanding, the buyer does not lose the right if the seller has been grossly negligent or otherwise acted in conflict with honesty and good faith.
- (2) In consumer sales the notification may instead be given to the person who under agreement with the seller has undertaken to rectify any lack of conformity.

§ 36. The seller's right to rectify or deliver substitute goods (remedy)

- (1) Whether or not required by the buyer, the seller may at his own expense rectify the lack of conformity or deliver substitute goods, when he can do so without major inconvenience to the buyer and without prejudice to the buyer's ability to recover his expenses from the seller.
- (2) If the seller asks the buyer whether he will accept rectification or delivery of substitute goods, or notifies the buyer that he will rectify or deliver substitute goods within a stated period, but the buyer fails to reply within a reasonable time after having been notified, the seller may take the necessary steps within the stated period.
- (3) The seller may not claim that he did not have an opportunity to rectify or deliver substitute goods, if the buyer has arranged to have the lack of conformity rectified and it would under the circumstances be unreasonable to require him to wait for the seller's rectification or delivery of substitute goods.

§ 37. Reduction in the price or cancellation following lack of remedy

- (1) If rectification or delivery of substitute goods is not accepted or is not performed within a reasonable time after the buyer complained of the lack of conformity, the buyer may demand a reduction in the price or cancel the contract under §§ 38 or 39 below. This rule does not apply if the buyer refuses a remedy which he is obliged to accept.
- (2) The buyer may not demand a reduction in the price of used goods bought at auction.

§ 38. Price reduction

If the goods lack conformity, the buyer may demand a reduction in the price so that the ratio of the reduced to the agreed price is equivalent to the ratio of the value of the non-conforming goods to their value in a contractual condition at the time of delivery.

§ 39. Cancellation

- (1) The buyer may cancel the contract if the lack

of conformity amounts to a fundamental breach of contract.

- (2) The buyer may not cancel the contract unless he gives the seller notice of the cancellation within reasonable time after he was informed or ought to have been informed of the lack of conformity, or after the expiry of the period which may follow from a claim or notification under §§ 34 or 36 above. This rule does not apply however if the seller has been grossly negligent or otherwise acted in conflict with honesty and good faith.

§ 40. Damages

- (1) The buyer may claim damages for the loss he sustains as a consequence of the lack of conformity of the goods, unless the seller proves that the lack of conformity of the delivery is due to an impediment as mentioned in § 27 above. The other rules of §§ 27 and 28 will similarly apply.
- (2) The rules of the preceding paragraph do not comprise such indirect losses as mentioned in § 67 (2) below. In international sales however, the rules comprise also indirect losses except as otherwise provided by § 70 (3) below.
- (3) The buyer may in any case claim damages if
 - (a) the lack of conformity or loss is due to the fault or neglect of the seller or
 - (b) the goods differed already at the time of conclusion of the contract from what the seller had undertaken.

Legal defects etc.

§ 41. Legal defects. Other third party claims

- (1) If a third party has ownership of, a lien on or other right in the goods (legal defect), the rules of non-conformity apply unless it appears from the contract that the buyer shall take delivery of the goods with the restriction entailed by the third party right. The two year period for complaining under § 32 (2) above is however not applicable.
- (2) The buyer may in any case claim damages for loss resulting from the legal defect which existed at the time of contract conclusion and of which he neither knew nor ought to have known.
- (3) If a third party claims a right in the goods and this right is contested, the rules of the two preceding paragraphs apply similarly when the claim is not evidently groundless.
- (4) Third party claims based on intangible rights (see § 96 below) are subject to the rules of (1) above. Other rules may be agreed also in consumer purchases.

Other provisions

§ 42. The buyer's right of retention

If the buyer has a claim arising from the seller's breach of contract, the buyer may retain such part of the price as will ensure him recovery of his claim.

§ 43. Breach of contract for part of the goods

- (1) If the seller's breach of contract applies to only part of the sold goods, the rules of this chapter will apply to such part. The buyer may cancel the contract in its entirety when the breach is fundamental to the whole contract.
- (2) If the seller under the circumstances must be regarded as having completed his delivery although not all the goods have been delivered, the rules of non-conformity will be applicable.

§ 44. Delivery by instalments

- (1) If the seller is to deliver by instalments and one of the instalment deliveries is in breach of the contract, the buyer may cancel this instalment delivery under the cancellation rules.
- (2) If the breach of contract gives the buyer good grounds to conclude that a breach of contract will occur which will give a right of cancellation with respect to future instalments, he may on such grounds cancel for such deliveries provided he does so within a reasonable time.
- (3) A buyer who cancels in respect of a single delivery may at the same time cancel the contract in respect of deliveries 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.

Chapter VI. Obligations of the buyer **Amount of the price**

§ 45.

- (1) If a contract has been concluded without making provision for the price, the buyer shall pay the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned, provided the price is not unreasonable. If there is no such generally charged price, the buyer must pay the price which is reasonable with due regard to the nature and quality of the objects and the circumstances in general.
- (2) In consumer sales the seller may not in addition to the price demand any payment for issuing and dispatching the bill. This rule does not apply when it appears clearly that the price is the seller's price for cash payment, but he nevertheless grants a respite.

§ 46.

- (1) If the price is fixed according to number, measurement or weight, the applicable figure will be the quantity at the time the risk for the goods passes to the buyer.
- (2) If the price is fixed by weight, the weight of the packaging will first be deducted.

§ 47.

If the buyer has received a bill or invoice, he is bound by the price which is entered, unless he declares within a reasonable time that he does not accept it. This rule does not apply when a lower price follows from agreement or the entered price is unreasonable.

Payment of the price

§ 48.

- (1) The price is payable at the seller's place of business (or residence if appropriate, see § 83 below). If the payment is to be made against the handing over of the goods or of documents, it shall be made at the place where the handing over takes place.
- (2) The obligation to pay the purchase price comprises also any obligation under the contract to accept a bill, issue a letter of credit, bank guarantee or other security and to take other measures to pay the price.
- (3) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

§ 49.

- (1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller so demands, but not before the goods are handed over to the buyer or placed at his disposal in accordance with the contract and the law.
- (2) The foregoing provision notwithstanding, before the buyer pays he has the right to have the goods examined in the customary manner, provided this is not inconsistent with the agreed procedure for delivery and payment of the price.
- (3) If a bill of lading is used for transport of the goods to the destination, or the transport to the buyer takes place on such other conditions that the seller cannot control the disposition of the goods after they were paid, payment may be demanded against bill of lading, freight note or other evidence of the goods being transported on such conditions. This rule applies whether or not the goods have failed to arrive or the buyer has not had an opportunity to examine them.

The buyer's participation in performance of the contract

§ 50.

The buyer shall

- (a) furnish such assistance as may reasonably be expected of him in order for the seller to perform the contract, and
- (b) take delivery of the goods by collecting or receiving them.

Chapter VII. The seller's rights in the event of the buyer's breach of contract

§ 51. Introductory provision

- (1) If the buyer fails to pay or to perform his other obligations under the contract or the law, and this is not due to the seller or circumstances on his part, the seller may demand performance, cancellation and damages under the provisions of this chapter. He may also retain payment under § 10 above and charge interest under § 71 below.
- (2) If the buyer fails in his obligation to take delivery of the goods, and this failure is not due to the seller or circumstances on his part, the rules of §§ 55, 57 (2) and 58 below will apply instead.
- (3) The seller is not deprived of any right he may have to claim damages and interest by exercising his right to other remedies or by these rights not being exercisable.

§ 52. Right to perform by demanding payment. Cancellation of order

- (1) The seller may maintain the contract and require the buyer to pay the price. This rule does not however apply as long as the payment is impeded by interruption of communications or payment transfers or other circumstances beyond the buyer's control and which he cannot overcome.
- (2) If the buyer cancels the order for goods which are to be manufactured specifically for him, the seller may not maintain the contract by continuing the manufacture, making other preparations for the delivery and demand payment, unless an interruption would entail considerable inconvenience for him or prejudice his ability to recover any loss resulting from the cancellation. If the seller cannot maintain the contract, damages will be awarded for any loss resulting from the cancellation in accordance with the rules of Chapter X below.
- (3) If the goods have not yet been delivered, the seller loses his right to demand performance if he delays unreasonably the presentation of his claim.

§ 53. Right to perform by demanding participation in carrying out the contract
The seller's right to demand performance of the buyer's obligation to participate in carrying out the contract is subject to the rules of § 23 above.

§ 54. Cancellation when the buyer fails to pay

- (1) The seller may cancel the contract on grounds of delayed payment if the buyer's breach of contract is fundamental.
- (2) The contract may also be cancelled if the buyer fails to pay the price within an additional period of time of reasonable length which the seller has fixed for performance.
- (3) In the course of the additional period the sel-

ler may not cancel, unless the buyer has declared that he will not perform within the period so fixed.

- (4) If the goods have already been taken over by the buyer, the seller may only cancel if he has made a reservation to that effect or the buyer rejects the goods. The foregoing provision notwithstanding, an international sale may be cancelled without such reservation unless the cancellation affects the right which a third party may have in the goods, including any right of creditors in the buyer's bankruptcy.

§ 55. Cancellation when the buyer fails to participate

- (1) The seller may cancel the contract when the buyer fails to participate in its performance if such failure amounts to a fundamental breach of contract. The seller may on the same conditions cancel the contract when the buyer fails to take delivery of the goods under § 50 (b) above and the seller has a special interest in having them delivered.
- (2) The contract may also be cancelled when the buyer, within an additional period of time of reasonable length which the seller has fixed for performance.
 - (a) fails to participate in carrying out the contract, or
 - (b) fails to take delivery of the object in cases where the seller has a special interest in having them delivered.
- (3) In the course of the additional period the seller may not cancel, unless the buyer has declared that he will not perform within the period so fixed.

§ 56. Delivery by instalments

- (1) If the seller is to deliver by instalments and the buyer is to pay or participate correspondingly, and the buyer has committed a breach of contract in respect of one of the instalment deliveries, the seller may cancel this instalment delivery under the rules of §§ 54 and 55 above.
- (2) If the breach of contract gives the seller good grounds to conclude that a breach of contract will occur which will give a right of cancellation with respect to future instalments, he may on such grounds cancel for such deliveries provided he does so within a reasonable time.

§ 57. Damages

- (1) The seller may claim damages for the loss he sustains as a consequence of delay in the payment by the buyer. This rule does not apply however where the buyer proves that the delay is due to interruption of communications or payment transfers or other impediment beyond the buyer's control and which he could not reasonably be expected to take into account at the time the contract was

concluded or to avoid or overcome the consequences of. The rules of § 27 (2) and (3) above will similarly apply.

- (2) The seller may claim damages under the rules of § 27 above for the loss he sustains as a consequence of
 - (a) the buyer not participating in the performance of the contract, or
 - (b) the buyer not taking delivery of the goods in due time as provided in § 50 (b) above, and the seller has a special interest in having the goods delivered.

§ 58. Notice of impediment

If the buyer is prevented from performing the contract in due time, he shall give the seller notice of the impediment and its effect on the possibility of performing. If the seller fails to receive such notice within a reasonable time after the buyer was informed or ought to have been informed of the impediment, the seller may claim damages for the loss which could have been avoided if he had been notified in time.

§ 59. Period for the seller's right to cancel

If the purchase price has been paid, the seller may not cancel the contract unless he gives the buyer notice to that effect:

- (a) in the event of delay, before he was informed of the performance by the buyer, or
- (b) in the event of other breach of contract, within a reasonable time after he was or ought to have been informed of the breach of contract, or after an additional period of time of reasonable length as provided in § 55 (2) above has expired.

§ 60. Specification

- (1) If the buyer is to determine the form, measurement or other properties of the goods and he fails to do so by the agreed time or within a reasonable time after having been requested to do so by the seller, the seller may do it himself in accordance with what he must presume is the buyer's interest. This does not prevent the seller from exercising any other claims he may have.
- (2) The seller must notify the buyer of the specifications he will use and allow the buyer a reasonable period in which to alter the specifications. If the buyer fails to do so in time after having received the seller's notification, the seller's specifications are binding.

Chapter VIII. Common provisions regarding anticipatory breach, insolvency etc.

§ 61. Anticipatory breach of contract

- (1) If after the conclusion of the contract it becomes apparent from a party's conduct or from a serious deficiency in his creditworthiness or in his ability to perform that he will not perform a substantial part of his obliga-

tions, the other party may suspend the performance of his obligations.

- (2) If the seller has already dispatched the goods and the circumstances on the part of the buyer as mentioned in the preceding paragraph become apparent, the seller may prevent the goods from being handed over to the buyer or his creditors. This is so whether or not the buyer or his creditors have received the transport document.
- (3) The party which suspends performance or prevents the goods from being handed over must promptly notify the other party. Failing such notification, the other party may claim damages for the loss which could have been avoided if he had been notified.
- (4) A party suspending performance or preventing the goods from being handed over must continue with performance if the other party provides adequate security for his performance.

§ 62. Cancellation for anticipatory breach of contract

- (1) If prior to the date for performance of the contract it is clear that a breach of contract will occur which will give a party a right of cancellation, he may cancel the contract already before the time for performance. The cancellation may be prevented if the other party promptly provides adequate security for performance of the contract.
- (2) If time allows, the party intending to cancel shall notify the other party to enable him to provide security so as to avoid cancellation.

§ 63. Insolvency proceedings -the trustees' right to enter into the contract etc.

- (1) If one of the parties is subjected to insolvency proceedings, the trustees for his creditors may enter into the contract. The other party may require the trustees to announce without undue delay whether they will do so.
- (2) If the trustees enter into the contract and the time for full or partial performance by the other party has arrived, this party may require the trustees to perform a corresponding part of the contract or, if deferment has been granted, provide without undue delay adequate security for the performance. He may require the security to be provided before the time for his performance has arrived, if necessary to protect him from loss. Any dispute regarding the security will be decided by the bankruptcy court.
- (3) If the trustees do not without undue delay enter into the contract and provide security according to the preceding rules, the other party may cancel the contract. Contract terms which give the party a further opportunity to cancel on grounds of insolvency are not binding on the trustees.
- (4) The provisions of Chapter 7 of the Creditors

Recovery Act are applicable wherever appropriate.

Chapter IX. Common rules for cancellation or substitute delivery

§ 64. Effects

- (1) Cancellation of the contract releases both parties from the obligation to perform it.
- (2) If all or part of the contract has been performed by either party, he may claim restitution of whatever he has supplied or paid under the contract. However, a party may keep back what he has received until the other party makes restitution of whatever he has obtained. The same rule applies when a party can claim damages or interest and adequate security is not provided.
- (3) If the seller is to deliver substitute goods, the buyer can retain whatever he has received until the substitute goods have been delivered.
- (4) Cancellation has no effect on contract terms regarding commercial secrets, the settlement of disputes or the parties' rights and obligations as a consequence of the cancellation.

§ 65. Yield and interest on restitution

- (1) If the contract is cancelled, the buyer shall credit the seller for the yield he has obtained from the goods and pay reasonable compensation for any substantial benefits he may otherwise have gained from them.
- (2) If the seller is to repay the price, he is obliged to pay interest in accordance with § 71 below from the date on which he received payment.

§ 66. Loss of right to cancel and deliver substitute goods

- (1) The buyer may cancel the contract or require delivery of substitute goods only if he returns the goods in substantially the same condition and quantity as he received them. However, he does not lose the right to cancel or obtain delivery of substitute goods if
 - (a) the impossibility of returning the goods in substantially the same condition and quantity is due to the intrinsic quality of the goods or other circumstances which do not depend on the buyer;
 - (b) all or part of the goods have perished or deteriorated as a consequence of an act which was necessary for the examination of whether the goods were in conformity with the contract; or
 - (c) all or part of the goods have been resold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity which is the reason for rejecting the goods.
- (2) Nor does the buyer lose the right to cancel the contract or obtain delivery of substitute

goods if on returning the goods he pays for the reduction in their value. This provision does not apply to international sales.

Chapter X. Amount of damages. Interest.

Amount of damages

§ 67. General rule

- (1) Damages which are payable by a party for breach of contract shall be equivalent to the loss, including expenses, difference in price and loss of profit, which the other party has sustained as a consequence of the breach. However, only losses are included which could reasonably have been foreseen as a possible consequence of the breach of contract.
- (2) Indirect losses include:
 - (a) loss as a consequence of reduced or discontinued production or trade,
 - (b) loss as a consequence of the goods not being utilizable as contemplated,
 - (c) loss of profit as a consequence of a contract with a third party becoming inoperative or not being duly performed, but only to the extent that the buyer fails without good grounds to purchase substitute goods or take other measures to avoid or mitigate the loss,
 - (d) loss as a consequence of damage to other property than the sold goods themselves and objects for whose manufacture the goods are used or which have a close and direct connection with their contemplated use.
- (3) The rules of the preceding paragraph do not apply to costs of
 - (a) customary measures to compensate for the fact that the goods are delayed or lack conformity with the contract, or
 - (b) measures which mitigate other losses than those comprised under the preceding paragraph.
- (4) It can be agreed also in consumer sales that damages are not payable for indirect losses coming under (2) above.

§ 68. Difference in price on substitution

If the contract is cancelled and if, in a reasonable manner and within a reasonable time after cancellation, the buyer has bought goods in replacement or the seller has resold the goods, the purchase price and the price of the substitute goods will be applied for the purpose of computing the price difference.

§ 69. Price difference in the absence of substitute goods

- (1) If the contract has been cancelled without substitute goods being provided as mentioned in § 68 above, and if there is a current price for the goods, the purchase price and the current price at the time of cancellation will be applied for the purpose of computing the price difference. If the contract is cancelled af-

ter the goods were taken over, the current price at the time of such taking over shall be applied instead.

- (2) The current price is the price at the place of delivery for goods of the same kind or, if there is no current price at that place, the price at such other place as may reasonably be regarded as equivalent, making due allowance for differences in the cost of transporting the goods.

§ 70. Obligation to mitigate losses. Relief from liability. International sales

- (1) A party who invokes a breach of contract by the other party must take such measures as are reasonable to mitigate the loss. If he fails to do so, he must sustain the corresponding part of the loss.
- (2) The amount of the damages may be reduced if it would have an unreasonable effect on the party in breach considering the amount of the loss compared with such loss as would normally arise in similar cases, and other circumstances.
- (3) In international sales the damages comprise only losses which could reasonably have been foreseen as a possible consequence of the breach, in the light of circumstances which the party knew or ought to have known at the time of concluding the contract. Damages in such sales may not be reduced according to the preceding paragraph.

Interest

§ 71.

If the price or other outstanding amount is not paid in time, the debtor shall pay interest under the Overdue Payments Interest Act of 17 December 1976 No. 100.

Chapter XI. Preservation of the goods

§ 72. The seller's obligation to preserve the goods

If the buyer fails to collect or receive the goods in due time or other circumstances on his part have caused them not to be handed over to him, the seller shall for account of the buyer arrange for such preservation of the goods as is reasonable under the circumstances, provided he has the goods in his custody or is otherwise able to preserve them.

§ 73. The buyer's obligation to preserve the goods

- (1) If the buyer rejects goods which he has taken over, he shall for account of the seller take such steps to preserve them as are reasonable under the circumstances.
- (2) If the buyer rejects goods that have been dispatched to him and placed at his disposal at the destination, he shall take steps to preserve them for account of the seller if he can do so without paying the purchase price or in-

curing unreasonable cost or unreasonable inconvenience. This rule does not apply however if the seller or anybody acting on his behalf can take charge of the goods at the destination.

§ 74. Third party custody

A party who is obliged to preserve the goods can authorize a third party to preserve them for account of the other party, provided the costs thereof are not unreasonable. The party is exempt from liability when such third party has been properly chosen and has received the goods.

§ 75. Damages and security for expenses

A party who preserves the goods for account of the other party has a right to recover reasonable expenses thereof. He may retain the goods until the expenses have been paid or adequate security provided.

§ 76. Sale

- (1) A party who is bound to preserve the goods may sell them if he cannot preserve them without major expense, or if there has been an unreasonable delay by the other party in taking possession of the goods or in paying the purchase price or the cost of preservation.
- (2) If the goods are subject to rapid perishing or deterioration or their preservation would involve unreasonable expense, they shall if possible be sold.
- (3) The measures taken to sell the goods shall be reasonable. Wherever possible, the other party shall be notified in reasonable time of the intention to sell the goods.

§ 77. Other disposal than sale

If a party has the right to sell the goods under § 76 above but the goods cannot be sold or it is evident that the proceeds will be insufficient to meet the sales expenses, the party may take reasonable measures to dispose of the goods. The other party shall be notified if possible.

§ 78. Accounts and crediting of proceeds

The party preserving the goods shall credit the other party for the sales and other proceeds and give him an account of his expenses. The profit accrues to the other party.

Chapter XII. Dividends and other yield

§ 79. Benefits yielded by the goods

Benefits yielded by the goods before the agreed delivery time accrue to the seller, unless it was reasonable to expect the benefits to be yielded later. Benefits which the goods yield thereafter accrue to the buyer, unless it was reasonable to expect them to be yielded earlier. These provisions may be set aside by agreement also in consumer sales.

§ 80. Shares of stock

The purchase of a share comprises the dividends that have not fallen due before the purchase date. It also comprises the right to subscribe new shares when the right could not be exercised before the purchase date.

§ 81. Interest-bearing claim

The purchase of an interest-bearing claim comprises the interest that has accrued but not fallen due on the agreed delivery date. An amount equivalent to such interest is payable as an addition to the price unless the claim has been sold as doubtful.

Chapter XIII. Certain general provisions

§ 82. The risk of sending notices

If a party gives notice in accordance with this Act and sends it in a manner which is reasonable under the circumstances and not contrary to other indications, the sender may claim that the notice was given in time even if a delay or error occurs in the transmission or the notice fails to reach the other party.

§ 83. Place of business

- (1) When a party's place of business is of significance and he has more than one place of business, the relevant place of business is that which has the closest relationship to the contract, having regard to the circumstances known to or contemplated by the parties at the conclusion of the contract.
- (2) If a party does not have a place of business which is related to the contract, reference is to be made to his habitual residence.

Chapter XIV. Claims against prior sales stages

§ 84. Conditions for claiming against prior sales stages

- (1) Except as otherwise provided by agreement outside consumer sales, the buyer may as a consequence of non-conformity of the goods bring claims against a prior sales stage if a corresponding claim on account of the non-conformity can be brought against the seller.
- (2) In consumer sales the buyer may in any case bring his non-conformity claim on the seller against a prior professional sales stage, provided a similar claim on account of the non-conformity could be brought by the seller or another party who acquired the goods from the prior stage. Consumer sales include for this purpose sales between consumers.
- (3) Any agreement at prior sales stages which restricts the right of the seller or other acquirer cannot be invoked against the consumer buyer's claims under the preceding paragraph to a greater extent than could have been agreed between the consumer buyer and the seller.

§ 85. Complaint

- (1) The buyer must bring his claim against the prior sales stage within a reasonable time after he discovered or ought to have discovered the non-conformity and at the latest within the periods allowed for complaint in the contract between the predecessor and the prior sales stage.
- (2) Claims against prior sales stages under § 84 (2) are subject to the rules of complaint contained in § 32 above. If used goods have also previously been sold to a consumer, the period under § 32 (2) runs for each sales stage from the date on which the next successive consumer received the goods.
- (3) The buyer must as soon as reasonably possible inform the sales stage of his claim.

§ 86. Responsibility for notification under § 18

When a manufacturer or other person in a prior sales stage has given information as mentioned in § 18 (2) above, he is liable for any loss sustained by the buyer on account of the information, if appropriate jointly and severally with the seller. The rules of § 40 above will similarly apply.

Chapter XV. Special rules for international sales

§ 87. International sales

«International sales» are contracts of sale concluded between parties who have their places of business in different States, provided this is apparent from the contract, previous business relations between the parties or from information they have given before or at the time the contract was concluded.

§ 88. Interpretation of this Act. Unsettled matters. Direct performance

- (1) In international sales, the interpretation of the rules of this Act shall take into account the need to promote uniform application of rules based on the UN Convention on Contracts for the International Sale of Goods 1980, their international character and the observance of honesty and good faith in international trade.
- (2) Questions concerning matters governed by the UN Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the laws of the country which are applicable by virtue of the rules of international private law, see Act of 3 April 1964 No. 1 concerning international private law rules for sales contracts.
- (3) Requirements of direct performance which are to be decided in Norway or in accordance with Norwegian law are always subject to the rules of this Act, see Article 28 of the UN Convention.

§ 89. Interpretation of a party's statement

- (1) 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. In other cases, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.
- (2) In determining the intent or understanding according to the preceding paragraph, 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.

§ 90. Trade usage

Except as otherwise provided by the contract, the parties are regarded as bound by trade usage which they knew or ought to have known of, and which is well known in international commerce and generally observed by parties in similar trade relations. The trade usage is in such cases regarded as part of the contract.

§ 91. Oral or written contract

- (1) A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.
- (2) A contract may be modified or terminated by the mere agreement of the parties.
- (3) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. 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.

§ 92. Foreign law requiring written contract

The provisions of § 91 above do not apply to international sales where a party has his place of business in a Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing and which makes a declaration in accordance with Article 96 of the UN Convention on Contracts for the International Sale of Goods 1980.

§ 93. Telegram and telex

Telegram or telex may be used notwithstanding the provisions of §§ 91 and 92 above.

§ 94. Fundamental breach of contract

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially

to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

§ 95. Handing over and correcting documents

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. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages.

§ 96. Third party industrial property rights etc.

- (1) The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual or intangible property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based:
 - (a) on 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 at the time of the conclusion of the contract.
- (2) The obligation of the seller under the preceding paragraph 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, descriptions, formulae, models or other such specifications furnished by the buyer.

§ 97. Exception from the rules of complaint

- (1) The seller may not invoke the buyer's neglect of his obligation to examine the goods under § 31 or present a complaint under § 32, 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.
- (2) In the event of any legal defect or other third party claim under §§ 41 or 96 above, the seller may not invoke the buyer's neglect as mentioned in the preceding paragraph, if the seller was aware of the right or claim and its content. The two year period for complaint set forth in § 32 (2) above does not apply with respect to any such claim.
- (3) Even where the buyer has not made a complaint under § 32 (1) above, he may demand a reduction in the price or damages for losses other than loss of profit, provided he had good reason for not making the complaint.

§ 98. Premature delivery or excessive delivery

- (1) If the goods are delivered too early, the buyer may accept or reject the goods, with due regard to his obligation to preserve them.
- (2) If the quantity delivered exceeds the contract quantity, the buyer may accept the delivery or reject the excess quantity. If he accepts all or part of the excess quantity, the price thereof will be calculated in proportion to the price appearing from the contract.

Chapter XVI. Entry into force. Repeal of former Act.

§ 99.

- (1) This Act enters into force on the date provided by the King (1 January 1989 by Royal Decree).
- (2) From the same date, the Sale of Goods Act of 24 May 1907 no. 2 is repealed.
- (3) The King may decide that the special rules concerning international sales, see § 5 and chapter XV, shall enter into force at another date than the other provisions of this Act.
- (4) This new Act will be applicable only to contracts that are concluded after it has entered into force.

True translation certified



Government Authorized Translator

United Nations Convention on Contracts for the International Sale of Goods,¹⁾

11th April, 1980

(Vienna, 11 April 1980)

THE STATES PARTIES TO THIS CONVENTION.

BEARING IN MIND the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,

CONSIDERING that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

BEING OF THE OPINION that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

HAVE AGREED as follows:

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 in determining the application of this Convention.

¹⁾ This Convention was adopted and opened for signature at the United Nations Conference on Contracts for the International Sale of Goods held in Vienna from 10 March to 11 April 1980.

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, hovercraft or aircraft;
- (f) of electricity.

Article 3

(1) 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.

(2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

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 in this Convention, it 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

This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

Article 6

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

CHAPTER II – GENERAL PROVISIONS

Article 7

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

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article 8

(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 of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, 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 9

(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 or its formation 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 10

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 11

A contract of sale need not be concluded in

or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

Article 12

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement 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 96 of this Convention. The parties may not derogate from or vary the effect of this article.

Article 13

For the purpose of this Convention "writing" includes telegram and telex.

Part II Formation of the contract

Article 14

(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 15

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

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

Article 16

(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 on the offer as being irrevocable and the offeree has acted in reliance on the offer.

Article 17

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

Article 18

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

(2) An 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 the preceding paragraph.

Article 19

(1) A reply to an offer which purports to be an acceptance but contains 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 contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. 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, among other things, 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.

Article 20

(1) A period of time for acceptance fixed by the 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 the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.

(2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at

the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

Article 21

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

(2) If a letter or other writing 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 orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

Article 22

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 23

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

Article 24

For the purpose of this Part of the 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 personally, to 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 Sale of goods

CHAPTER I – GENERAL PROVISIONS

Article 25

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

Article 26

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

Article 27

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part 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 28

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 judgment for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

Article 29

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

(2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. 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 30

The seller must deliver the goods, hand over any documents relating to them 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 31

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 32

(1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.

(2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation 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, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

Article 33

The seller must deliver the goods:

- (a) if a date is fixed by or determinable from the contract, on that date;
- (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 34

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. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Section II *Conformity of the goods and third party claims*

Article 35

(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.

(2) Except where the parties have agreed otherwise, 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 or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of 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 lack of conformity.

Article 36

(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 the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

Article 37

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. However, the buyer retains any right to claim damages as provided for in this Convention.

Article 38

(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 redirected in transit or 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 redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

Article 39

(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 this time-limit is inconsistent with a contractual period of guarantee.

Article 40

The seller is not entitled to rely on the provisions of articles 38 and 39 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 41

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by article 42.

Article 42

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

Article 43

(1) The buyer loses the right to rely on the provisions of article 41 or article 42 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 has become aware or ought to have become aware of the right or claim.

(2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

Article 44

Notwithstanding the provisions of paragraph (1) of article 39 and paragraph (1) of article 43, the buyer may reduce the price in accordance with article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

Section III Remedies for breach of contract by the seller

Article 45

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

- (a) exercise the rights provided in articles 46 to 52;
- (b) claim damages as provided in articles 74 to 77.

(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 46

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this 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 of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

(3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given un-

der article 39 or within a reasonable time thereafter.

Article 47

(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 performance.

Article 48

(1) Subject to article 49, 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 unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, 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 the preceding paragraph, that the buyer make known his decision.

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

Article 49

(1) The buyer may declare the contract avoided:

- (a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
- (b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.

(2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

- (a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;

(b) in respect of any breach other than late delivery, within a reasonable time:

- (i) after he knew or ought to have known of the breach;
- (ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or
- (iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance.

Article 50

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery 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 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

Article 51

(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, articles 46 to 50 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 52

(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 53

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 54

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 laws and regulations to enable payment to be made.

Article 55

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

Article 56

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 57

(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 his place of business subsequent to the conclusion of the contract.

Article 58

(1) If the buyer is not bound to pay the price at any other specific time, he must pay it 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 59

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 compliance with any formality on the part of the seller.

Section II *Taking delivery*

Article 60

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 61

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

- (a) exercise the rights provided in articles 62 to 65;
- (b) claim damages as provided in articles 74 to 77.

(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 62

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 this requirement.

Article 63

(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 performance.

Article 64

(1) The seller may declare the contract avoided:

- (a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
- (b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares 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 the right to declare the contract avoided unless he does 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 by the buyer, within a reasonable time:

(i) after the seller knew or ought to have known of the breach; or

(ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

Article 65

(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 the requirements 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, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

CHAPTER IV – PASSING OF RISK

Article 66

Loss of 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 67

(1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, 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 the risk.

(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the

goods, by shipping documents, by notice given to the buyer or otherwise.

Article 68

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

Article 69

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods 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) However, if the buyer is bound to take over the goods at a place other than a 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 goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

Article 70

If the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

CHAPTER V - PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

Section I *Anticipatory breach and instalment contracts*

Article 71

(1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:

(a) a serious deficiency in his ability to perform or in his creditworthiness; or

(b) his conduct in preparing to perform or in performing the contract.

(2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph 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. The present 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 of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

Article 72

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

(2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.

(3) The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

Article 73

(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 of contract 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 of contract 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 who declares the contract avoided in respect of any delivery may, at the same time, declare it 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.

Article 74

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 of which he then knew or ought to have known, as a possible consequence of the breach of contract.

Article 75

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 as well as any further damages recoverable under article 74.

Article 76

(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 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

(2) For the purposes of the preceding paragraph, 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 such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

Article 77

A 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 by which the loss should have been mitigated.

Section III *Interest*

Article 78

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

Section IV *Exemptions*

Article 79

(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:

- (a) he is exempt under the preceding paragraph; and
- (b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

(3) The exemption provided by this article has effect 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 by the other party 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 non-receipt.

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

Article 80

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

Section V *Effects of avoidance*

Article 81

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

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

Article 82

(1) The buyer loses the 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) The preceding paragraph 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 the buyer received them is not due to his act or omission;
- (b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; 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 or ought to have discovered the lack of conformity.

Article 83

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

Article 84

(1) If the seller is bound to refund the price, he must also pay interest on it, 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 VI Preservation of the goods

Article 85

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, 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 is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 86

(1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasona-

ble in the circumstances. He is entitled to 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 this can be done 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. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

Article 87

A 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 88

(1) A party who is bound to preserve the goods in accordance with article 85 or 86 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 price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

(2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 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) A 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.

Part IV Final provisions

Article 89

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

Article 90

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties to such agreement.

Article 91

(1) This Convention is open for signature at the concluding meeting of the United Nations conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 92

(1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.

(2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

Article 93

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

(4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

Article 94

(1) Two or more Contracting States which

have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.

(3) If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 95

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph 1 (b) of article 1 of this Convention.

Article 96

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement 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 that State.

Article 97

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.

(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under article 94 take effect on the first day of the month following the

expiration of six months after the receipt of the latest declaration by the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

(5) A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

Article 98

No reservations are permitted except those expressly authorized in this Convention.

Article 99

(1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.

(2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

(3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International sale of Goods done at The Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part II of this Convention

shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.

(5) A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(6) For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary co-ordination in this respect.

Article 100

(1) This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1) (a) or the Contracting State referred to in subparagraph (1) (b) of article 1.

(2) This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1) (a) or the Contracting State referred to in subparagraph (1) (b) of article 1.

Article 101

(1) A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE AT VIENNA, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by

their respective Governments, have signed this Convention.

Protocol amending the convention on the limitation period in the international sale of goods¹⁾

(Vienna, 11 April 1980)

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING that international trade is an important factor in the promotion of friendly relations amongst States,

BELIEVING that the adoption of uniform rules governing the limitation period in the international sale of goods would facilitate the development of world trade,

CONSIDERING that amending the Convention on the Limitation Period in the International Sale of Goods, concluded at New York on 14 June 1974 (the 1974 Limitation Convention), to conform to the United Nations Convention on Contracts for the International Sale of Goods, concluded at Vienna on 11 April 1980 (the 1980 Sales Convention), would promote the adoption of the uniform rules governing the limitation period contained in the 1974 Limitation Convention,

HAVE AGREED to amend the 1974 Limitation Convention as follows:

Article I

(1) Paragraph 1 of article 3 is replaced by the following provisions:

"1. This Convention shall apply only

(a) if, at the time of the conclusion of the contract, the places of business of the parties to a contract of international sale of goods are in Contracting States; or

(b) if the rules of private international law make the law of a Contracting State applicable to the contract of sale."

(2) Paragraph 2 of article 3 is deleted.

(3) Paragraph 3 of article 3 is renumbered as paragraph 2.

Article II

(1) Subparagraph (a) of article 4 is deleted and replaced by the following provision:

"(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;"

(2) Subparagraph (e) of article 4 is deleted and is replaced by the following provision:

"(e) of ships, vessels, hovercraft or aircraft;"

Article III

A new paragraph 4 is added to article 31 reading as follows:

"(4) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party to a contract is located in that State, this place of business shall, for the purposes of this Convention, be considered not to be in a Contracting State unless it is in a territorial unit to which the Convention extends."

Article IV

The provisions of article 34 are deleted and are replaced by the following provisions.

"(1) Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention shall not apply to contracts of international sale of goods where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention shall not apply to contracts of international sale of goods where the parties have their places of business in those States.

(3) If a State which is the object of a declaration under paragraph 2 of this article subsequently becomes a Contracting State, the declaration made shall, as from the date on which this Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph 1, provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration."

Article V

The provisions of article 37 are deleted and are replaced by the following provisions:

¹⁾ This Protocol was adopted and opened for accession at the United Nations Conference on Contracts for the International Sale of Goods held in Vienna from 10 March to 11 April 1980.

"This Convention shall not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the seller and buyer have their places of business in States parties to such agreement."

Article VI

At the end of paragraph 1 of article 40, the following provision is added:

"Reciprocal unilateral declarations under article 34 shall take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the Secretary-General of the United Nations."

Final provisions

Article VII

The Secretary-General of the United Nations is hereby designated as the depositary for this Protocol.

Article VIII

(1) This Protocol shall be open for accession by all States.

(2) Accession to this Protocol by any State which is not a Contracting Party to the 1974 Limitation Convention shall have the effect of accession to that Convention as amended by this Protocol, subject to the provisions of article XI.

(3) Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article IX

(1) This Protocol shall enter into force on the first day of the sixth month following the deposit of the second instrument of accession, provided that on that date:

- (a) the 1974 Limitation Convention is itself in force; and
- (b) the 1980 Sales Convention is also in force.

If these Conventions are not both in force on that date, this Protocol shall enter into force on the first day on which both Conventions are in force.

(2) For each State acceding to this Protocol after the second instrument of accession has been deposited, this Protocol shall enter into force on the first day of the sixth month following the deposit of its instrument of accession, if by that date the Protocol is itself in force. If by that date the Protocol itself is not yet in force, the Protocol shall enter into force for that State on the date the Protocol itself enters into force.

Article X

If a State ratifies or accedes to the 1974 Limitation Convention after the entry into force of this Protocol, the ratification or accession shall also constitute an accession to this Protocol if the State notifies the depositary accordingly.

Article XI

Any State which becomes a Contracting Party to the 1974 Limitation Convention, as amended by this Protocol, by virtue of articles VIII, IX or X of this Protocol shall, unless it notifies the depositary to the contrary, be considered to be also a Contracting Party to the Convention, unamended, in relation to any Contracting Party to the Convention not yet a Contracting Party to this Protocol.

Article XII

Any State may declare at the time of the deposit of its instrument of accession or its notification under article X that it will not be bound by article 1 of the Protocol. A declaration made under this article shall be in writing and be formally notified to the depositary.

Article XIII

(1) A Contracting State may denounce this Protocol by notifying the depositary to that effect.

(2) The denunciation shall take effect on the first day of the month following the expiration of twelve months after receipt of the notification by the depositary.

(3) Any Contracting State in respect of which this Protocol ceases to have effect by the application of paragraphs (1) and (2) of this article shall remain a Contracting Party to the 1974 Limitation Convention, unamended, unless it denounces the unamended Convention in accordance with article 45 of that Convention.

Article XIV

(1) The depositary shall transmit certified true copies of this Protocol to all States.

(2) When this Protocol enters into force in accordance with article IX, the depositary shall prepare a text of the 1974 Limitation Convention, as amended by this Protocol, and shall transmit certified true copies to all States Parties to that Convention, as amended by this Protocol.

DONE AT VIENNA, this eleventh day of April, one thousand nine hundred and eight, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

ACT OF 3 APRIL 1964 (NO. 1) CONCERNING INTERNATIONAL PRIVATE LAW RULES FOR SALES OF GOODS

§ 1. This act applies to the sales of goods which have such connection with more than one country that they are regarded as international sales.

The foregoing provision notwithstanding, this Act does not apply to sales of registered ships, boats or aircraft or of securities, nor to sales in enforcement proceeding or legal proceedings of other kinds.

A contract to supply goods which shall first be manufactured will be regarded as a sales contract when the supplier furnishes the required raw materials.

- § 2. This Act does not apply to
- a) questions of legal competence
 - b) questions of whether or how far an authorization creates an ability to conclude binding purchases or sales and of similar ability to serve otherwise as agent in binding purchases or sales
 - c) questions concerning the form of the contract
 - d) questions of the effects of the sale on others than the parties (buyer and seller).

§ 3. The sale is governed by the laws of the country on which the buyer and seller have explicitly agreed or which otherwise appears clearly from the contract.

Questions whether a binding contract has been made to the effect that the sale shall be governed by the laws of a specific country will be decided according to the laws of that country.

§ 4. In the absence of any contract as mentioned in § 3 above, the sale will be governed by the laws of the country where the seller was resident at the time he received the order from the buyer. If the order was received at a place of business which the seller had, the sale will be governed by the laws of the country where the place of business is located.

If the seller or his agent received the order in the country where the buyer had his residence or the place of business from which the order came, the sale will be governed by the laws of that country.

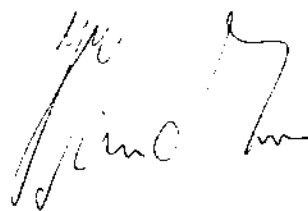

Stock exchange or auction sales are governed by the rules of the country where the stock exchange trade or auction takes place.

§ 5. The procedure and periods for examination of the goods are governed by the law of the country where the examination is to be made, except as otherwise specifically agreed. The laws of that country apply also to notices of examination and to the measures which are to be taken when the goods are rejected.

§ 6. A foreign rule of law which is not in accordance with the moral order in Norway, may not be applied under this Act.

§ 7. The King determines the date on which this Act shall take effect (1 September 1964 under Royal Decree of 3 April 1964).

True translation certified

Government Authorized Translator