

The States signatory to the present Convention, Desiring to establish a uniform law on the international sale of goods,

Have resolved to conclude a convention to this effect and have agreed upon the following provisions:

## **Article I**

1. Each Contracting State undertakes to incorporate into its own legislation, in accordance with its constitutional procedure, not later than the date of the entry into force of the present Convention in respect of that State, the Uniform Law on the International Sale of Goods (hereinafter referred to as " the Uniform Law ") forming the Annex to the present Convention.
2. Each Contracting State may incorporate the Uniform Law into its own legislation either in one of the authentic texts or in a translation into its own language or languages.
3. Each Contracting State shall communicate to the Government of the Netherlands the texts which it has incorporated into its legislation to give effect to the present Convention.

## **Article II**

1. Two or more Contracting States may declare that they agree not to consider themselves as different States for the purpose of the requirements as to place of business or habitual residence laid down in paragraphs 1 and 2 of article 1 of the Uniform Law because they apply to sales which in the absence of such a declaration would be governed by the Uniform Law the same or closely related legal rules.
2. Any Contracting State may declare that it does not consider one or more non-Contracting States as different States from itself for the purpose of the requirements of the Uniform Law, which are referred to in paragraph 1 of this article, because such States apply to sales which in the absence of such a declaration would be governed by the Uniform Law, legal rules which are the same as or closely related to its own.

3. If a State which is the object of a declaration made under paragraph 2 of this article subsequently ratifies or accedes to the present Convention, the declaration shall remain in effect unless the ratifying or acceding State declares that it cannot accept it.

4. Declarations under paragraphs 1, 2 or 3 of this article may be made by the States concerned at the time of the deposit of their instruments of ratification of or accession to the present Convention or at any time thereafter and shall be addressed to the Government of the Netherlands. They shall take effect three months after the date of their receipt by the Government of the Netherlands or, if at the end of this period the present Convention has not yet entered into force in respect of the State concerned, at the date of such entry into force.

### **Article III**

By way of derogation from article I of the Uniform Law, any State may, at the time of the deposit of its instrument of ratification of or accession to the present Convention, declare by a notification addressed to the Government of the Netherlands that it will apply the Uniform Law only if each of the parties to the contract of sale has his place of business or, if he has no place of business, his habitual residence in the territory of a different Contracting State, and in consequence may insert the word " Contracting " before the word " States " where the latter word first occurs in paragraph 1 of article 1 of the Uniform Law.

### **Article IV**

1. Any State which has previously ratified or acceded to one or more Conventions on conflict of laws in respect of the international sale of goods may, at the time of the deposit of its instrument of ratification of or accession to the present Convention, declare by a notification addressed to the Government of the Netherlands that it will apply the Uniform Law in cases governed by one of those previous Conventions only if that Convention itself requires the application of the Uniform Law.

2. Any State which makes a declaration under paragraph I of this article shall inform the Government of the Netherlands of the Convention or the Conventions referred to in that declaration.

### **Article V**

Any State may, at the time of the deposit of its instrument of ratification of or accession to the present Convention, declare, by a notification addressed to the Government of the Netherlands, that it will apply the Uniform Law only to contracts in which the parties thereto have, by virtue of article 4 of the Uniform Law, chosen that Law as the law of the contract.

### **Article VI**

Any State which has made a declaration under paragraphs 1 or 2 of article II, article III, article IV or article V of the present Convention may withdraw it at any time by a notification addressed to the Government of the Netherlands. Such withdrawal shall take effect three months after the date of the receipt of the notification by the Government of the Netherlands and, in the case of a declaration made under paragraph 1 of article II, shall also render inoperative, as from the date when the withdrawal takes effect, any reciprocal declaration made by another State.

### **Article VII**

1. Where under the provisions of the Uniform Law one party to a contract of sale is entitled to require performance of any obligation by the other party, a court shall not be bound to enter or enforce a judgment providing for specific performance except in the cases in which it would do so under its law in respect of similar contracts of sale not governed by the Uniform Law.
2. The provisions of paragraph I of this article shall not affect the obligations of a Contracting State resulting from any Convention, concluded or to be concluded, concerning the recognition and enforcement of judgments, awards and other formal instruments which have like force.

## **Article VIII**

1. The present Convention shall remain open until the 31st day of December 1965 for signature by the States represented at the Hague Conference of 1964 on the Unification of Law governing the International Sale of Goods.
2. The present Convention shall be ratified.
3. The instruments of ratification shall be deposited with the Government of the Netherlands.

## **Article IX**

1. The present Convention shall be open to accession by all States members of the United Nations or any of its Specialized Agencies.
2. The instruments of accession shall be deposited with the Government of the Netherlands.

## **Article X**

1. The present Convention shall come into force six months after the date of the deposit of the fifth instrument of ratification or accession.
2. In respect of a State that ratifies or accedes to the present Convention after the deposit of the fifth instrument of ratification or accession, the Convention shall come into force six months after the date of the deposit of its instrument of ratification or accession.

## **Article XI**

Each Contracting State shall apply the provisions incorporated into its legislation in pursuance of the present Convention to contracts of sale to which the Uniform Law applies and which are concluded on or after the date of the entry into force of the Convention in respect of that State.

## **Article XII**

1. Any Contracting State may denounce the present Convention by notifying the Government of the Netherlands to that effect.
2. The denunciation shall take effect twelve months after receipt of the notification by the Government of the Netherlands.

### **Article XIII**

1. Any State may, at the time of the deposit of its instrument of ratification or accession or at any time thereafter, declare, by means of a notification addressed to the Government of the Netherlands, that the present Convention shall be applicable to all or any of the territories for whose international relations it is responsible. Such a declaration shall take effect six months after the date of receipt of the notification by the Government of the Netherlands, or, if at the end of that period the Convention has not yet come into force, from the date of its entry into force.
2. Any Contracting State which has made a declaration pursuant to paragraph 1 of this article may, in accordance with article XII, denounce the Convention in respect of all or any of the territories concerned.

### **Article XIV**

1. After the present Convention has been in force for three years, any Contracting State may, by a notification addressed to the Government of the Netherlands, request the convening of a conference for the purpose of revising the Convention or its Annex. Notice of this request shall be given to all Contracting States by the Government of the Netherlands, which shall convene a conference for the purpose of such revision if, within a period of six months from the date of such notice, at least one quarter of the Contracting States notify the said Government of their agreement with the request.
2. States invited to the conference, other than Contracting States, shall have the status of observers unless the Contracting States at the conference decide otherwise by a majority vote. Observers shall have all rights of participation except that of voting.

3. The Government of the Netherlands shall request all States invited to the conference to submit such proposals as they may wish the conference to examine. The Government of the Netherlands shall notify all States invited of the provisional agenda for the conference and of the texts of all the proposals which have been submitted.

4. The Government of the Netherlands shall communicate to the International Institute for the Unification of Private Law the proposals concerning revision which are submitted to it in accordance with paragraph 3 of this article.

## **Article XV**

The Government of the Netherlands shall notify the Signatory and Acceding States and the International Institute for the Unification of Private Law of:

- a) the communications received in accordance with paragraph 3 of article I;
- b) the declarations and notifications made in accordance with articles II, III, IV, V and VI;
- c) the ratifications and accessions deposited in accordance with articles VIII and IX;
- d) the dates on which the present Convention will come into force in accordance with article X;
- e) the denunciations received in accordance with article XII;
- f) the notifications received in accordance with article XIII.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

DONE at The Hague, this first day of July one thousand nine hundred and sixty-four, in the French and English languages, both texts being equally authentic.

The original of the present Convention shall be deposited with the Government of the Netherlands, which shall furnish certified copies to each of the Signatory and Acceding States and to the International Institute for the Unification of Private Law.

# Uniform Law on the International Sale of Goods (1964)

## Chapter I - Sphere of Application of the Law

### Article 1

1. The present Law shall apply to contracts of sale of goods entered into by parties whose places of business are in the territories of different States, in each of the following cases:

(a) where the contract involves the sale of goods which are at the time of the conclusion of the contract in the course of carriage or will be carried from the territory of one State to the territory of another;

(b) where the acts constituting the offer and the acceptance have been effected in the territories of different States;

(c) where delivery of the goods is to be made in the territory of a State other than that within whose territory the acts constituting the offer and the acceptance have been effected.

2. Where a party to the contract does not have a place of business, reference shall be made to his habitual residence.

3. The application of the present Law shall not depend on the nationality of the parties.

4. In the case of contracts by correspondence, offer and acceptance shall be considered to have been effected in the territory of the same State only if the letters, telegrams or other documentary communications which contain them have been sent and received in the territory of that State.

5. For the purpose of determining whether the parties have their places of business or habitual residences in "different States", any two or more States shall not be considered to be "different States" if a valid declaration to that effect made under Article 11 of the Convention dated the 1st day of July 1964 relating to a Uniform Law on the International Sale of Goods is in force in respect of them.

## **Article 2**

1. Rules of private international law shall be excluded for the purposes of the application of the present Law, subject to any provision to the contrary in the said Law.

## **Article 3**

The parties to a contract of sale shall be free to exclude the application thereto of the present Law either entirely or partially. Such exclusion may be express or implied.

## **Article 4**

The present Law shall also apply where it has been chosen as the law of the contract by the parties, whether or not their places of business or their habitual residences are in different States and whether or not such States are Parties to the Convention dated the 1st day of July 1964 relating to a Uniform Law on the International Sale of Goods, to the extent that it does not affect the application of any mandatory provisions of law which would have been applicable if the parties had not chosen the Uniform Law.

## **Article 5**

1. The present Law shall not apply to sales:
  - (a) of stocks, shares, investment securities, negotiable instruments or money;
  - (b) of any ship, vessel or aircraft, which is or will be subject to registration;
  - (c) of electricity;
  - (d) by authority of law or on execution or distress.
2. The present Law shall not affect the application of any mandatory provision of national law for the protection of a party to a contract which contemplates the purchase of goods by that party by payment of the price by instalments.

## **Article 6**

Contracts for the supply of goods to be manufactured or produced shall be considered to be sales within the meaning of the present Law, unless the party who orders the goods undertakes to supply an essential and substantial part of the materials necessary for such manufacture or production.

### **Article 7**

The present Law shall apply to sales regardless of the commercial or civil character of the parties or of the contracts.

### **Article 8**

The present Law shall govern only the obligations of the seller and the buyer arising from a contract of sale. In particular, the present Law shall not, except as otherwise expressly provided therein, be concerned with the formation of the contract, nor with the effect which the contract may have on the property in the goods sold, nor with the validity of the contract or of any of its provisions or of any usage.

## **Chapter II - General Provisions**

### **Article 9**

1. The parties shall be bound by any usage which they have expressly or impliedly made applicable to their contract and by any practices which they have established between themselves.
2. They shall also be bound by usages which reasonable persons in the same situation as the parties usually consider to be applicable to their contract. In the event of conflict with the present Law, the usages shall prevail unless otherwise agreed by the parties.
3. Where expressions, provisions or forms of contract commonly used in commercial practice are employed, they shall be interpreted according to the meaning usually given to them in the trade concerned.

### **Article 10**

For the purposes of the present Law, a breach of contract shall be regarded as fundamental wherever the party breach knew, or ought to have known, at the time of the conclusion of the contract, that a reasonable person in the same situation as the other party would not have entered into the contract if he had foreseen the breach and its effects.

### **Article 11**

Where under the present Law an act is required to be performed " promptly ", it shall be performed within as short a period as possible, in the circumstances, from the moment when the act could reasonably be performed.

### **Article 12**

For the purposes of the present Law, the expression " current price " means a price based upon an official market quotation, or, in the absence of such a quotation, upon those factors which, according to the usage of the market, serve to determine the price.

### **Article 13**

For the purposes of the present Law, the expression " a party knew or ought to have known ", or any similar expression, refers to what should have been known to a reasonable person in the situation.

### **Article 14**

Communications provided for by the present Law shall be made by the means usual in the circumstances.

### **Article 15**

A contract of sale need not be evidenced by writing and shall not be subject to any other requirements as to form. In particular, it may be proved by means of witnesses.

## **Article 16**

Where under the provisions of the present Law one party to a contract of sale is entitled to require performance of any obligation by the other party, a court shall not be bound to enter or enforce a judgment providing for specific performance except in accordance with the provisions of Article VII of the Convention dated the 1st day of July 1964 relating to a Uniform Law on the International Sale of Goods.

## **Article 17**

Questions concerning matters governed by the present Law which are not expressly settled therein shall be settled in conformity with the general principles on which the present Law is based.

# **Chapter III - Obligations of the Seller**

## **Article 18**

The seller shall effect delivery of the goods, hand over any documents relating thereto and transfer the property in the goods, as required by the contract and the present Law.

# **Section I - Delivery of the Goods**

## **Article 19**

1. Delivery consists in the handing over of goods which conform with the contract.
2. Where the contract of sale involves carriage of the goods and no other place for delivery has been agreed upon, delivery shall be effected by handing over the goods to the carrier for transmission to the buyer.
3. Where the goods handed over to the carrier are not clearly appropriated to performance of the contract by being marked with an address or by some

other means, the seller shall, in addition to handing over the goods, send to the buyer notice of the consignment and, if necessary, some document specifying the goods.

## **Sub - Section I - Obligations of the Seller as Regards the Date and Place of Delivery**

### **A. - Date of delivery**

#### **Article 20**

Where the parties have agreed upon a date for delivery or where such date is fixed by usage, the seller shall, without the need for any other formality, be bound to deliver the goods at that date, provided that the date thus fixed is determined or determinable by the calendar or is fixed in relation to a definite event, the date of which can be ascertained by the parties.

#### **Article 21**

Where by agreement of the parties or by usage delivery shall be effected within a certain period (such as a particular month or season), the seller may fix the precise date of delivery, unless the circumstances indicate that the fixing of the date was reserved to the buyer.

#### **Article 22**

Where the date of delivery has not been determined in accordance with the provisions of Article 20 or 21, the seller shall be bound to deliver the goods within a reasonable time after the conclusion of the contract, regard being had to the nature of the goods and to the circumstances.

### **B. - Place of delivery**

#### **Article 23**

1. Where the contract of sale does not involve carriage of the goods, the seller shall deliver the goods at the place where he carried on business at the time of the conclusion of the contract, or, in the absence of a place of business, at his habitual residence.

2. If the sale relates to specific goods and the parties knew that the goods were at a certain place at the time of the conclusion of the contract, the seller shall deliver the goods at that place. The same rule shall apply if the goods sold are unascertained goods to be taken from a specified stock or if they are to be manufactured or produced at a place known to the parties at the time of the conclusion of the contract.

## **C. - Remedies for the seller's failure to perform his obligations as regards the date and place of delivery**

### **Article 24**

1. Where the seller fails to perform his obligations as regards the date or the place of delivery, the buyer may, as provided in Articles 25 to 32:

- (a) require performance of the contract by the seller;
- (b) declare the contract avoided.

2. The buyer may also claim damages as provided in Article 82 or in Articles 84 to 87.

3. In no case shall the seller be entitled to apply to a court or arbitral tribunal to grant him a period of grace.

### **Article 25**

The buyer shall not be entitled to require performance of the contract by the seller, if it is in conformity with usage and reasonably possible for the buyer to purchase goods to replace those to which the contract relates. In this case the contract shall be ipso facto avoided as from the time when such purchase should be effected.

## **(a) Remedies as regards the date of delivery**

### **Article 26**

1. Where the failure to deliver the goods at the date fixed amounts to a fundamental breach of the contract, the buyer may either require performance by the seller or declare the contract avoided. He shall inform the seller of his decision within a reasonable time, otherwise the contract shall be ipso facto avoided.
2. If the seller requests the buyer to make known his decision under paragraph 1 of this Article and the buyer does not comply promptly, the contract shall be ipso facto avoided.
3. If the seller has effected delivery before the buyer has made known his decision under paragraph 1 of this Article and the buyer does not exercise promptly his right to declare the contract avoided, the contract cannot be avoided.
4. Where the buyer has chosen performance of the contract and does not obtain it within a reasonable time, he may declare the contract avoided.

### **Article 27**

1. Where failure to deliver the goods at the date fixed does not amount to a fundamental breach of the contract, the seller shall retain the right to effect delivery and the buyer shall retain the right to require performance of the contract by the seller.
2. The buyer may however grant the seller an additional period of time of reasonable length. Failure to deliver within this period shall amount to a fundamental breach of the contract.

### **Article 28**

Failure to deliver the goods at the date fixed shall amount to a fundamental breach of the contract whenever a price for such goods is quoted on a market where the buyer can obtain them.

## **Article 29**

Where the seller tenders delivery of the goods before the date fixed, the buyer may accept or reject delivery; if he accepts, he may reserve the right to claim damages in accordance with Article 82.

## **(b) Remedies as regards the place of delivery**

### **Article 30**

1. Where failure to deliver the goods at the place fixed amounts to a fundamental breach of the contract, and failure to deliver the goods at the date fixed would also amount to a fundamental breach, the buyer may either require performance of the contract by the seller or declare the contract avoided. The buyer shall inform the seller of his decision within a reasonable time; otherwise the contract shall be ipso facto avoided.

2. If the seller requests the buyer to make known his decision under paragraph 1 of this Article and the buyer does not comply promptly, the contract shall be ipso facto avoided.

3. If the seller has transported the goods to the place fixed before the buyer has made known his decision under paragraph 1 of this Article and the buyer does not exercise promptly his right to declare the contract avoided, the contract cannot be avoided.

### **Article 31**

1. In cases not provided for in Article 30, the seller shall retain the right to effect delivery at the place fixed and the buyer shall retain the right to require performance of the contract by the seller.

2. The buyer may however grant the seller an additional period of time of reasonable length. Failure to deliver within this period at the place fixed shall amount to a fundamental breach of the contract.

### **Article 32**

1. If delivery is to be effected by handing over the goods to a carrier and the goods have been handed over at a place other than that fixed, the buyer may declare the contract avoided, whenever the failure to deliver the goods at the place fixed amounts to a fundamental breach of the contract. He shall lose this right if he has not promptly declared the contract avoided.
2. The buyer shall have the same right, in the circumstances and on the conditions provided in paragraph 1 of this Article, if the goods have been despatched to some place other than that fixed.
3. If despatch from a place or to a place other than that fixed does not amount to a fundamental breach of the contract, the buyer may only claim damages in accordance with Article 82.

## **Sub - Section 2 - Obligations of the Seller as Regards the Conformity of the Goods**

### **A. - Lack of conformity**

#### **Article 33**

1. The seller shall not have fulfilled his obligation to deliver the goods where he has handed over:
  - (a) part of the goods sold or a larger or a smaller quantity of the goods than he contracted to sell;
  - (b) goods which are not those to which the contract relates or goods of a different kind;
  - (c) goods which lack the qualities of a sample or model which the seller has handed over or sent to the buyer, unless the seller has submitted it without any express or implied undertaking that the goods would conform therewith;
  - (d) goods which do not possess the qualities necessary for their ordinary or commercial use;
  - (e) goods which do not possess the qualities for some particular purpose expressly or impliedly contemplated by the contract;

(f) in general, goods which do not possess the qualities and characteristics expressly or impliedly contemplated by the contract.

2. No difference in quantity, lack of part of the goods or absence of any quality or characteristic shall be taken into consideration where it is not material.

### **Article 34**

In the cases to which Article 33 relates, the rights conferred on the buyer by the present Law exclude all other remedies based on lack of conformity of the goods.

### **Article 35**

1. Whether the goods are in conformity with the contract shall be determined by their condition at the time when risk passes. However, if risk does not pass because of a declaration of avoidance of the contract or of a demand for other goods in replacement, the conformity of the goods with the contract shall be determined by their condition at the time when risk would have passed had they been in conformity with the contract.

2. The seller shall be liable for the consequences of any lack of conformity occurring after the time fixed in paragraph 1 of this Article if it was due to an act of the seller or of a person for whose conduct he is responsible.

### **Article 36**

The seller shall not be liable for the consequences of any lack of conformity of the kind referred to in sub-paragraph d), e) or f) of paragraph 1 of Article 33, 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 37**

If the seller has handed over goods before the date fixed for delivery he may, up to that date, deliver any missing part or quantity of the goods or deliver other goods which are in conformity with the contract or remedy any defects in

the goods handed over, provided that the exercise of this right does not cause the buyer either unreasonable inconvenience or unreasonable expense.

## **B. - Ascertainment and notification of lack of conformity**

### **Article 38**

1. The buyer shall examine the goods, or cause them to be examined, promptly.
2. In case of carriage of the goods the buyer shall examine them at the place of destination.
3. If the goods are redespached by the buyer without transshipment and the seller knew or ought to have known, at the time when the contract was concluded, of the possibility of such redespatch, examination of the goods may be deferred until they arrive at the new destination.
4. The methods of examination shall be governed by the agreement of the parties or, in the absence of such agreement, by the law or usage of the place where the examination is to be effected.

### **Article 39**

1. The buyer shall lose the right to rely on a lack of conformity of the goods if he has not given the seller notice thereof promptly after he discovered the lack of conformity or ought to have discovered it. If a defect which could not have been revealed by the examination of the goods provided for in Article 38 is found later, the buyer may nonetheless rely on that defect, provided that he gives the seller notice thereof promptly after its discovery. In any event, the buyer shall lose the right to rely on a lack of conformity of the goods if he has not given notice thereof to the seller within a period of two years from the date on which the goods were handed over, unless the lack of conformity constituted a breach of a guarantee covering a longer period.

2. In giving notice to the seller of any lack of conformity, the buyer shall specify its nature and invite the seller to examine the goods or to cause them to be examined by his agent.

3. Where any notice referred to in paragraph 1 of this Article has been sent by letter, telegram or other appropriate means, the fact that such notice is delayed or fails to arrive at its destination shall not deprive the buyer of the right to rely thereon.

#### **Article 40**

The seller shall not be entitled to rely on the provisions of Articles 38 and 39 if the lack of conformity relates to facts of which he knew, or of which he could not have been unaware, and which he did not disclose.

### **C. - Remedies for lack of conformity**

#### **Article 41**

1. Where the buyer has given due notice to the seller of the failure of the goods to conform with the contract, the buyer may, as provided in Articles 42 to 46:

- (a) require performance of the contract by the seller;
- (b) declare the contract avoided;
- (c) reduce the price.

2. The buyer may also claim damages as provided in Article 82 or in Articles 84 to 87.

#### **Article 42**

1. The buyer may require the seller to perform the contract:

- (a) if the sale relates to goods to be produced or manufactured by the seller, by remedying defects in the goods, provided the seller is in position to remedy the defects;

- (b) if the sale relates to specific goods, by delivering the goods to which the contract refers or the missing part thereof;
  - (c) if the sale relates to unascertained goods, by delivering other goods which are in conformity with the contract or by delivering the missing part or quantity, except where the purchase of goods in replacement is in conformity with usage and reasonably possible.
2. If the buyer does not obtain performance of the contract by the seller within a reasonable time, he shall retain the rights provided in Articles 43 to 46.

### **Article 43**

The buyer may declare the contract avoided if the failure of the goods to conform to the contract and also the failure to deliver on the date fixed amount to fundamental breaches of the contract. The buyer shall lose his right to declare the contract avoided if he does not exercise it promptly after giving the seller notice of the lack of conformity or, in the case to which paragraph 2 of Article 42 applies, after the expiration of the period referred to in that paragraph.

### **Article 44**

1. In cases not provided for in Article 43, the seller shall retain, after the date fixed for the delivery of the goods, the right to deliver any missing part or quantity of the goods or to deliver other goods which are in conformity with the contract or to remedy any defect in the goods handed over, provided that the exercise of this right does not cause the buyer either unreasonable inconvenience or unreasonable expense.
2. The buyer may however fix an additional period of time of reasonable length for the further delivery or the remedying of the defect. If at the expiration of the additional period the seller has not delivered the goods or remedied the defect, the buyer may choose between requiring the performance of the contract or reducing the price in accordance with Article 46 or, provided that he does so promptly, declare the contract avoided.

## **Article 45**

1. Where the seller has handed over part only of the goods or an insufficient quantity or where part only of the goods handed over is in conformity with the contract the provisions of Articles 43 and 44 shall apply in respect of the part or quantity which is missing or which does not conform with the contract.

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

## **Article 46**

Where the buyer has neither obtained performance of the contract by the seller nor declared the contract avoided, the buyer may reduce the price in the same proportion as the value of the goods at the time of the conclusion of the contract has been diminished because of their lack of conformity with the contract.

## **Article 47**

Where the seller has proffered to the buyer a quantity of unascertained goods greater than that provided for in the contract, the buyer may reject or accept the excess quantity. If the buyer rejects the excess quantity, the seller shall be liable only for damages in accordance with Article 82. If the buyer accepts the whole or part of the excess quantity, he shall pay for it at the contract rate.

## **Article 48**

The buyer may exercise the rights provided in Articles 43 to 46, even before the time for delivery, if it is clear that goods which would be handed over would not be in conformity with the contract.

## **Article 49**

1. The buyer shall lose his right to rely on lack of conformity with the contract at the expiration of a period of one year after he has given notice as provided in Article 39, unless he has been prevented from exercising his right because of fraud on the part of the seller.

2. After the expiration of this period, the buyer shall not be entitled to rely on the lack of conformity, even by way of defence to an action. Nevertheless, if the buyer has not paid for the goods and provided that he has given due notice of the lack of conformity promptly, as provided in Article 39, he may advance as a defence to a claim for payment of the price a claim for a reduction in the price or for damages.

## **Section II - Handing Over of Documents**

### **Article 50**

Where the seller is bound to hand over to the buyer any documents relating to the goods, he shall do so at the time and place fixed by the contract or by usage.

### **Article 51**

If the seller fails to hand over documents as provided in Article 50 at the time and place fixed or if he hands over documents which are not in conformity with those which he was bound to hand over, the buyer shall have the same rights as those provided under Articles 24 to 32 or under Articles 41 to 49, as the case may be.

## **Section III - Transfer of Property**

### **Article 52**

1. Where the goods are subject to a right or claim of a third person, the buyer, unless he agreed to take the goods subject to such right or claim, shall notify the seller of such right or claim. Unless the seller already knows thereof, and

request that the goods should be freed therefrom within a reasonable time or that other goods free from all rights and claims of third persons be delivered to him by the seller.

2. If the seller complies with a request made under paragraph 1 of this Article and the buyer nevertheless suffers a loss, the buyer may claim damages in accordance with Article 82.

3. If the seller fails to comply with a request made under paragraph 1 of this Article and a fundamental breach of the contract results thereby, the buyer may declare the contract avoided and claim damages in accordance with Articles 84 to 87. If the buyer does not declare the contract avoided or if there is no fundamental breach of the contract, the buyer shall have the right to claim damages in accordance with Article 82.

4. The buyer shall lose his right to declare the contract avoided if he fails to act in accordance with paragraph 1 of this Article within a reasonable time from the moment when he became aware or ought to have become aware of the right or claim of the third person in respect of the goods.

### **Article 53**

The rights conferred on the buyer by Article 52 exclude all other remedies based on the fact that the seller has failed to perform his obligation to transfer the property in the goods or that the goods are subject to a right or claim of a third person.

## **Section IV - Other Obligations of the Seller**

### **Article 54**

1. If the seller is bound to despatch the goods to the buyer, he shall make, in the usual way and on the usual terms, such contracts as are necessary for the carriage of the goods to the place fixed.

2. If the seller is not bound by the contract to effect insurance in respect of the carriage of the goods, he shall provide the buyer, at his request, with all information necessary to enable him to effect such insurance.

## **Article 55**

1. If the seller fails to perform any obligation other than those referred to in Articles 20 to 53, the buyer may:

(a) where such failure amounts to a fundamental breach of the contract, declare the contract avoided, provided that he does so promptly, and claim damages in accordance with Articles 84 to 87, or

(b) in any other case, claim damages in accordance with Article 82.

2. The buyer may also require performance by the seller of his obligation, unless the contract is avoided.

## **Chapter IV - Obligations of the Buyer**

### **Article 56**

The buyer shall pay the price for the goods and take delivery of them as required by the contract and the present Law.

## **Section I - Payment of the Price**

### **A. - Fixing the price**

#### **Article 57**

Where a contract has been concluded but does not state a price or make provision for the determination of the price, the buyer shall be bound to pay the price generally charged by the seller at the time of the conclusion of the contract.

#### **Article 58**

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

## **B. - Place and date of payment**

### **Article 59**

1. The buyer shall pay the price to the seller at the seller's place of business or, if he does not have a place of business, at his habitual residence, or, where the payment is to be made against the handing over of the goods or of documents, at the place where such handing over takes place.

2. Where, in consequence of a change in the place of business or habitual residence of the seller subsequent to the conclusion of the contract, the expenses incidental to payment are increased, such increase shall be borne by the seller.

### **Article 60**

Where the parties have agreed upon a date for the payment of the price or where such date is fixed by usage, the buyer shall, without the need for any other formality, pay the price at that date.

## **C. - Remedies for non - payment**

### **Article 61**

1. If the buyer fails to pay the price in accordance with the contract and with the present Law, the seller may require the buyer to perform his obligation.

2. The seller shall not be entitled to require payment of the price by the buyer if it is in conformity with usage and reasonably possible for the seller to resell the goods. In that case the contract shall be ipso facto avoided as from the time when such resale should be effected.

### **Article 62**

1. Where the failure to pay the price at the date fixed amounts to a fundamental breach of the contract, the seller may either require the buyer to

pay the price or declare the contract avoided. He shall inform the buyer of his decision within a reasonable time; otherwise the contract shall be ipso facto avoided.

2. Where the failure to pay the price at the date fixed does not amount to a fundamental breach of the contract, the seller may grant to the buyer an additional period of time of reasonable length. If the buyer has not paid the price at the expiration of the additional period, the seller may either require the payment of the price by the buyer or, provided that he does so promptly, declare the contract avoided.

### **Article 63**

1. Where the contract is avoided because of failure to pay the price, the seller shall have the right to claim damages in accordance with Articles 84 to 87.

2. Where the contract is not avoided, the seller shall have the right to claim damages in accordance with Articles 82 and 83.

### **Article 64**

In no case shall the buyer be entitled to apply to a court or arbitral tribunal to grant him a period of grace for the payment of the price.

## **Section II - Taking of Delivery**

### **Article 65**

Taking delivery consists in the buyer's doing all such acts as are necessary in order to enable the seller to hand over the goods and actually taking them over.

### **Article 66**

1. Where the buyer's failure to take delivery of the goods in accordance with the contract amounts to a fundamental breach of the contract or gives the

seller good grounds for fearing that the buyer will not pay the price, the seller may declare the contract avoided.

2. Where the failure to take delivery of the goods does not amount to a fundamental breach of the contract, the seller may grant to the buyer an additional period of time of reasonable length. If the buyer has not taken delivery of the goods at the expiration of the additional period, the seller may declare the contract avoided provided that he does so promptly.

### **Article 67**

1. If the contract reserves to the buyer the right subsequently to determine the form, measurement or other features of the goods (sale by specification) and he fails to make such specification either on the date expressly or impliedly agreed upon or within a reasonable time after receipt of a request from the seller, the seller may declare the contract avoided, provided that he does so promptly, or make the specification himself in accordance with the requirements of the buyer in so far as these are known to him.

2. If the seller makes the specification himself, he shall inform the buyer of the details thereof and shall fix a reasonable period of time within which the buyer may submit a different specification. If the buyer fails to do so the specification made by the seller shall be binding.

### **Article 68**

1. Where the contract is avoided because of the failure of the buyer to accept delivery of the goods or to make a specification, the seller shall have the right to claim damages in accordance with Articles 84 to 87.

2. Where the contract is not avoided, the seller shall have the right to claim damages in accordance with Article 82.

## **Section III - Other Obligations of the Buyer**

### **Article 69**

The buyer shall take the steps provided for in the contract, by usage or by laws and regulations in force, for the purpose of making provision for or guaranteeing payment of the price, such as the acceptance of a bill of exchange, the opening of a documentary credit or the giving of a banker's guarantee.

## **Article 70**

1. If the buyer fails to perform any obligation other than those referred to in Sections I and II of this Chapter, the seller may:
  - (a) where such failure amounts to a fundamental breach of the contract, declare the contract avoided, provided that he does so promptly, and claim damages in accordance with Articles 84 to 87; or
  - (b) in any other case claim damages in accordance with Article 82.
2. The seller may also require performance by the buyer of his obligation, unless the contract is avoided.

## **Chapter V - Provisions Common to the Obligations of the Seller and of the Buyer**

### **Section I - Concurrence between Delivery of the Goods and Payment of the Price**

#### **Article 71**

Except as otherwise provided in Article 72, delivery of the goods and payment of the price shall be concurrent conditions. Nevertheless, the buyer shall not be obliged to pay the price until he has had an opportunity to examine the goods.

#### **Article 72**

1. Where the contract involves carriage of the goods and where delivery is, by virtue of paragraph 2 of Article 19, effected by handing over the goods to the carrier, the seller may either postpone despatch of the goods until he receives payment or proceed to despatch them on terms that reserve to himself the right of disposal of the goods during transit. In the latter case, he may require that the goods shall not be handed over to the buyer at the place of destination except against payment of the price and the buyer shall not be bound to pay the price until he has had an opportunity to examine the goods.
2. Nevertheless, when the contract requires payment against documents, the buyer shall not be entitled to refuse payment of the price on the ground that he has not had the opportunity to examine the goods.

### **Article 73**

1. Each party may suspend the performance of his obligations whenever, after the conclusion of the contract, the economic situation of the other party appears to have become so difficult that there is good reason to fear that he will not perform a material part of his obligations.
2. If the seller has already despatched the goods before the economic situation of the buyer described in paragraph 1 of this Article becomes evident, he may prevent the handing over of the goods to the buyer even if the latter holds a document which entitles him to obtain them.
3. Nevertheless, the seller shall not be entitled to prevent the handing over of the goods if they are claimed by a third person who is a lawful holder of a document which entitles him to obtain the goods, unless the document contains a reservation concerning the effects of its transfer or unless the seller can prove that the holder of the document, when he acquired it, knowingly acted to the detriment of the seller.

## **Section II - Exemptions**

### **Article 74**

1. Where one of the parties has not performed one of his obligations, he shall not be liable for such non-performance if he can prove that it was due to circumstances which, according to the intention of the parties at the time of the conclusion of the contract, he was not bound to take into account or to avoid or to overcome; in the absence of any expression of the intention of the parties, regard shall be had to what reasonable persons in the same situation would have intended.

2. Where the circumstances which gave rise to the non- performance of the obligation constituted only a temporary impediment to performance, the party in default shall nevertheless be permanently relieved of his obligation if, by reason of the delay, performance would be so radically changed as to amount to the performance of an obligation quite different from that contemplated by the contract.

3. The relief provided by this Article for one of the parties shall not exclude the avoidance of the contract under some other provision of the present Law or deprive the other party of any right which he has under the present Law to reduce the price, unless the circumstances which entitled the first party to relief were caused by the act of the other party or of some person for whose conduct he was responsible.

## **Section III - Supplementary Rules Concerning the Avoidance of the Contract**

### **A. - Supplementary grounds for avoidance**

#### **Article 75**

1. Where, in the case of contracts for delivery of goods by instalments, by reason of any failure by one party to perform any of his obligations under the contract in respect of any instalment, the other party has good reason to fear failure of performance in respect of future instalments, he may declare the contract avoided for the future, provided that he does so promptly.

2. The buyer may also, provided that he does so promptly, declare the contract avoided in respect of future deliveries or in respect of deliveries already made or both, if by reason of their interdependence such deliveries would be worthless to him.

### **Article 76**

Where prior to the date fixed for performance of the contract it is clear that one of the parties will commit a fundamental breach of the contract, the other party shall have the right to declare the contract avoided.

### **Article 77**

Where the contract has been avoided under Article 75 or Article 76, the party declaring the contract avoided may claim damages in accordance with Articles 84 to 87.

## **B. - Effects of avoidance**

### **Article 78**

1. Avoidance of the contract releases both parties from their obligations thereunder, subject to any damages which may be due.
2. If one party has performed the contract either wholly or in part, he may claim the return of whatever he has supplied or paid under the contract. If both parties are required to make restitution, they shall do so concurrently.

### **Article 79**

1. The buyer shall lose his right to declare the contract avoided where it is impossible for him to return the goods in the condition in which he received them.
2. Nevertheless, the buyer may declare the contract avoided:
  - (a) if the goods or part of the goods have perished or deteriorated as a result of the defect which justifies the avoidance;

(b) if the goods or part of the goods have perished or deteriorated as a result of the examination prescribed in Article 38;

(c) if part of the goods have been consumed or transformed by the buyer in the course of normal use before the lack of conformity with the contract was discovered;

(d) if the impossibility of returning the goods or of returning them in the condition in which they were received is not due to the act of the buyer or of some other person for whose conduct he is responsible;

(e) if the deterioration or transformation of the goods is unimportant.

## **Article 80**

The buyer who has lost the right to declare the contract avoided by virtue of Article 79 shall retain all the other rights conferred on him by the present Law.

## **Article 81**

1. Where the seller is under an obligation to refund the price, he shall also be liable for the interest thereon at the rate fixed by Article 83, as from the date of payment.

2. The buyer shall be liable to account to the seller for all benefits which he has derived from the goods or part of them, as the case may be:

(a) where he is under an obligation to return the goods or part of them; or

(b) where it is impossible for him to return the goods or part of them, but the contract is nevertheless avoided.

## **Section IV - Supplementary Rules Concerning Damages**

### **A. - Damages where the contract is not avoided**

#### **Article 82**

Where the contract is not avoided, damages for a breach of contract by one party shall consist of a sum equal to the loss, including loss of profit, suffered by the other party. Such damages shall not exceed the loss which the party in breach ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters which then were known or ought to have been known to him, as a possible consequence of the breach of the contract.

### **Article 83**

Where the breach of contract consists of delay in the payment of the price, the seller shall in any event be entitled to interest on such sum as is in arrears at a rate equal to the official discount rate in the country where he has his place of business or, if he has no place of business, his habitual residence, plus 1%.

## **B. - Damages where the contract is avoided**

### **Article 84**

1. In case of avoidance of the contract, where there is a current price for the goods, damages shall be equal to the difference between the price fixed by the contract and the current price on the date on which the contract is avoided.
2. In calculating the amount of damages under paragraph 1 of this Article, the current price to be taken into account shall be that prevailing in the market in which the transaction took place or, if there is no such current price or its application is inappropriate, the price in a market which serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

### **Article 85**

If the buyer has bought goods in replacement or the seller has resold goods in a reasonable manner, he may recover the difference between the contract

price and the price paid for the goods bought in replacement or that obtained by the resale.

#### **Article 86**

The damages referred to in Articles 84 and 85 may be increased by the amount of any reasonable expenses incurred as a result of the breach or up to the amount of any loss, including loss of profit, which should have been foreseen by the party in breach, at the time of the conclusion of the contract, in the light of the facts and matters which were known or ought to have been known to him, as a possible consequence of the breached of the contract.

#### **Article 87**

If there is no current price for the goods, damages shall be calculated on the same basis as that provided in Article 82.

### **C. - General provisions concerning damages**

#### **Article 88**

The party who relies on a breach of the contract shall adopt all reasonable measures to mitigate the loss resulting from the breach. If he fails to adopt such measures, the party in breach may claim a reduction in the damages.

#### **Article 89**

In case of fraud, damages shall be determined by the rules applicable in respect of contracts of sale not governed by the present Law.

### **Section V - Expenses**

#### **Article 90**

The expenses of delivery shall be borne by the seller; all expenses after delivery shall be borne by the buyer.

## **Section VI - Preservation of the Goods**

### **Article 91**

Where the buyer is in delay in taking delivery of the goods or in paying the price, the seller shall take reasonable steps to preserve the goods; he shall have the right to retain them until he has been reimbursed his reasonable expenses by the buyer.

### **Article 92**

1. Where the goods have been received by the buyer, he shall take reasonable steps to preserve them if he intends to reject them; he shall have the right to retain them until he has been reimbursed his reasonable expenses by the seller.
2. Where goods despatched to the buyer have been put at his disposal at their place of destination and he exercises the right to reject them, he shall be bound to take possession of them on behalf of the seller, provided that this may be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision shall not apply where the seller or a person authorized to take charge of the goods on his behalf is present at such destination.

### **Article 93**

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

### **Article 94**

1. The party who, in the cases to which Articles 91 and 92 apply, is under an obligation to take steps to preserve the goods may sell them by any appropriate means, provided that there has been unreasonable delay by the other party in accepting them or taking them back or in paying the cost of preservation and provided that due notice has been given to the other party of the intention to sell.
2. The party selling the goods shall have right to retain out of the proceeds of sale an amount equal to the reasonable costs of preserving the goods and of selling them and shall transmit the balance to the other party.

### **Article 95**

Where, in the cases to which Articles 91 and 92 apply, the goods are subject to loss or rapid deterioration or their preservation would involve unreasonable expense, the party under the duty to preserve them is bound to sell them in accordance with Article 94.

## **Chapter VI - Passing of the Risk**

### **Article 96**

Where the risk has passed to the buyer, he shall pay the price notwithstanding the loss or deterioration of the goods, unless this is due to the act of the seller or of some other person for whose conduct the seller is responsible.

### **Article 97**

1. The risk shall pass to the buyer when delivery of the goods is effected in accordance with the provisions of the contract and the present law.
2. In the case of the handing over of goods which are not in conformity with the contract, the risk shall pass to the buyer from the moment when the handing over has, apart from the lack of conformity, been effected in accordance with the provisions of the contract and of the present Law, where

the buyer has neither declared the contract avoided nor required goods in replacement.

### **Article 98**

1. Where the handing over of the goods is delayed owing to the breach of an obligation of the buyer, the risk shall pass to the buyer as from the last date when, apart from such breach, the handing over could have been made in accordance with the contract.

2. Where the contract relates to a sale of unascertained goods, delay on the part of the buyer shall cause the risk to pass only when the seller has set aside goods manifestly appropriated to the contract and has notified the buyer that this has been done.

3. Where unascertained goods are of such a kind that the seller cannot set aside a part of them until the buyer takes delivery, it shall be sufficient for the seller to do all acts necessary to enable the buyer to take delivery.

### **Article 99**

1. Where the sale is of goods in transit by sea, the risk shall be borne by the buyer as from the time at which the goods were handed over to the carrier.

2. Where the seller, at the time of the conclusion of the contract, knew or ought to have known that the goods had been lost or had deteriorated, the risk shall remain with him until the time of the conclusion of the contract:

### **Article 100**

If, in a case to which paragraph 3 of Article 19 applies, the seller, at the time of sending the notice or other document referred to in that paragraph, knew or ought to have known that the goods had been lost or had deteriorated after they were handed over to the carrier, the risk shall remain with the seller until the time of sending such notice or document.

### **Article 101**

The passing of the risk shall not necessarily be determined by the provisions of the contract concerning expenses.