

## CHAPTER THREE

### INTERNATIONAL CONVENTIONS GOVERNING INTERNATIONAL TRADE AGREEMENTS

There are very large number of public international law agreements and conventions, of both a bilateral and a multi-lateral nature, that impinge upon international trade transactions. The aim here, is to introduce the reader to the general concept of international conventions and through the analysis and application of a selective number of conventions, to show how to apply such conventions to the settlement of disputes in respect of private international agreements that are governed by international conventions.

**The inter-relationship between private international agreements and international conventions.** There are several ways in which an international agreement can be affected or governed by international convention.

**1 The contract can expressly incorporate rules contained within a convention.**

Care has to be taken when this occurs that the convention rules do not conflict with mandatory rules of the state which cannot be contracted out of, as with *The Komninos S*, where a contract said to be governed by the Hague Visby Rules was nonetheless still subject to mandatory provisions of the Greek Maritime Code governing the standard of care imposed on sea carriers.

**2 The law of a signatory state may specify that the contract is subject to the rules of a convention.**

The Hague-Visby Rules provide an example of this in the UK. Similarly, the Hamburg Rules are automatically incorporated in signatory states such as Egypt.

**3 The law of a signatory state may permit the parties to contract into a convention.**

S1(4) Uniform Laws on International Sales Act 1967 permits parties to contract on the basis of Uniform Laws on International Sales (ULIS). Hague Convention 1964.

**4 The law of a signatory state may be based on or incorporate a convention as an integral part of its own law.**

The People's Republic of China provides an example of this in respect of the United Nations Convention on Contracts for the International sale of Goods, Vienna. 1980.

**5 The law of a signatory state may require the parties to incorporate a convention, by means of a clause paramount.**

The Hague Rules as applied in the US provide an example of this. Problems occur where the parties omit to include a clause paramount as in the *Vita Food Case*. The domestic state may or may not have criminal sanctions for failure to insert a clause paramount – but nonetheless the result is that the convention does not govern the contract.

**6 An arbitrator is given the power to choose the rules or law that he or she will apply to a contract and the arbitrator chooses to apply the rules of a particular convention.**

A contract may contain an arbitration clause governed by the Model Law. In the absence of a choice of law clause and there is no clear domestic law applicable to the contract, and in particular where the arbitrator is permitted to decide *ex aequo bono*, resort may be had by the arbitrator to the rules of a convention, *a fortiori* if the parties are citizens of a signatory state to the convention.

**The inter-relationship between the substantive law of the contract under domestic law and the rules of the convention.** Few, if any, international conventions, succeed in incorporating a complete code that governs all aspects of a contract. It is likely that on times a dispute will involve issues not provided for by the convention that need to be settled by the arbitrator. When this occurs, the arbitrator must have recourse to the underlying principles of the law of agreement contained in the substantive law governing the dispute. The more complete a code is the less likely it is that this will occur.

Whilst the general principles of law governing agreement are by enlarge very similar world wide, and the international codes reflect this, to the extent that they cover particular areas. However, there are also differences and the arbitrator needs to be fully conversant with the domestic law of agreement that he or she has to apply. English Law frequently provides the substantive law governing international trade agreements, often by express incorporation, and hence it is useful to be aware of the provisions of English Law governing the international sale of goods.

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## Sources of law governing the international sale of goods in the UK.

- 1 **The Common Law.**  
Much of the law governing the sale of goods and international sales of goods are to be found in the common law. In particular :- the law of agreement, offer, acceptance, counter offer; consideration : the parties to a contract and privity : the terms of the contract, exclusion clauses, limitation clauses and liquidated damages clauses : general damages : breach : and vitiating factors such as duress, frustration and mistake.
- 2 **The Sale of Goods Acts.**  
There have been a series of Sale of Goods Acts, the most significant being the Sale of Goods Act 1979. Subsequent sale of goods amendment acts have been incorporated into the 1979 re-enactment by addition. Take care to use the latest version in Current Statutes rather than the Public and General which does not contain the amendments. Out of date statute books are similarly deceptive.
- 3 **General statutes.**  
These are too numerous to provide an exhaustive list but include Limitations Act 1980, Unfair Contract Terms Act 1977, Misrepresentation Act 1967, Privity Act 1999 (or pending)
- 4 **Custom of the trade.**  
Covers issues as diverse as trade terms on goods, eg timber and on methods of loading and insurance cover. *Hillas v Arcos*.
- 5 **In house rules appropriated to the contract.**  
INCO Terms governing import export contracts such as cif and fob, bills of lading, charterparties, road haulage standard term contracts and most construction contracts.
- 6 **European Community Law.**  
Treaty Obligations, in particular Art 30 et seq, and Art 80 et seq, Regulations, EC Directives and ECJ reports on the same.
- 7 **European Convention of Human Rights.**  
To become part of English Law by virtue of the Human Rights Act 1999 – but entering in force some time between 2000 and 2001. Recently private contracts have been made subject to the ECHR by the court at Luxembourg.

**International Conventions ancillary to international sales of goods.** The most obvious cover contracts for the carriage of goods, such as the Hague, The Hague Visby and the Hamburg Rules and liability for expense incurred during carriage, such as the York Antwerp Rules and the international pollution conventions.

These are closely followed by the UNCITRAL Conventions covering the financing of, and the guaranteeing of finance of, international sales agreements.

Criminal type legislation covers contracts for international drug sales, intellectual property and in particular scientific products, money laundering etc.

Conventions covering jurisdiction such as the Brussels and Lugano Conventions, The Rome Convention on the choice of law and conventions on dispute resolution and the enforcement of arbitral awards such as the New York Convention.

### **International Conventions on Sales of Goods.**

Clearly, it would be highly desirable if an effective, fair, comprehensive international convention could govern all international sales of goods, freeing the parties from the uncertainties of the diverse provisions of domestic laws of sales of goods. All parties could contract without fear of strange foreign provisions frustrating their intentions. No party would have to fear being prejudiced by biased foreign laws. A universal international sales convention has been the holly grail since the turn of the century.

However, domestic law makers have not been in such a hurry to embrace such a convention and drafting one that has all these qualities has not been easy, nor has the task of persuading states to sign up to such a convention.

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Part of the problem has been in deciding how much to cover in such a convention. Should it cover the law of agreement, mandatory terms and conditions and base standards, jurisdiction provisions and conflict of laws provisions, safe guards for domestic trial, enforcement mechanisms, ancillary matters such as delivery and carriage and conditions to govern them etc ?

The first major international convention to receive any significant attention in the UK was ULIS incorporated into English Law by virtue of the Uniform Laws of International Sales Act 1967. However, by virtue of s1(4) and articles 3 and 4. The UK provided a derogation from the automatic incorporation of the Convention into contracts for international sales of goods governed by English Law, leaving it to the parties to expressly incorporate the Convention into the contract. The take up on this option by commercial men was insignificant. For this reason we will not discuss the provisions of the Convention.

The United Nations Convention on Contracts for the International Sale of Goods, made at Vienna in 1980 has however been embraced by commerce and is standard practice for trade with China and forms the basic law governing CIETAC Arbitrations for trade with China.

Whilst much of the Convention bears a striking resemblance to English law there are also differences. In particular, privity of contract is different (though the significance of this will be lessened once the Privity Act comes into force) and there is no reference to the passing of property at all. Again, since the new amendments to the Sale of Goods Act this is of less significance than previously.

### UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS VIENNA, 1980

#### 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.

###### 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 obligation 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.

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## 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 its 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 purposes 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.

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### 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, it 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.

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## 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 purposes 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 judgement 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 misconduct 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 1: 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 sub-para, 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.

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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 a 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.

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3. If the goods are redirected in transit or re-dispatched 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 re-dispatch, 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 I 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.



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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 under 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.

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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.

## CHAPTER THREE

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 or 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 or 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 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 blown 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 authorised 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.

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### 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 or 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 credit worthiness; 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.

## CHAPTER THREE

### Section II Damages

#### 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 blew or ought to have blown, as a possible consequence of the breach of contract.

#### ARTICLE 75

if the contract is avoided and it 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.

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## 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 reasonable 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 authorised 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.

## CHAPTER THREE

### 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. ARTICLES 89-91 & 93 [Omitted]

### ARTICLE 92

1. A Contracting State may declare at the time of the 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 these 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 or Article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

### 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. [Omitted].

### 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 or 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.

### ARTICLES 97-101 [OMITTED]

The articles omitted concern ratification procedures etc and do not contain any substantive law provisions.

### Commentaries and application of the convention.

There are an enormous number of sources on and commentaries concerning the application of this convention both in the journals and on the net. The Convention is referred to a CIGS on the internet by the US Law Schools. Useful sites :

<http://www.un.or.at/uncitral/>

<http://itl.irv.no/trade> law/papers/UNCITRAL/html

<http://www.cisg.law.pace.edu>

<http://www.law.cornell.edu/library/sales.html>

<http://itl.irv.uit.no/trade> law/papers/CISG.bibliography.1996.winshop.html

These sites contain commentaries on the articles, case studies from around the world and extensive articles and readings.

# THE LAW OF INTERNATIONAL TRADE AND CARRIAGE

## **Bibliography : Useful readings :-**

International Sale of Goods : Dubrovinik Lecture. Inter-University Centre of Postgraduate Studies. Yugoslavia 1985.

International Sales. UN Convention on Contracts for the International Sale of Goods. Parker School of Foreign and Comparative Law. Columbia University. Matthew Bender 1984.

A selection of extracts covering International Conventions from the main text books follows with extracts from selected articles, and the text off ULIS which will enable you to cross reference references and comparisons between the Vienna Convention and ULIS.

Also, cross reference the Articles of the Vienna Convention with the contents of the Lecture Hand out on Sales of Goods under English Law, regarding both the common law and the various cumulative provisions of the Sales of Goods Acts.

## **UNIFORM LAWS ON INTERNATIONAL SALES ACT 1967**

### **1. Application of Uniform Law on the International Sale of Goods**

- (1) In this Act 'the Uniform Law on Sales' means the Uniform Law on the International Sale of Goods forming the Annex to the First Convention and set out, with the modification provided for by Article III of that Convention, in Schedule 1 to this Act; and 'the First Convention' means the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1st July 1964.
- (2) The Uniform Law on Sales shall, subject to the following provisions of this section, have the force of the law in the United Kingdom.
- (3) while an Order of Her Majesty in Council is in force declaring that a declaration by the United Kingdom under Article V of the First Convention (application only by choice of parties) has been made and not withdrawn the Uniform Law on Sales shall apply to a contract of sale only if it has been chosen by the parties to the contract as the law of the contract.
- (4) In determining the extent of the application of the Uniform Law on Sales by virtue of Article 4 thereof (choice of parties) (a) and (b) [omitted]
  - (c) in relation to a contract made on or after 1 February 1978, no provision of that law shall be so regarded except sections 12 to 15 of the Sale of Goods Act 1979.'
- (5) to (8) [omitted]

### **2. Application of Uniform Law on the Formation of Contracts for the International Sale of Goods**

- (1) In this Act 'the Uniform Law on Formation' means the Law forming Annex I to the Second Convention as set out, with the modifications provided for by paragraph 3 of Article I of that Convention, in Schedule 2 to this Act; and 'the Second Convention' means the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at The Hague on 1st July 1964.
- (2) Subject to subsection (3) of this section the Uniform Law on Formation shall have the force of law in the United Kingdom.
- (3) The Uniform Law on Formation shall not apply to offers, replies and acceptances made before such date as Her Majesty may by Order in Council declare to be the date on which the Second Convention comes into force in respect of the United Kingdom.
- (1) [omitted] & Section 3. to 5 [omitted]



## CHAPTER THREE

### SCHEDULE 1 THE UNIFORM LAW ON THE INTERNATIONAL SALE OF GOODS 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 Contracting 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 State' 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

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 the 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 there, 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.

# THE LAW OF INTERNATIONAL TRADE AND CARRIAGE

## 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 in 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 same 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 principals 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 1.-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, sent to the buyer notice of the consignment and, if necessary, some document specifying the goods.

## CHAPTER THREE

### Sub-section 1.-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 Articles 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 purchases 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.

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### 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 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 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 only 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.

## CHAPTER THREE

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-paragraphs (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 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 redespach, 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 has 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.

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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 a position to remedy the defects;
  - (b) if the sales 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 for the remedying of the defect. If at the expiration of the additional period the seller has not delivered to 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 fixed 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.

## CHAPTER THREE

### Section II Handing over 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 the 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 reasonable time or that other goods free from all rights and claims of third persons to 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 I of the 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 1 - 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.

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## 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 a 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 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 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 contract, the seller may grant to the buyer an 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<sup>1</sup> or to make the specification himself in accordance with the requirements of the buyer in so far as these are known to him.



## CHAPTER THREE

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 Articles 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.

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

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### 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 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 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 the 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, if there is no such current price or if 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 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 breach 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.

##### 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 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 the 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 reasonable inconvenience or unreasonable expense. This provision shall not apply where the seller or a person authorised to take charge of the goods on his behalf is present at such destination.

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### 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 costs 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 the 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 provision 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 the 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.

## CHAPTER THREE

### SCHEDULE 2

#### THE UNIFORM LAW ON THE FORMATION OF CONTRACTS FOR THE INTERNATIONAL SALES OF GOODS

##### ARTICLE 1

The present law shall apply to the formation of contracts of sale of goods which, if they were concluded, would be governed by the Uniform Law on the International Sale of Goods.

##### ARTICLE 2

1. The provision of the following Articles shall apply except to the extent that it appears from the preliminary negotiations, the offer, the reply, the practices which the parties have established between themselves or usage, that other rules apply.
2. However, a term of the offer stipulating that silence shall amount to acceptance is invalid.

##### ARTICLE 3

An offer or an acceptance need not be evidenced by writing and shall not be subject to any other requirement as to form. In particular, they may be proved by means of witnesses.

##### ARTICLE 4

1. The communication which one person addresses to one or more specific persons with the object of concluding a contract of sale shall not constitute an offer unless it is sufficiently definite to permit the conclusion of the contract by acceptance and indicates the intention of the offeror to be bound.
2. This communication may be interpreted by reference to and supplemented by the preliminary negotiations, any practices which the parties have established between themselves, usage and the provisions of the Uniform Law on the International Sale of Goods.

##### ARTICLE 5

1. The offer shall not bind the offeror until it has been communicated to the offeree; it shall lapse if its withdrawal is communicated to the offeree before or at the same time as the offer.
2. After an offer has been communicated to the offeree it can be revoked unless the revocation is not made in good faith or in conformity with fair dealing or unless the offer states a fixed time for acceptance or otherwise indicates that it is firm or irrevocable.
3. An indication that the offer is firm or irrevocable may be express or implied from the circumstances, the preliminary negotiations, any practices which the parties have established between themselves or usage.
4. A revocation of an offer shall only have effect if it has been communicated to the offeree before he has despatched his acceptance or has done any act treated as acceptance under paragraph 2 of Article 6.

##### ARTICLE 6

1. Acceptance of an offer consists of a declaration communicated by any means whatsoever to the offeror.
2. Acceptance may also consist of the despatch of the goods or of the price or of any other act which may be considered to be equivalent to the declaration referred to in paragraph 1 of this Article either, by virtue of the offer or, as a result of practices which the parties have established between themselves or usage.

##### ARTICLE 7

1. An acceptance containing additions, limitations or other modifications shall be a rejection of the offer and shall constitute a counter-offer.
2. However, a reply to an offer which purports to be an acceptance but which contains additional or different terms which do not materially alter the terms of the offer shall constitute an acceptance unless the offeror promptly objects to the discrepancy; if he does not so object the terms of the contract shall be the terms of the offer with the modifications contained in the acceptance.

##### ARTICLE 8

1. A declaration of acceptance of an offer shall have effect only if it is communicated to the offeror within the time he has fixed or, if no such 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, and usage. In the case of an oral offer, the acceptance shall be immediate, if the circumstances do not show that the offeree shall have time for reflection.
2. If a time for acceptance is fixed by an offeror in a letter or in a telegram, it shall be presumed to begin to run from the day the letter was dated or the hour of the day the telegram was handed in for despatch.

## THE LAW OF INTERNATIONAL TRADE AND CARRIAGE

3. if an acceptance consists of an act referred to in paragraph 2 of Article 6, the act shall have effect only if it is done within the period laid down in paragraph 1 of the present Article.

### ARTICLE 9

1. If the acceptance is late, the offeror may nevertheless consider it to have arrived in due time on condition that he promptly so informs the acceptor orally or by despatch of a notice.
2. If however the acceptance is communicated late, it shall be considered to have been communicated in due time, if the letter or document which contains the acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have been communicated in due time; this provision shall not however apply if the offeror has promptly informed the acceptor orally or by despatch of a notice that he considers his offer as having lapsed.

### ARTICLE 10

An acceptance cannot be revoked except by a revocation which is communicated to the offeror before or at the same time as the acceptance.

### ARTICLE 11

The formation of the contract is not affected by the death of the parties or by his becoming incapable of contracting before acceptance unless the contrary results from the intention of the parties, usage or the nature of the transaction.

### ARTICLE 12

1. For the purpose of the present law, the expression "to be communicated means to be delivered at the address of the person to whom the communication is directed.
2. Communications provided for by the present Law shall be made by the means usual in the circumstances.

### ARTICLE 13

1. "Usage" means any practice or method of dealing which reasonable persons in the same situation as the parties usually consider to be applicable to the formation of their contract.
2. 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.