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**INTERNATIONAL COMMERCIAL SALE
OF PERISHABLE GOODS:
MODEL CONTRACT AND USERS' GUIDE**



ITC
INTERNATIONAL TRADE CENTRE
GENEVA
1999

The logo for the International Trade Centre (ITC) consists of the letters "ITC" in a large, bold, sans-serif font. Below this, the full name "INTERNATIONAL TRADE CENTRE" is written in a smaller, all-caps sans-serif font. At the bottom, the location "GENEVA" and the year "1999" are printed in the same font style.

Abstract for trade information services

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INTERNATIONAL TRADE CENTRE UNCTAD/WTO

International commercial sale of perishable goods: model contract and users' guide

Geneva: ITC, 1999. vii, 78 p.

Model contract developed for international sale of foodstuffs subject to rapid physical deterioration – proposes conditions compatible with international trade conventions and usages, offering legal framework applicable to international deliveries of goods and international payments; users' guide provides general presentation of the model contract and commentaries on individual contractual provisions; annexes cover text of United Nations Convention on Contracts for the International Sale of Goods, UNIDROIT principles of international commercial contracts, and ISO currency codes.

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Foreword

The *Contract for the International Commercial Sale of Perishable Goods* and the accompanying *Users' Guide* have been developed by the International Trade Centre UNCTAD/WTO (ITC), in response to needs expressed by exporting and trade associations from 115 countries. The model contract is the first in a series that aims to offer balanced, reliable and flexible general-purpose legal instruments which are simple to use by all and especially by small and medium-sized enterprises.

The users' guide is included in this publication to assist parties in making the most appropriate choices for any given situation in the course of their business dealings. The annexes contain the text and/or summary description of the international trade instruments referred to in the model contract.

The model contract epitomizes intelligent cooperation between international organizations, public and private, sharing a common legal objective – security and fairness in the development of international trade rules – by making use of three key instruments for international transactions: the *United Nations Convention on Contracts for the International Sale of Goods*, prepared by the United Nations Commission on International Trade Law (UNCITRAL); the *Principles of International Commercial Contracts*, drawn up by UNIDROIT; and the *Incoterms*, an initiative of the International Chamber of Commerce. Without these landmark instruments, ITC would not have been able to bring to the sellers' and buyers' doorsteps a comparatively simple, generic contract, which can be used internationally for their day to day operations.



J. Denis Bélisle
Executive Director

Acknowledgements

The model contract and users' guide were prepared by David Brown (United Kingdom), a solicitor practising in Paris with Schadbolt & C^o, and Alain Prujiner (Canada), a law professor and solicitor, former director of the Institut des Hautes Etudes Internationales of Laval University, Quebec, in conjunction with Jean-François Bourque, senior adviser on legal aspects of foreign trade, International Trade Centre UNCTAD/WTO (ITC).

Under their chairmanship, the initial draft contract benefited greatly from the comments of members of ITC's pro bono Committee on Model Contracts. The following members of the Committee participated actively in commenting upon and/or improving the contract: Homayoon Arfazadeh (Islamic Republic of Iran), Ben Beaumont (Hong Kong, China); Marc Blessing (Switzerland); Gabriele Crespi-Reghizzi (Italy); Gaston Kenfack Douajni (Cameroon); Nader Mohamed Ibrahim (Egypt); Christophe Imhoos (Switzerland); Charles Jarrosson (France); Sami Kallel (Tunisia); Filip de Ly (Netherlands); Pierre Karrer (Switzerland); Ibrahim Najjar (Lebanon); Konstantin Razumov (Russian Federation); Derick Reffold (United Kingdom); Habib Slim (Tunisia); Jakob Smid (Switzerland); Vadim Trukhin (Russian Federation); and Ziedonis Udris (Latvia).

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Foreword

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Contract for the International Commercial Sale of Perishable Goods



1 PARTIES

SELLER

Name _____

Address _____

_____ *If different, address of Seller's place
of business through which this contract is to be performed* _____

Telephone _____ Fax _____ E-mail _____

Authorized signatory *(name and position)* _____

BUYER

Name _____

Address _____

_____ *If different, address of Buyer's place
of business through which this contract is to be performed* _____

Telephone _____ Fax _____ E-mail _____

Authorized signatory *(name and position)* _____

2. GOODS

Description of the goods *(including details, as appropriate, concerning required quality, certificates, and
country of origin)* _____

Quantity *(including unit of measurement)*

- Total quantity _____
- Per delivery instalment _____
- Tolerance percentage: plus or minus _____ %

Inspection of goods (where an inspection is required, specify, as appropriate, details of organization responsible for inspecting quality and/or quantity, place and date/period of inspection, responsibility for inspection costs) _____

Details, as appropriate, concerning packaging and other similar conditions _____

Any other specification _____

3. DELIVERY

Applicable ICC Incoterm (By reference to most recent version of the Incoterms at date of formation of contract) _____

Place of delivery _____

Date or period of delivery _____

Name and address of carrier (where applicable) _____

Unless otherwise agreed, delivery shall be Ex Works (as per ICC Incoterm EXW) at the address of the Seller's place of business through which this Contract is to be performed.

4. PRICE

Price (specify whether total price and/or price per unit of measurement, specify the amount in both figures and words, and the currency) _____

Method for determining the price (if appropriate) _____

Where the price has not been and cannot be determined, it shall be that generally charged, in the same trade, for such goods delivered under comparable circumstances or, if such price cannot be established, a reasonable price.

5. PAYMENT

Means of payment (e.g. cash, cheque, bank draft, transfer) _____

Details of Seller's bank account (if appropriate) _____

Unless otherwise agreed, the amounts due shall be transferred by teletransmission to the Seller's bank account, and the Buyer shall be deemed to have performed its payment obligations when the said amounts have been received by the Seller's bank.

Payment of the price shall be made within 30 days after the date of invoice, unless the parties agree a different period hereafter: _____

THE PARTIES MAY CHOOSE A PAYMENT ARRANGEMENT AMONG THE POSSIBILITIES SET OUT BELOW, IN WHICH CASE THEY SHOULD SPECIFY THE ARRANGEMENT CHOSEN AND PROVIDE THE CORRESPONDING DETAILS:

PAYMENT IN ADVANCE

Amount due (i.e. all or part of the price, or expressed as a percentage of the total price)

Latest date for payment to be received by Seller's bank _____

Special conditions applying to this payment (if any) _____

In the event that the advance payment does not correspond to the total price, the balance due shall be payable within 30 days of the date of invoice, in accordance with the conditions set out above, unless otherwise specified hereafter: _____

PAYMENT BY DOCUMENTARY COLLECTION

Amount to be paid (specify whether total price or price per delivery instalment)

Latest date for payment _____

Means of payment: D/P (i.e. documents against payment), unless the parties specify D/A (i.e. documents against acceptance) hereafter: _____

Payment by documentary collection shall be subject to the ICC Uniform Rules for Collections.

The documents to be presented are specified at Article 6 below.

PAYMENT BY IRREVOCABLE DOCUMENTARY CREDIT

The Buyer must arrange for an irrevocable documentary credit in favour of the Seller to be issued by a reputable bank, subject to the ICC Uniform Customs and Practice for Documentary Credits. The issue must be notified at least 14 days before the agreed date for delivery, or before the beginning of the agreed delivery period specified at Article 3 above, as appropriate, unless the parties agree otherwise as specified hereafter. Latest agreed date for issue: _____

The credit shall expire 14 days after the end of the period or date of delivery specified in Article 3 above, *unless otherwise agreed hereafter*: _____

The documentary credit does not have to be confirmed, *unless the parties agree otherwise, as specified hereafter*: _____

All costs incurred in relation to confirmation shall be borne by the Seller, *unless the parties specify otherwise hereafter*: _____

Unless otherwise agreed, the documentary credit shall be payable at sight and allow partial shipments and transshipments.

PAYMENT BACKED BY BANK GUARANTEE

The Buyer shall provide, at least 30 days before the agreed date of delivery or the beginning of the agreed delivery period specified at Article 3 above as appropriate, *unless the parties specify hereafter some other date*: _____, either a first demand bank guarantee subject to the ICC Uniform Rules for Demand Guarantees, or a standby letter of credit subject either to such Rules or to the ICC Uniform Customs and Practice for Documentary Credits, in either case issued by a reputable bank.

OTHER PAYMENT ARRANGEMENTS

6. DOCUMENTS

The Seller shall make available to the Buyer or, as the case may be, shall present to the Bank specified by the Buyer, the following documents (*tick corresponding boxes and indicate, as appropriate, the number of copies to be provided*):

- Commercial invoice _____
- The following transport documents (*specify any detailed requirements*): _____
- _____
- Packing list _____
- Insurance documents _____
- Certificate of origin _____
- Certificate of inspection _____
- Customs documents _____
- Other documents _____

Unless otherwise agreed, the Seller shall make available to the Buyer the documents indicated in the applicable Incoterm.

7. FAILURE TO COMPLY WITH A PAYMENT DEADLINE

If the Buyer does not pay a sum of money when it falls due, the Seller is entitled to interest upon that sum from the time when payment is due to the time of payment. Unless the parties agree otherwise, the rate of interest shall be 2% above the average bank short-term lending rate prevailing for the currency of payment at the place of payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment. In the absence of such a rate at either place, and if the parties have not agreed upon a specific rate, the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment. *Other rate of interest agreed by the parties if appropriate:* _____

The Seller shall be entitled to terminate this Contract by notice to the Buyer as regards goods for which payment has not been made for any reason whatsoever (excluding a temporary impediment in the event of force majeure within 14 days (*unless the parties agree some other period:* _____) after the date on which the said payment falls due.

8. FAILURE TO COMPLY WITH A DELIVERY DEADLINE

When there is delay in delivery of any goods, the Buyer is entitled to liquidated damages equal to 0.5% (*unless the parties agree some other percentage:* _____) of the price of those goods for each complete day of delay as from the agreed date of delivery or the last day of the agreed delivery period, as appropriate, provided the Buyer notifies the Seller of the delay, and subject to any extension resulting from force majeure.

Where the Buyer so notifies the Seller within 7 days from the agreed date of delivery or the last day of the agreed delivery period, damages will run from the agreed date of delivery or from the last day of the agreed delivery period. Where the Buyer so notifies the Seller more than 7 days after the agreed date of delivery or the last day of the agreed delivery period, damages will run from the date of the notice. *If the parties wish to modify either or both of the above-mentioned 7-day deadlines they should do so hereafter:* _____

Liquidated damages for delay shall not exceed 20% of the price of the delayed goods, or such other maximum amount as may be agreed hereafter: _____

The Buyer shall be entitled to terminate this Contract by notice to the Seller as regards goods which have not been delivered for any reason whatsoever (excluding a temporary impediment in the event of force majeure within 14 days after the agreed delivery date or the end of the agreed delivery period, as appropriate, *unless the parties specify some other period hereafter:* _____)

9. FORCE MAJEURE

A party is not liable for a failure to perform any of its obligations in so far as it proves:

- That the failure was due to an impediment beyond its control, and
- That it could not reasonably be expected to have taken into account the impediment and its effects upon its ability to perform at the time of the conclusion of this Contract, and
- That it could not reasonably have avoided or overcome the effect of such impediment.

A party seeking to be relieved of liability on grounds of force majeure shall, as soon as the impediment and its effects upon its ability to perform become known to that party, give notice

to the other party of such impediment and its effects on its ability to perform, together with all appropriate supporting documents. Notice shall be given if and when the event of force majeure ceases. Failure to give either notice or such documents makes the party thus failing liable to damages for loss which otherwise could have been avoided.

Where the impediment could be merely temporary i.e. where the impediment does not necessarily have the effect of rendering performance impossible and could end within a period of 30 days (*unless the parties agree hereafter some other period: _____*), then the period of performance shall be extended until the impediment has ended, or the expiry of the said period, whichever is the earlier.

If performance is still impossible on expiry of this period, or if and as soon as performance becomes definitively impossible, either party shall be entitled to terminate this Contract upon notice to the other party of its decision to terminate.

10. FUNDAMENTAL NON-PERFORMANCE

A party may, by notice to the other party, terminate this Contract in the event of fundamental non-performance by the other party.

The following circumstances constitute examples of fundamental non-performance:

- Failure of the Buyer to comply with its undertaking, if appropriate, to procure the opening of an irrevocable letter of credit or to provide a first demand bank guarantee by the due date specified in Article 5 above;
- Failure of the Buyer to pay any sum by the date upon which the other party is entitled to terminate this Contract in accordance with the provisions of Article 7 above;
- Failure of the Seller to deliver all of the goods by the date upon which the Buyer is entitled to terminate this Contract in accordance with the provisions of Article 8 above;
- A manifest incapacity on the part of either party to fulfil its contractual obligations by reason of bankruptcy or liquidation proceedings, or any other suspension or stoppage of its activities.

In the event of fundamental non-performance, the aggrieved party may, at its discretion:

- Terminate the contract, and recover damages from the defaulting party; and/or,
- Sell or purchase, as appropriate, the goods, in which event the defaulting party shall make good any loss suffered by the aggrieved party.

Any dispute in relation to the damages due upon termination, and/or the losses suffered, as appropriate, shall be settled in accordance with the dispute resolution procedure agreed upon in this Contract.

11. EXPERTISE PROCEDURE

In the event that the Buyer is not satisfied with the quality of the goods delivered or to be delivered, it must inform the Seller of such dissatisfaction as soon as possible, and in any event within 7 days of delivery of the goods *or such other period as the parties may agree hereafter: _____*

The Buyer shall immediately apply to the following institution _____ for an expert to be appointed. If no institution has been specified by the parties, then the Buyer shall immediately proceed to appoint an expert. Any expert appointed shall be independent of the parties.

The expert shall consider and report to the parties on the alleged nonconformity of the goods.

For this purpose, the expert shall be entitled to inspect the entire goods, or samples taken under his/her supervision, and may carry out any test which he/she considers to be appropriate.

The expert shall submit his/her report to both parties by registered post. The report shall be final and binding upon the parties unless, within 45 days after it has been received (or such other period as the parties may agree hereafter: _____), it is challenged by one of the parties by the commencement of proceedings in accordance with the dispute resolution procedure provided under this Contract.

The expert's fees and expenses shall be borne by the Buyer pending completion of the expertise procedure, but shall be reimbursed to the Buyer by the Seller if the nonconformity of the goods with the contractual requirements is established.

12. MITIGATION OF HARM

In the event of dissatisfaction with the quality of the goods delivered, the Buyer must take all such measures as are reasonable in the circumstances to preserve the goods. The Seller shall be obliged to reimburse the cost of such measures if the nonconformity of the goods with the contractual requirements is established.

If the goods are subject to rapid deterioration, or their preservation would involve unreasonable expense, the Buyer must take reasonable measures to sell them on the best terms available, after notifying the Seller of its intention to sell. The Buyer must nevertheless retain appropriate samples for the purposes of an expertise procedure and must give the Seller (and any expert appointed in accordance with Article 11 above) an opportunity to be represented when such samples are taken.

13. COMMUNICATIONS BETWEEN THE PARTIES

All communications between the parties in relation to this Contract must be made in writing and sent by ordinary post (unless some other form of postal delivery is agreed hereafter _____), by fax or by electronic mail. Any communication sent via electronic mail must be in a 'read only' format or in some other format in which it is not possible to modify the message received. Communications via fax or electronic mail are made entirely at the sender's risk.

References in this Contract to days are to calendar days.

14. APPLICABLE RULES OF LAW

In so far as any matters are not covered by the foregoing provisions, this Contract is governed by the following, in descending order of precedence :

- The United Nations Convention on Contracts for the International Sale of Goods
- The UNIDROIT Principles of International Commercial Contracts, and
- For matters not dealt with in the above-mentioned texts, the law applicable at _____ or, in the absence of a choice of law, the law applicable at the Seller's place of business through which this Contract is to be performed.

15. DISPUTE RESOLUTION

In the event of any difficulty in relation to the performance of this Contract, the parties undertake that they will proceed diligently with good faith negotiations in an attempt to find the solution best adapted to the situation. If the difficulty relates to the conformity of the goods, the parties undertake to have recourse to the expertise procedure specified in Article 11 prior to any other procedure. If such steps prove unsuccessful, either party may have recourse to the dispute resolution procedure set out below.

Unless otherwise agreed, all disputes arising out of, or in connection with, this Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with the said Rules.

If the amount in dispute is less than 100,000 United States dollars, the parties agree that the arbitrator shall decide the case solely on the documents submitted by the parties and waive the right to require a hearing, including a procedural hearing.

If the amount in dispute is greater than one million United States dollars, the parties agree that the ICC International Court of Arbitration shall constitute an arbitral tribunal comprising three arbitrators should one of the parties so require.

AGREED MODIFICATIONS, IF ANY, TO THIS PROCEDURE: _____

OTHER DISPUTE RESOLUTION PROCEDURE CHOSEN: _____

16. DATE AND SIGNATURE FOR THE SELLER AND BUYER

SELLER

BUYER

Date _____

Date _____

Name _____

Name _____

Signature

Signature

Users' Guide

This guide consists of a general presentation followed by a commentary on each of the provisions of the model contract.

General presentation

A - Purpose of the model contract

International contract for business rather than consumer sales The model contract has been developed for business users engaged in international trade in perishable goods. The aim is to offer a balanced, reliable and flexible general-purpose legal instrument which is simple to use. The contract is intended for business rather than consumer sales. Sales are considered to be international in nature if the contracting parties have their respective places of business in different countries. The model contract has therefore been elaborated with a view to offering a legal framework which is adapted to both international deliveries of goods and international payments.

Contract is intended for the sale of perishable goods The perishable goods for which the model contract has been developed are foodstuffs subject to rapid physical deterioration, and which are therefore liable to become worthless just as quickly. They thus include fruit and vegetables in particular. This contract may prove difficult to apply if used for other types of products.

Check whether specialized contract forms exist for the type of goods to be sold There exist model contract forms for the sale of specific perishable products such as coffee, grain, cocoa, oils and fats which are proposed by national and international associations of sellers and/or buyers specialized in a particular commodity. Depending on the product to be sold, it may be advisable for parties to consult such contract forms, as they may make provision for specific usages in the trade in question. Certain of these contract forms can be found on ITC's Juris international database at the following address: <http://www.jurisint.org>.

In preparing the model contract, every effort has been made to propose conditions which are compatible with those of the ICC Model International Sale Contract (Manufactured Goods Intended for Resale), published in 1998 by the International Chamber of Commerce, with a view to promoting the harmonization of international contracts. The present model nevertheless differs significantly as regards both form and content, owing to the different subject matter it covers. Thus, for example, there is no provision concerning retention of title, since this is less likely to be a matter of concern in the context of perishable goods.

B - Contract format

- Initial each page* The contract is contained in a single document, and therefore effectively incorporates both specific and general conditions. It is presented in both electronic and printed paper forms. The paper version may be accompanied by any appropriate annexes. It is recommended that the parties initial each page of the contract including any such annexes.
- Some precautions in using the electronic version* The electronic version of the model contract is available at <http://www.jurisint.org>. It can be adapted so that the annexes are incorporated into the contract document itself. It is recommended that a contract which exists in electronic form be printed for initialling and signature by each party. This precaution is particularly appropriate if the contract has been negotiated via electronic mail using a network which does not provide for either the authentication of signatures or the non-modifiable recording of data.

C - The underlying legal rules

The principal aim of this model contract is to ensure an equitable balance between the parties' respective positions by means of full information as to their rights and obligations. In other words, the buyer and the seller must each be able clearly to identify the extent of their respective undertakings as well as those of their business partner.

Certain key instruments for the development of international trade have been called upon with a view to achieving this aim, namely, the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG), the 1994 UNIDROIT Principles of International Commercial Contracts, and International Chamber of Commerce initiatives such as the Incoterms. The texts of these various instruments are reproduced in part or in full in the present publication for ease of reference.

- Parties using this model contract should not exclude application of CISG or the UNIDROIT Principles* Reference to such instruments has allowed the model contract to be greatly simplified, in that it is possible to dispense with the reproduction of provisions concerning matters which are dealt with in a satisfactory manner elsewhere. These texts also offer a standardized international vocabulary, which has been adopted in the contract. Thus, the provisions set out in the contract are essentially those which are specific to commerce in perishable goods. In these circumstances parties are advised not to exclude the application of these international instruments if they decide to use the model contract. If the parties prefer not to subject their contract to CISG and the UNIDROIT Principles, then they are recommended not to use the model contract. As mentioned previously, many product-specific contracts exist, which have been drawn up for more specialized markets, to which users could turn instead.

A further advantage of using such international instruments is the limited impact of any applicable domestic system of law. The model contract can therefore be used for transactions involving parties in any two countries. While it should not be susceptible to widely varying interpretations by different countries, certain precautionary measures nevertheless remain advisable, as indicated below.

D - Incorporation by reference

Contracting parties may also incorporate the terms of the model contract simply by reference. They should, however, note that the enforceability of the provisions set out in the model contract, particularly the arbitration clause, may be doubtful under the law of certain countries if such provisions have not been expressly incorporated into the contract. In view of this consideration, it is proposed that wording such as the following should appear in the signed contract document:

Recommended wording for incorporation by reference "Any matter which is not the subject of a provision to the contrary in the present contract shall be governed by the terms of the Contract for the International Commercial Sale of Perishable Goods of the International Trade Centre, including the arbitration clause."

E - Three types of contractual provisions

As flexibility is clearly an important characteristic, the model contract can be adapted to the wide range of different situations that may arise in the context of sales of perishable goods. In response to this need, the model contract offers the parties a number of choices based on actual practice, particularly as regards international payment and international delivery.

In this connexion, the model contract comprises a variety of types of provisions, as follows:

- Provisions which the parties must complete (e.g. identity of the parties and description of the goods);
- Provisions to be completed at the parties' discretion (e.g. quality and inspection of the goods);
- Fall-back provisions: these provisions apply when the parties do not provide for any other alternative (e.g. as regards the price, delivery and payment terms).

II - Commentary on specific provisions of the contract

Article 1 - Parties

- Clearly identify the parties* It is important that each party to the contract should be properly identified by reference to its name and address. If a party is a company, it should specify its official address, even if the transaction is to be handled by a branch or other place of business of the same company, in which case the address of such other place of business should also be given.
- Who is the authorized signatory ?* If a party is an individual, he or she should personally sign the contract, unless represented by an agent.
- If a party is a company or another type of legal entity, it is important to clearly identify the person signing on behalf of the party, together with details of any appropriate authorization to sign. Each party should verify that the other party's representative is duly authorized to represent that party.
- Check addresses and contact details* It is also important that the correct addresses and contact details be given for the purpose of subsequent communications between the parties.

Article 2 - Goods

- Description, specific details, quantity, checking and packaging* Article 2 is intended to contain all appropriate details in relation to the physical characteristics of the goods as well as their packaging. The article comprises, in effect, a checklist of items to which the parties' attention is drawn.
- Only some of the items are likely to be fundamental to the existence of a contract, in particular the description of the goods and the total quantity. If the quantity of the goods is to be determined at a later stage or is variable, the parties must make provision for a mechanism for determining the quantity.
- Checking operations, particularly as regards quality and weight, which are necessary for the purpose of placing the goods at the disposal of the buyer or for the purpose of delivering the goods are standard operations usually paid by the seller. These operations should be distinguished from the inspection of goods, the costs of which are usually borne by the buyer (see below).
- Inspection of goods* Article 2 invites the parties to consider whether they need to arrange for the quality and quantity of the goods to be inspected and who should carry out the inspection. The time and place of such inspection,

usually referred to as “pre-shipment inspection”, need to be fixed by reference to the delivery arrangements and the Incoterm chosen. The parties should also specify how the costs of inspection are to be borne. In many cases, the buyer will have to pay the costs for an inspection arranged at his request and in his own interest. If there is no specific arrangement as to the costs of inspection, then they will be borne in accordance with the Incoterm chosen.

Article 3 - Delivery

Choosing the appropriate Incoterm

It is proposed that, rather than specifying in detail the delivery arrangements and respective obligations of the parties, the parties should simply choose an ICC Incoterm. Parties are advised to become familiar with the Incoterms and the principal rules to be followed when applying them. The full text of the Incoterms is available from the International Chamber of Commerce. As of 1 January 2000, the 1990 version is to be replaced by the Incoterms 2000. The present model contract refers to the latest Incoterms version in force on the date of formation of the contract.

Linking the Incoterm and the place and date of delivery

Once the Incoterm has been chosen, it is important to specify the agreed place and date or period of delivery taking due account of the particularities of the Incoterm. If the place and/or time for delivery have not been fixed, it is important to specify how they are to be determined.

If the parties do not wish to choose an Incoterm, they are nevertheless recommended to consult the relevant Incoterms, which provide a useful checklist of matters for which they should make specific provisions in their contract.

Ex Works used only as fall back Incoterm

If the parties make no specific provision as regards delivery, they are presumed to have opted for delivery Ex Works at the seller's place of business through which the contract is to be performed. This is a “fall-back” clause, or in other words a clause which applies only if the parties do not provide otherwise. It corresponds closely to the approach adopted in CISG (Article 31). In practice, however, parties will usually opt for another Incoterm for the sale of perishable goods, such as, for example an F – or C – term.

Article 4 - Price

This provision allows the parties to record all information required as regards the agreed price. The parties should be as precise as possible when specifying the price and the currency. A list of international currency symbols is appended at the end of this guide (see annex III).

Currency of account and currency of payment The contract sets out the rule that payment is to be made in the currency of account. Here, some explanation is required. When specifying the currency, the parties should bear in mind that there may be a difference between the currency in which the price is expressed (currency of account) and the currency of payment. Normally, payment is made in the currency of account. However, this is not always the case. Where the currency of the place of payment is different from the currency of account, the UNIDROIT Principles (Article 6.1.9) give the buyer an option: to pay either in the currency of account or in the currency of the place of payment if that currency is freely convertible. As this option may take some parties by surprise, the model contract excludes the application of this alternative by specifying that payment is to be made only in the currency expressed in the price, unless otherwise agreed by the parties.

Different currency for price and payment: who bears the exchange rate risk? If payment is to be made in a currency other than the currency in which the price is expressed, the parties should state this in their contract. In this event, the parties are advised to specify which of them shall bear the risk of exchange rate variations.

If the price cannot be fixed at the time of signature of the contract, the parties should specify the method for determining the price or modifying it.

Finally, it should be noted that the contract remains valid even if the price has not been recorded in it, since provision is made for the price to be established having regard to the market price, in accordance with the approach adopted in CISG (Article 55).

Article 5 - Payment

The model contract proposes several payment options commonly encountered in international trade. The parties are totally free as regards their payment arrangements, but if they do not opt for a specific payment mechanism, then the contract provides a fall-back arrangement for payment by bank transfer (see below).

The method of payment – by teletransmission to the seller's bank, bill of exchange (draft), cheque or other – is to be specified according to the payment options chosen by the parties. For example, where parties opt for payment in advance, they should specify whether payment will be made by cheque, bank transfer, etc.

Details of the seller's bank account should be given if appropriate – where the amount due is transferred by teletransmission to the seller's bank, for example.

Payment via teletransmission

Fall-back clause: payment by bank transfer within 30 days of date of invoice Article 5 first details the fall-back payment option: payment is made 30 days after the date of the invoice via teletransmission to the seller's bank. This is presumed to constitute the parties' agreement in the absence of any other arrangement. Details of the seller's bank (name, branch, address) and, where appropriate, details of the seller's account should be given. Unless otherwise agreed, the teletransmission costs are to be borne by the sender, i.e. the buyer. The parties are free to modify the period for payment. They may, for example, opt for payment 60 or 90 days after the date of the invoice.

Other payment options

Various other payment possibilities are listed in the contract. If the parties wish to opt for one of these possibilities, then they should tick the appropriate box and provide the requisite details:

- Payment in advance

Check time limits for payment of remaining part The parties may prefer payment in whole or in part before delivery – when the order is placed, for example. In this event, they must specify both the time of payment and any specific conditions which may apply. If the payment which is to be made in advance covers only part of the total price, the model contract provides for payment of the remaining part 30 days after the date of the invoice, unless the parties make some other provision.

Alternatively, the parties may provide for payment against documents, in the form of payment either by documentary collection or by documentary credit.

- Documentary collection

Documents tendered against payment: the general rule for documentary collection Where payment is made by documentary collection, the buyer pays only after having had an opportunity to examine the documents corresponding to the seller's delivery obligations. The seller is exposed to the risk that the buyer will not pay or will not accept the documents, but retains control over the documents until it is assured of payment. There are two possibilities in documentary collection: either the buyer pays in order to receive the documents (documents against payment), or the buyer accepts the bill of exchange in order to receive the documents (documents against acceptance). Unless otherwise agreed, the contract provides that the documents will be tendered against payment. The ICC Uniform Rules for Collections standardize banking practice with regard to collection arrangements and apply to collections under the present contract.

Documentary credit

Letters of credit: safe, but expensive and require careful management Payment made by irrevocable documentary credit is the safest payment option for the seller, since it provides an independent and irrevocable undertaking from a bank in its favour. However, it requires careful document management. The relevant documentary credit procedures are set out in the ICC Uniform Customs and Practice for Documentary Credits which can be consulted in most banks.

In order to make proper use of a documentary credit, it is important to specify in the contract the date by which the credit is to be sent to the seller or beneficiary by the buyer's bank (via a notifying bank) and the date upon which the credit will expire – in other words, the end of the period during which the seller or beneficiary may present the documents so as to obtain payment. The model contract specifies the various periods which will apply unless the parties agree otherwise.

Seller should consider requiring confirmation The model contract does not provide for confirmation of the credit by a bank in the buyer's country. It may, however, be prudent for the seller to require confirmation if reliable information concerning the bank issuing the credit is not available. It is foreseen that the seller will bear the costs of confirmation, but the parties may agree upon some other rule for sharing such expenses.

The proposed Article also allows partial shipments and transshipments. The parties should make it clear that such possibilities are excluded if that is indeed the case.

The clause provides for immediate payment (payment at sight). If, however, the parties prefer to apply any given method of acceptance, they should make specific provision for it as appropriate.

Demand guarantees and standby credits

A demand guarantee is not a payment instrument The parties are also given the opportunity to back a deferred payment by a first demand bank guarantee or a standby credit, which the seller may call should the buyer fail to pay. It is to be noted that a demand guarantee or a standby credit is primarily a security instrument and not a payment mechanism. Therefore, notwithstanding the provision of a guarantee, the parties must still specify how and when payment will be made.

Article 6 - Documents

It is particularly important to specify the various contract documents, especially if payment is conditional upon the production of certain documents by the seller. This Article comprises a checklist based upon the documents generally used in practice. It is proposed that where phytosanitary certificates are required, they be mentioned under "other documents".

Check that seller is able to provide the required documents It is important to check that the seller is actually able to produce the documents in question, and to verify the content of the list against the Incoterm which has been chosen.

The rule concerning the strict conformity of the documents to be presented to the bank should not be overlooked. It is therefore essential for the list to identify as clearly as possible each of the documents to be presented in order to obtain payment.

Article 7 - Late payment

In line with general practice in international trade, it is proposed that a party should be entitled to compensation, in the form of interest, in the event of late payment. The parties are recommended to verify whether there may be any legal difficulty in recovering interest calculated by reference to an average bank short-term lending rate prevailing for the currency of payment, as well as inquiring as to the types of bank lending rate to be used by way of reference.

Seller may be able both to claim interest and to terminate contract The seller's entitlement to interest for late payment does not affect its right to terminate the contract in accordance with CISG (Articles 61-65) in the event of non-payment. The provision specifies also the period after the expiry of which the seller may terminate the contract in the event of late payment.

Article 8 - Late delivery

Rate and amount of damages may be modified The daily rate and maximum amount of liquidated damages proposed are relatively high as a result of the particular importance which buyers of perishable goods generally place upon timely delivery. Both the said rate and maximum amount may require modification by the parties in view of the specific subject matter of their contract.

The importance attached to timely delivery is the reason why a relatively short period is proposed before the buyer is entitled to terminate the contract on grounds of non-delivery. This period may always be modified by the parties.

Article 9 - Force majeure

The force majeure clause is based upon the standard form of Force Majeure (Exemption) Clause of the International Chamber of Commerce (see ICC Publication No. 421), which itself was inspired by Article 79 of CISG.

Check that the proposed 30-day period is adequate While a party clearly cannot be blamed for failing to perform its obligations as a result of an event of force majeure, the commercial prerogatives of trade in perishable goods mean that the other party

should nevertheless be entitled to terminate the contract in the event of force majeure upon expiry of a relatively short extension of the period for performance. The proposed period of 30 days needs to be reviewed by the parties in light of the particular circumstances of their respective fields of business.

Article 10 - Fundamental non-performance

The right to terminate is linked to the concept of fundamental non-performance of the contract (known as fundamental breach in CISG). The contract does not seek to set out an exhaustive list of matters constituting fundamental non-performance, but limits itself instead to highlighting certain particularly important examples with a view to helping the parties to appreciate the potential consequences of certain developments, and therefore to manage their relationship better as a result.

In the event of fundamental non-performance, the party which is the victim of the default may terminate the contract and recover damages, and/or sell or purchase the goods, as appropriate, with a view to mitigating the losses resulting from such default. The latter alternative is commonly encountered in contracts for the sale of perishable goods.

Article 11 - Expertise procedure

Expertise may avoid court litigation or arbitration

Disputes as to the quality of goods are encountered quite frequently in trade in perishable goods. This Article proposes an expertise procedure which should allow the parties to deal quickly and efficiently with any difficulties of this order. The aim is to obtain an expert report from an independent third party on the basis of which the parties will be able to take any measures for the purposes of their contractual relationship. In this regard, the dispute resolution procedure (see Article 15) will come into play only if a disagreement persists between the parties as regards either the quality of the goods or the consequences of the expert's findings for the parties' contractual relationship. It is hoped that the mechanism which is proposed will allow the parties to find a solution without having to apply the dispute resolution procedure.

Choosing an independent expert

It is important that the expert chosen be totally independent of the parties. Should the parties not be able to identify a suitable institution or person at the time of signature of the contract, then this choice will fall upon the buyer at the time of delivery, unless the parties agree otherwise at that time. The parties may wish to consider using the services of an independent inspection company. Copies of the "World Directory of Inspection Companies" (ITC, 1999, 265 pages) covering 55 inspection companies present in some 182 countries, may be obtained free of charge to developing countries from the International Trade Centre UNCTAD/WTO, Palais des Nations, 1211 Geneva 10, Switzerland.

Article 12 - Mitigation of harm

It is a well-established principle in international commerce that parties are obliged to mitigate any harm or loss which may arise by virtue of their contractual relationship. This principle is particularly important in the context of contracts involving perishable goods. The aim of this Article is to specify the measures which the parties should take, and to deal with liability for the costs which those measures involve.

Article 13 - Communications between the parties

This Article sets out the rules for communications between the parties and deals in particular with the subject of proof of receipt when using electronic means of communication. The Article also specifies that every day counts in the calculation of applicable time periods.

Article 14 - Applicable rules of law

The applicable rules have an order of precedence starting with the contract The model contract specifies the rules which govern the parties' agreement and specifies their order of precedence when interpreting the terms of the contract. The order of precedence is: first, the ITC contract document as completed by the parties; second, the United Nations Convention on Contracts for the International Sale of Goods; third, the UNIDROIT Principles of International Commercial Contracts; fourth and finally, the law specified by the parties or, in absence of a specific choice, the law applicable at the seller's place of business.

The model contract thus incorporates two international instruments which are well adapted to the requirements of contracts for the international sale of perishable goods.

The Vienna Sales Convention The first is the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) which has been ratified by more than 55 countries. By virtue of the reference to CISG in the model contract, the provisions of CISG will apply to all contracts even if one or more of the parties does not belong to a country which has ratified CISG. The text of CISG is reproduced in annex I for ease of reference.

The UNIDROIT Principles The second instrument which it is proposed to incorporate by reference is the UNIDROIT Principles of International Commercial Contracts. This instrument seeks to set out standard international practice applicable to all commercial transactions. The reference to the UNIDROIT Principles allows the contract to be supplemented by a set of provisions specifically conceived for international transactions. The text of the UNIDROIT Principles is reproduced in annex II.

In the event that any provisions contained in either of these instruments raise any particular difficulties, a specific qualification to this effect should be recorded in the contract. If any such qualification is to be made, care should be taken to ensure that the internal logic and equilibrium of the instrument in question are not affected. Given, however, that the model contract has been drawn up on the basis of both instruments and the vocabulary they use, it is considered that it would be difficult to do this successfully. The parties are advised instead to set down in writing all the terms and conditions which are to apply to their transaction, or to have recourse to some other standard form.

Important to stipulate a domestic law Finally, the parties should be aware that the CISG and UNIDROIT Principles do not cover all potential legal eventualities as regards any given transaction. It is therefore appropriate to stipulate the domestic law which will apply in addition. The parties are invited to specify the domestic law which they consider to be appropriate to their transaction. In the absence of such choice, the domestic law which will apply, under the terms of the model contract, is the law which is commonly considered to be applicable to an international sales contract, namely the law applicable at the seller's place of business through which the contract is to be performed. This is one of the reasons why the address of the place of business must be specified in the contract.

Article 15 - Dispute resolution

The parties are free to choose the dispute resolution procedure which they consider to be appropriate. Thus, they can choose between giving jurisdiction to a State court to decide upon any disputes which may arise, and arbitration.

The State court option If the parties choose to give jurisdiction to a specific State court, then, in order to be effective, the jurisdiction clause should be exclusive in nature – in other words, it should exclude the possibility that other courts can deal with a matter. The parties should, however, be aware that an exclusive jurisdiction clause is generally a lesser guarantee of a legally secure outcome than arbitration, because if proceedings are commenced in a different State court from that foreseen, the said court may well refuse to accept the consequences of the parties' choice as regards its own jurisdiction.

The arbitration option This is one of the reasons why arbitration has become the standard option for settling disputes in international commerce, particularly as the State courts of all of the countries (of which there are now more than 120) which have ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 are obliged to accept the parties' decision, in opting for arbitration, to exclude the jurisdiction of those courts.

UNCITRAL arbitration The parties may prefer to foresee an ad hoc arbitration, which they will have to manage themselves. In this event, they are recommended to specify that they will use the UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules and that the International Chamber of Commerce shall be the appointing authority for the purposes of constituting the arbitral tribunal, if necessary.

The recommended UNCITRAL arbitration clause is as follows:

“Any dispute, controversy or claim arising out of or relating to the contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules at present in force.

It is recommended to add the following details.

(a) The appointing authority shall be the International Chamber of Commerce (ICC)

(b) The number of arbitrators shall be one.

*(c) The place of arbitration shall be
(City or Country)*

(d) The language to be used in the arbitral proceedings shall be English.”

Quality arbitrations If, however, the parties do not have the benefit of the assistance of a lawyer experienced in international dispute resolution, they are recommended instead to opt for institutional arbitration, and to choose among the numerous centres for international dispute resolution in existence. There exist, in the perishable goods sector, numerous institutions which organize what is known as “quality arbitration”, in other words tailor-made arbitration and expertise procedures for specific goods (such as cocoa, coffee, grain and feed, rice and sugar). Parties may well prefer to have recourse to such procedures in appropriate circumstances. In any event, there is no single international quality arbitration institution covering the entire commodities spectrum.

ICC arbitration Unless the parties specifically prefer to have recourse to some other institution, it is proposed that they use the arbitration rules of the International Chamber of Commerce.

With a view to keeping to a minimum the cost of arbitrating disputes which involve relatively small amounts, it is recommended that the tribunal should be made up of a single arbitrator and that if, in addition, the amount in dispute is less than 100,000 United States dollars, the proceedings should take place entirely on the basis of written exchanges, to the exclusion of hearings. Hearings, including travel and other costs of the persons involved, are generally the most expensive

cost item in arbitration. A case dealt with at a distance, on the basis of documents alone, should not prevent an arbitral award of good quality from being produced, particularly as the ICC International Court of Arbitration will provide the same amount of supervision of the arbitrator's award as for any other case, at a relatively low cost. If the parties nevertheless require a hearing, they may so agree, but a single party may not insist upon a hearing (unless otherwise agreed in the arbitration clause).

For more substantial disputes, the parties may always agree to proceed on the basis of documents alone. However, if one of them prefers to have a hearing then this will be possible under the ICC Rules.

If the dispute is substantial, a party may request the ICC International Court of Arbitration to appoint a tribunal comprising three arbitrators. The court will decide at its discretion whether this is appropriate.

Those wishing to consider alternative possibilities for institutional arbitration are advised to consult the International Trade Centre's Juris International Web site (<http://www.jurisint.org>).

Annex I

United Nations Convention
on Contracts for the
International Sale of Goods

United Nations Convention on Contracts for the International Sale of Goods

The States Parties to this Convention,

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

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

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

HAVE DECREED as follows:

Part I - Sphere of application and general provisions

Chapter I - Sphere of application

Article 1

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

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

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

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

Article 2

This Convention does not apply to sales:

- (a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;

- (b) by auction;
- (c) on execution or otherwise by authority of law;
- (d) of stocks, shares, investment securities, negotiable instruments or money;
- (e) of ships, vessels, hovercraft or aircraft;
- (f) of electricity.

Article 3

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

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

Article 4

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

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

Article 5

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

Article 6

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

Chapter II - General provisions

Article 7

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

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

Article 8

- (1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.
- (2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.
- (3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

Article 9

- (1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.
- (2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

Article 10

For the purposes of this Convention:

- (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;
- (b) if a party does not have a place of business, reference is to be made to his habitual residence.

Article 11

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

Article 12

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

Article 13

For the 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.

Article 15

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

Article 16

- (1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.
- (2) However, an offer cannot be revoked:
 - (a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or
 - (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

Article 17

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

Article 18

- (1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.
- (2) An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.
- (3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to

the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

Article 19

- (1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.
- (2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.
- (3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

Article 20

- (1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.
- (2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

Article 21

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

Article 22

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

Article 23

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

Article 24

For the 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 his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

Chapter II - Obligations of the seller

Article 30

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

Section I - Delivery of the goods and handing over of documents

Article 31

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

- (a) if the contract of sale involves carriage of the goods - in handing the goods over to the first carrier for transmission to the buyer;
- (b) if, in cases not within the preceding subparagraph, the contract related to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place - in placing the goods at the buyer's disposal at that place;
- (c) in other cases - in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

Article 32

- (1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.
- (2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.
- (3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

Article 33

The seller must deliver the goods:

- (a) if a date is fixed by or determinable from the contract, on that date;
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or
- (c) in any other case, within a reasonable time after the conclusion of the contract.

Article 34

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Section II - Conformity of the goods and third party claims

Article 35

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

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

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

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

(d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

Article 36

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

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

Article 37

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

Article 38

- (1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.
- (2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.
- (3) If the goods are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

Article 39

- (1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.
- (2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

Article 40

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

Article 41

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

Article 42

- (1) The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:
 - (a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or
 - (b) in any other case, under the law of the State where the buyer has his place of business.
- (2) The obligation of the seller under the preceding paragraph does not extend to cases where:
 - (a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or

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

Article 43

- (1) The buyer loses the right to rely on the provisions of article 41 or article 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.
- (2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

Article 44

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

Section III - Remedies for breach of contract by the seller

Article 45

- (1) If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:
 - (a) exercise the rights provided in articles 46 to 52;
 - (b) claim damages as provided in articles 74 to 77.
- (2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.
- (3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

Article 46

- (1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.
- (2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.
- (3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given 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.
- (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 increases in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

Article 58

(1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

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

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

Article 59

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

Section II - Taking delivery

Article 60

The buyer's obligation to take delivery consists:

(a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and

(b) in taking over the goods.

Section III - Remedies for breach of contract by the buyer

Article 61

- (1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:
- (a) exercise the rights provided in articles 62 to 65;
 - (b) claim damages as provided in articles 74 to 77.
- (2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.
- (3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

Article 62

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

Article 63

- (1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.
- (2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 64

- (1) The seller may declare the contract avoided:
- (a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
 - (b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.
- (2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:
- (a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or
 - (b) in respect of any breach other than late performance by the buyer, within a reasonable time:
 - (i) after the seller knew or ought to have known of the breach; or
 - (ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) 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 or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.

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

Chapter IV - Passing of Risk

Article 66

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

Article 67

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

(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

Article 68

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

Article 69

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

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

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

Article 70

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

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

Section Anticipatory breach and instalment contracts

Article 71

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

- (a) a serious deficiency in his ability to perform or in his creditworthiness; or
- (b) his conduct in preparing to perform or in performing the contract.

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

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

Article 72

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

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

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

Article 73

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

contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.

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

(3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

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

Article 75

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

Article 76

(1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

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

Article 77

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

Section III Interest

Article 78

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

Section IV - Exemptions

Article 79

- (1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.
- (2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:
 - (a) he is exempt under the preceding paragraph; and
 - (b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.
- (3) The exemption provided by this article has effect for the period during which the impediment exists.
- (4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.
- (5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

Article 80

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

Section V - Effects of avoidance

Article 81

- (1) Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.
- (2) A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

Article 82

- (1) The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.
- (2) The preceding paragraph does not apply:
 - (a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;
 - (b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; or
 - (c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course 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 authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

Article 87

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

Article 88

(1) A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

(2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.

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

Part IV - Final Provisions

Article 89

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

Article 90

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

Article 91

- (1) This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.
- (2) This Convention is subject to ratification, acceptance or approval by the signatory States.
- (3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.
- (4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 92

- (1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.
- (2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

Article 93

- (1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.
- (2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.
- (3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.
- (4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

Article 94

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

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

Article 95

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

Article 96

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

Article 97

- (1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.
- (2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.
- (3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under article 94 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.
- (4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.
- (5) A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

Article 98

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

Article 99

- (1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit

of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.

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

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

(4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 52 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.

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

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

Article 100

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

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

Article 101

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

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

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

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

Annex II

UNIDROIT Principles of
International Commercial Contracts

UNIDROIT Principles of International Commercial Contracts*

Preamble - Purpose of the Principles

These Principles set forth general rules for international commercial contracts.

They shall be applied when the parties have agreed that their contract be governed by them.

They may be applied when the parties have agreed that their contracts be governed by general principles of law, the *lex mercatoria* or the like.

They may provide a solution to an issue raised when it proves impossible to establish the relevant rule of applicable law.

They may be used to interpret or supplement international uniform law instruments.

They may serve as a model for national and international legislators.

Chapter 1 - General Provisions

Article 1. - Freedom of Contract

The parties are free to enter into a contract and determine its content.

Article 1.2 - No Form Required

Nothing in these Principles requires a contract to be concluded in or evidenced by writing. It may be proved by any means, including witnesses.

Article 1.3 - Binding Character of Contract

A contract validly entered into is binding upon the parties. It can only be modified or terminated in accordance with its terms or by agreement or as otherwise provided in these Principles.

Article 1.4 - Mandatory Rules

Nothing in these Principles shall restrict the application of mandatory rules, whether of national, international or supranational origin, which are applicable in accordance with the relevant rules of private international law.

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Article 1.5 - Exclusion or Modification by the Parties

The parties may exclude the application of these Principles or derogate from or vary the effect of any of their provisions, except as otherwise provided in the Principles.

Article 1.6 - Interpretation and supplementation of the Principles

- (1) In the interpretation of these Principles, regard is to be had to their international character and to their purposes including the need to promote uniformity in their application.
- (2) Issues within the scope of these Principles but not expressly settled by them are as far as possible to be settled in accordance with their underlying general principles.

Article 1.7 - Good Faith and Fair Dealing

- (1) Each party must act in accordance with good faith and fair dealing in international trade.
- (2) The parties may not exclude or limit this duty.

Article 1.8 - Usages and Practices

- (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 bound by a usage that is widely known to and regularly observed in international trade by parties in the particular trade concerned except where the application of such usage would be unreasonable.

Article 1.9 - Notice

- (1) Where notice is required it may be given by any means appropriate to the circumstances.
- (2) A notice is effective when it reaches the person to whom it is given.
- (3) For the purpose of paragraph (2) a notice “reaches” a person when given to that person orally or delivered at that person’s place of business or mailing address.
- (4) For the purpose of this article “notice” includes a declaration, demand, request or any other communication of intention.

Article 1.10 - Definitions

In these Principles

- “court” includes an arbitral tribunal;
- where a party has more than one place of business the relevant “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;
- “obligor” refers to the party who is to perform an obligation and “obligee” refers to the party who is entitled to performance of that obligation.
- “writing” means any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form.

Chapter 2 - Formation

Article 2.1 - Manner of Formation

A contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.

Article 2.2 - Definition of Offer

A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance.

Article 2.3 - Withdrawal of Offer

- (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 2.4 - Revocation of Offer

- (1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before it 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 of the offer.

Article 2.5 - Rejection of Offer

An offer is terminated when a rejection reaches the offeror.

Article 2.6 - Mode of Acceptance

- (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 when the indication of assent reaches the offeror.
- (3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act without notice to the offeror, the acceptance is effective when the act is performed.

Article 2.7 - Time of Acceptance

An offer must be accepted within the time the offeror has fixed or, if no time is fixed, within a

reasonable time having regard to the circumstances, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

Article 2.8 - Acceptance Within a Fixed Period of Time

- (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 means of instantaneous communication begins to run from the moment that 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 2.9 - Late Acceptance. Delay in Transmission

- (1) A late acceptance is nevertheless effective as an acceptance if without undue delay the offeror so informs the offeree or gives 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 undue delay, the offeror informs the offeree that it considers the offer as having lapsed.

Article 2.10 - Withdrawal of Acceptance

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 2.11 - Modified Acceptance

- (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 to the discrepancy. If the offeror does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

Article 2.12 - Writings in Confirmation

If a writing which is sent within a reasonable time after the conclusion of the contract and which purports to be a confirmation of the contract contains additional or different terms, such terms become part of the contract, unless they materially alter the contract or the recipient, without undue delay, objects to the discrepancy.

Article 2.13 - Conclusion of Contract Dependent on Agreement on Specific Matters or in a Specific Form

Where in the course of negotiations one of the parties insists that the contract is not concluded until there is agreement on specific matters or in a specific form, no contract is concluded before agreement is reached on those matters or in that form

Article 2.14 - Contract with Terms Deliberately Left Open

- (1) If the parties intend to conclude a contract, the fact that they intentionally leave a term to be agreed upon in further negotiations or to be determined by a third person does not prevent a contract from coming into existence.
- (2) The existence of the contract is not affected by the fact that subsequently
 - (a) the parties reach no agreement on the terms; or
 - (b) the third person does not determine the term, provided that there is an alternative means of rendering the term definite that is reasonable in the circumstances, having regard to the intention of the parties.

Article 2.15 - Negotiations in Bad Faith

- (1) A party is free to negotiate and is not liable for failure to reach an agreement.
- (2) However, a party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party.
- (3) It is bad faith, in particular, for a party to enter into or continue negotiations when intending not to reach an agreement with the other party.

Article 2.16 - Duty of Confidentiality

Where information is given as confidential by one party in the course of negotiations, the other party is under a duty not to disclose that information or to use it improperly for its own purposes, whether or not a contract is subsequently concluded. Where appropriate, the remedy for breach of that duty may include compensation based on the benefit received by the other party.

Article 2.17 - Merger Clause

A contract in writing which contains a clause indicating that the writing completely embodies the terms on which the parties have agreed cannot be contradicted or supplemented by evidence of prior statements or agreements. However, such statements or agreements may be used to interpret the writing.

Article 2.18 - Written Modification Clauses

A contract in writing which contains a clause requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated. However, a party may be precluded by its conduct from asserting such a clause to the extent that the other party has acted in reliance on that conduct.

Article 2.19 - Contracting Under Standard Terms

- (1) Where one party or both parties use standard terms in concluding a contract, the general rules of formation apply, subject to Articles 2.20 - 2.22.
- (2) Standard terms are provisions which are prepared in advance for general and repeated use by one party and which are actually used without negotiation with the other party.

Article 2.20 - Surprising Terms

- (1) No term contained in standard terms which is of such a character that the other party could not reasonably have expected it, is effective unless it has been expressly accepted by that party.
- (2) In determining whether a term is of such a character regard is to be had to its content, language and presentation.

Article 2.21 - Conflict Between Standard Terms and Non-Standard Terms

In case of conflict between a standard term which is not a standard term the latter prevails

Article 2.22 - Battle of Forms

Where both parties use standard terms and reach agreement except on those terms, a contract is concluded on the basis of the agreed terms and of any standard terms which are common in substance unless one party clearly indicates in advance, or later and without undue delay informs the other party, that it does not intend to be bound by such a contract.

Chapter 3 - Validity

Article 3 - Matters Not Covered

These Principles do not deal with invalidity arising from

- (a) lack of capacity;
- (b) lack of authority;
- (c) immorality or illegality.

Article 3.2 - Validity of Mere Agreement

A contract is concluded, modified or terminated by the mere agreement of the parties, without any further requirements.

Article 3.3 - Initial Impossibility

- (1) The mere fact that at the time of the conclusion of the contract the performance of the obligation assumed was impossible does not affect the validity of the contract.
- (2) The mere fact that at the time of the conclusion of the contract a party was not entitled to dispose of the assets to which the contract relates does not affect the validity of the contract.

Article 3.4 - Definition of Mistake

Mistake is an erroneous assumption relating to facts or to law existing when the contract was concluded.

Article 3.5 - Relevant Mistake

(1) A party may only avoid the contract for mistake if, when the contract was concluded, the mistake was of such importance that a reasonable person in the same situation as the party would not have concluded it at all if the true state of affairs had been known, and

(a) the other party made the same mistake, or caused the mistake, or knew or ought to have known of the mistake and it was contrary to reasonable commercial standards of fair dealing to leave the mistaken party in error; or

(b) the other party had not at the time of avoidance acted in reliance on the contract

(2) However, a party may not avoid the contract if

(a) it was grossly negligent in committing the mistake; or

(b) the mistake relates to a matter in regard to which the risk of mistake was assumed or, having regard to the circumstances, should be borne by the mistaken party.

Article 3.6 - Error in Expression or Transmission

An error occurring in the expression or transmission of a declaration is considered to be a mistake of the person from whom the declaration emanated.

Article 3.7 - Remedies for Non-Performance

A party is not entitled to avoid the contract on the ground of mistake if the circumstances on which that party relies afford, or could have afforded, a remedy for non-performance.

Article 3.8 - Fraud

A party may avoid the contract when it has been led to conclude the contract by the other party's fraudulent representation, including language or practices, or fraudulent non-disclosure of circumstances which, according to reasonable commercial standards of fair dealing, the latter party should have disclosed.

Article 3.9 - Threat

A party may avoid the contract when it has been led to conclude the contract by the other party's unjustified threat which, having regard to the circumstances, is so imminent and serious as to leave the first party no reasonable alternative. In particular, a threat is unjustified if the act or omission with which a party has been threatened is wrongful in itself, or is wrong to use it as a means to obtain the conclusion of the contract.

Article 3.10 - Gross Disparity

(1) A party may avoid the contract or an individual term of it if, at the time of the conclusion

of the contract, the contract term unjustifiably gave the other party an excessive advantage. Regard is to be had, among other factors, to

(a) the fact that the other party has taken unfair advantage of the first party's dependence, economic distress or urgent needs, or of its improvidence, ignorance, inexperience or lack of bargaining skill; and

(b) the nature and purpose of the contract.

(2) Upon the request of the party entitled to avoidance, a court may adapt the contract or term in order to make it accord with reasonable commercial standards of fair dealing.

(3) A court may also adapt the contract or term upon the request of the party receiving notice of avoidance, provided that that party informs the other party of its request promptly after receiving such notice and before the other party has acted in reliance on it. The provisions of Article 3.13(2) apply accordingly.

Article 3.11 - Third Persons

(1) Where fraud, threat, gross disparity or a party's mistake is imputable to, or is known or ought to be known by, a third person for whose acts the other party is responsible, the contract may be avoided under the same conditions as if the behaviour or knowledge had been that of the party itself.

(2) Where fraud, threat or gross disparity is imputable to a third person for whose acts the other party is not responsible, the contract may be avoided if that party knew or ought to have known of the fraud, threat or disparity, or has not at the time of avoidance acted in reliance on the contract.

Article 3.12 - Confirmation

If the party entitled to avoid the contract expressly or impliedly confirms the contract after the period of time for giving notice of avoidance has begun to run, avoidance of contract is excluded.

Article 3.13 - Loss of Right to Avoid

(1) If a party is entitled to avoid the contract for mistake but the other party declares itself willing to perform or performs the contract as it was understood by the party entitled to avoidance, the contract is considered to have been concluded as the latter party understood it. The other party must make such a declaration or render such performance promptly after having been informed of the manner in which the party entitled to avoidance had understood the contract and before that party has acted in reliance on a notice of avoidance.

(2) After such a declaration or performance the right to avoidance is lost and any earlier notice of avoidance is ineffective.

Article 3.14 - Notice of Avoidance

The right of a party to avoid the contract is exercised by notice to the other party.

Article 3.15 - Time Limits

(1) Notice of avoidance shall be given within a reasonable time, having regard to the

circumstances, after the avoiding party knew or could not have been unaware of the relevant facts or became capable of acting freely.

(2) Where an individual term of the contract may be avoided by a party under Article 3.10, the period of time for giving notice of avoidance begins to run when that term is asserted by the other party.

Article 3.16 - Partial Avoidance

Where a ground of avoidance affects only individual terms of the contract, the effect of avoidance is limited to those terms unless, having regard to the circumstances, it is unreasonable to uphold the remaining contract.

Article 3.17 - Retroactive Effect of Avoidance

(1) Avoidance takes effect retroactively.

(2) On avoidance either party may claim restitution of whatever is supplied under the contract or the part of it avoided, provided that it concurrently makes restitution of whatever it has received under the contract or the part of it avoided or, if it cannot make restitution in kind, it makes an allowance for what it has received.

Article 3.18 - Damages

Irrespective of whether or not the contract has been avoided, the party who knew or ought to have known of the ground for avoidance is liable for damages so as to put the other party in the same position in which it would have been if it had not concluded the contract.

Article 3.19 - Mandatory Character of the Provisions

The provisions of this Chapter are mandatory, except insofar as they relate to the binding force of mere agreement, initial impossibility or mistake.

Article 3.20 - Unilateral Declarations

The provisions of this Chapter apply with appropriate adaptations to any communication of intention addressed by one party to the other.

Chapter 4 - Interpretation

Article 4.1 - Intention of the Parties

(1) A contract shall be interpreted according to the common intention of the parties.

(2) If such an intention cannot be established, the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.

Article 4.2 - Interpretation of Statements and Other Conduct

- (1) The statements and other conduct of a party shall be interpreted according to that party's intention if the other party knew or could not have been unaware of that intention.
- (2) If the preceding paragraph is not applicable, such statements and other conduct shall be interpreted according to the meaning that a reasonable person of the same kind as the other party would give to it in the same circumstances.

Article 4.3 - Relevant Circumstances

In applying Articles 4.1 and 4.2, regard shall be had to all the circumstances, including

- (a) preliminary negotiations between the parties;
- (b) practices which the parties have established between themselves;
- (c) the conduct of the parties subsequent to the conclusion of the contract;
- (d) the nature and purpose of the contract;
- (e) the meaning commonly given to terms and expressions in the trade concerned;
- (f) usages.

Article 4.4 - Reference to Contract or Statement as a Whole

Terms and expressions shall be interpreted in the light of the whole contract or statement in which they appear.

Article 4.5 - All Terms to be Given Effect

Contract terms shall be interpreted so as to give effect to all the terms rather than to deprive some of them of effect.

Article 4.6 - Contra Proferentem Rule

If contract terms supplied by one party are unclear, an interpretation against that party is preferred.

Article 4.7 - Linguistic Discrepancies

Where a contract is drawn up in two or more language versions which are equally authoritative there is, in case of discrepancy between the versions, a preference for the interpretation according to a version in which the contract was originally drawn up.

Article 4.8 - Supplying an Omitted Term

- (1) Where the parties to a contract have not agreed with respect to a term which is important for a determination of their rights and duties, a term which is appropriate in the circumstances shall be supplied.
- (2) In determining what is an appropriate term regard shall be had, among other factors to
 - (a) the intention of the parties;
 - (b) the nature and purpose of the contract;

- (c) good faith and fair dealing
- (d) reasonableness.

Chapter 5 - Content

Article 5.1 - Express and Implied Obligations

The contractual obligations of the parties may be express or implied

Article 5.2 - Implied Obligations

Implied obligations stem from

- (a) the nature and purpose of the contract;
- (b) practices established between the parties and usages;
- (c) good faith and fair dealing;
- (d) reasonableness.

Article 5.3 - Co-operation between the Parties

Each party shall co-operate with the other party when such co-operation may reasonably be expected for the performance of that party's obligations.

Article 5.4 - Duty to Achieve a Specific Result. Duty of Best Efforts

- (1) To the extent that an obligation of a party involves a duty to achieve a specific result, that party is bound to achieve that result.
- (2) To the extent that an obligation of a party involves a duty of best efforts in the performance of an activity, that party is bound to make such efforts as would be made by a reasonable person of the same kind in the same circumstances.

Article 5.5 - Determination of Kind of Duty Involved

In determining the extent to which an obligation of a party involves a duty of best efforts in the performance of an activity or duty to achieve a specific result, regard shall be had, among other factors, to

- (a) the way in which the obligation is expressed in the contract;
- (b) the contractual price and other terms of the contract;
- (c) the degree of risk normally involved in achieving the expected result;
- (d) the ability of the other party to influence the performance of the obligation.

Article 5.6 - Determination of Quality of Performance

Where the quality of performance is neither fixed by, nor determinable from, the contract a party is bound to render performance of a quality that is reasonable and not less than average in the circumstances.

Article 5.7 - Price Determination

- (1) Where a contract does not fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have made reference to the price generally charged at the time of the conclusion of the contract for such performance in comparable circumstances in the trade concerned or, if no such price is available, to a reasonable price.
- (2) Where the price is to be determined by one party and that determination is manifestly unreasonable, a reasonable price shall be substituted notwithstanding any contract term to the contrary.
- (3) Where the price is to be fixed by a third person, and that person cannot or will not do so, the price shall be a reasonable price.
- (4) Where the price is to be fixed by reference to factors which do not exist or have ceased to exist or to be accessible, the nearest equivalent factor shall be treated as a substitute.

Article 5.8 - Contract for an Indefinite Period

A contract for an indefinite period may be ended by either party by giving notice a reasonable time in advance.

Chapter 6 - Performance

Section 1 - Performance in General

Article 6. 1.1 Time of Performance

A party must perform its obligations:

- (a) if a time is fixed by or determinable from the contract, at that time;
- (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 other party is to choose a time;
- (c) in any other case, within a reasonable time after the conclusion of the contract.

Article 6.1.2 - Performance at one Time or in Instalments

In cases under Article 6.1(b) or (c), a party must perform its obligations at one time if that performance can be rendered at one time and the circumstances do not indicate otherwise.

Article 6.1.3 - Partial Performance

- (1) The obligee may reject an offer to perform in part at the time performance is due, whether or not such offer is coupled with an assurance as to the balance of the performance, unless the obligee has no legitimate interest in so doing.
- (2) Additional expenses caused to the obligee by partial performance are to be borne by the obligor without prejudice to any other remedy.

Article 6.14 - Order of Performance

- (1) To the extent that the performances of the parties can be rendered simultaneously, the parties are bound to render them simultaneously unless the circumstances indicate otherwise.
- (2) To the extent that the performance of only one party requires a period of time, that party is bound to render its performance first, unless the circumstances indicate otherwise.

Article 6.15 - Earlier Performance

The obligee may reject an earlier performance unless it has no legitimate interest in so doing.

- (2) Acceptability by a party of an earlier performance does not affect the time for the performance of its own obligations if that time has been fixed irrespective of the performance of the other party's obligations.
- (3) Additional expenses caused to the obligee by earlier performance are to be borne by the obligor, without prejudice to any other remedy.

Article 6.16 - Place of Performance

- (1) If the place of performance is neither fixed by, nor determinable from the contract, a party is to perform:
 - (a) a monetary obligation, at the obligee's place of business;
 - (b) any other obligation, at its own place of business.
- (2) A party must bear any increase in the expenses incidental to performance which is caused by a change in its place of business subsequent to the conclusion of the contract.

Article 6.1.7 - Payment by Cheque or other Instrument

- (1) Payment may be made in any form used in the ordinary course of business at the place for payment.
- (2) However, an obligee who accepts, either by virtue of paragraph (1) or voluntarily, a cheque, any other order to pay or a promise to pay, is presumed to do so only on condition that it will be honoured.

Article 6.1.8 - Payment by Funds Transfer

- (1) Unless the obligee has indicated a particular account, payment may be made by a transfer to any of the financial institutions in which the obligee has made it known that it has an account.
- (2) In case of payment by a transfer of the obligation of the obligor is discharged when the transfer to the obligee's financial institution becomes effective.

Article 6.1.9 - Currency of Payment

- (1) If a monetary obligation is expressed in a currency other than that of the place of payment, it may be paid by the obligor in the currency of the place for payment unless

- (a) the currency is freely convertible; or
 - (b) the parties have agreed that payment should be made only in the currency in which the monetary obligation is expressed.
- (2) If it is impossible for the obligor to make payment in the currency in which the monetary obligation is expressed, the obligee may require payment in the currency of the place for payment, even in the case referred to in paragraph (1)(b).
- (3) Payment in the currency of the place for payment is to be made according to the applicable rate of exchange prevailing there when payment is due.
- (4) However, if the obligor has not paid at the time when payment is due, the obligee may require payment according to the applicable rate of exchange prevailing either when payment is due or at the time of actual payment.

Article 6.1.10 - Currency Not Expressed

Where a monetary obligation is not expressed in a particular currency, payment must be made in the currency of the place where payment is to be made.

Article 6.1.11 - Costs of Performance

Each party shall bear the costs of performance of its obligations.

Article 6.1.12 - Imputation of Payments

- (1) An obligor owing several monetary obligations to the same obligee may specify at the time of payment the debt to which it intends the payment to be applied. However, the payment discharges first any expenses, then interest due and finally the principal.
- (2) If the obligor makes no such specification, the obligee may, within a reasonable time after payment, declare to the obligor the obligation to which it imputes the payment, provided that the obligation is due and undisputed.
- (3) In the absence of imputation under paragraphs (1) or (2), payment is imputed to that obligation which satisfies one of the following criteria and in the order indicated:
- (a) an obligation which is due or which is the first to fall due;
 - (b) the obligation for which the obligee has least security;
 - (c) the obligation which is the most burdensome for the obligor;
 - (d) the obligation which has arisen first.

If none of the preceding criteria applies, payment is imputed to all the obligations proportionally.

Article 6.1.13 - Imputation of Non-Monetary Obligations

Article 6.1.12 applies with appropriate adaptations to the imputation of performance of non-monetary obligations.

Article 6.1.14 - Application for Public Permission

Where the law of a State requires a public permission affecting the validity of the contract or its performance and neither that law nor the circumstances indicate otherwise.

- (a) if only one party has its place of business in that State, that party shall take the measures necessary to obtain the permission;
- (b) in any other case the party whose performance requires permission shall take the necessary measures.

Article 6.1.15 - Procedure in Applying for Permission

- (1) The party required to take the measures necessary to obtain the permission shall do so without undue delay and shall bear any expenses incurred.
- (2) That party shall whenever appropriate give the other party notice of the grant or refusal of such permission without undue delay.

Article 6.1.16 - Permission Neither Granted Nor Refused

- (1) If, notwithstanding the fact that the party responsible has taken all measures required, permission is neither granted nor refused within an agreed period or, where no period has been agreed, within a reasonable time from the conclusion of the contract, either party is entitled to terminate the contract.
- (2) Where the permission affects some terms only, paragraph (1) does not apply if, having regard to the circumstances, it is reasonable to uphold the remaining contract even if the permission is refused.

Article 6.1.17 - Permission Refused

- (1) The refusal of a permission affecting the validity of the contract renders the contract void. If the refusal affects the validity of some terms only, only such terms are void if, having regard to the circumstances, it is reasonable to uphold the remaining contract.
- (2) Where the refusal of a permission renders the performance of the contract impossible in whole or in part, the rules on non-performance apply.

Section 2 - Hardship

Article 6.2. - Contract to be Observed

Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship.

Article 6.2.2 - Definition of Hardship

There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished, and

- (a) the events occur or become known to the disadvantaged party after the conclusion of the contract;
- (b) the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract;

- (c) the events are beyond the control of the disadvantaged party; and
- (d) the risk of the events was not assumed by the disadvantaged party.

Article 6.2.3 - Effects of Hardship

- (1) In case of hardship the disadvantaged party is entitled to request renegotiations. The request shall be made without undue delay and shall indicate the grounds on which it is based.
- (2) The request for renegotiation does not itself entitle the disadvantaged party to withhold performance.
- (3) Upon failure to reach agreement within a reasonable time either party may resort to the court.
- (4) If the court finds hardship it may, if reasonable,
 - (a) terminate the contract at a date and on terms to be fixed; or
 - (b) adapt the contract with a view to restoring its equilibrium.

Chapter 7 - Non-Performance

Section 1 - Non-Performance in General

Article 7.1.1 - Non-Performance Defined

Non-performance is failure by a party to perform any of its obligations under the contract, including defective performance or late performance.

Article 7.1.2 - Interference by the Other Party

A party may not rely on the non-performance of the other party to the extent that such non-performance was caused by the first party's act or omission or by another event as to which the first party bears the risk.

Article 7.1.3 - Withholding Performance

- (1) Where the parties are to perform simultaneously, either party may withhold performance until the other party tenders performance.
- (2) Where the parties are to perform consecutively, the party that is to perform later may withhold its performance until the first party has performed.

Article 7.1.4 - Cure by Non-Performing Party

- (1) The non-performing party may, at its own expense, cure any non-performance, provided that
 - (a) without undue delay, it gives notice indicating the proposed manner and timing of the cure;

- (b) cure is appropriate in the circumstances;
 - (c) the aggrieved party has no legitimate interest in refusing cure; and
 - (d) cure is effected promptly.
- (2) The right to cure is not precluded by notice of termination.
 - (3) Upon effective notice of cure, rights of the aggrieved party that are inconsistent with the nonperforming party's performances are suspended until the time for cure has expired.
 - (4) The aggrieved party may withhold performance pending cure.
 - (5) Notwithstanding cure, the aggrieved party retains the right to claim damages for delay as well as for any harm caused or not prevented by the cure.

Article 7.1.5 - Additional Period for Performance

- (1) In a case of non-performance the aggrieved party may by notice to the other party allow an additional period of time for performance.
- (2) During the additional period the aggrieved party may withhold performance of its own reciprocal obligations and may claim damages but may not resort to any other remedy. If it receives notice from the other party that the latter will not perform within that period, or if upon expiry of that period due performance has not been made, the aggrieved party may resort to any of the remedies that may be available under this Chapter.
- (3) Where in a case of delay in performance which is not fundamental the aggrieved party has given notice allowing an additional period of time of reasonable length, it may terminate the contract at the end of that period. If the additional period allowed is not of reasonable length it shall be extended to a reasonable length. The aggrieved party may in its notice provide that if the other party fails to perform within the period allowed by the notice the contract shall automatically terminate.
- (4) Paragraph (3) does not apply where the obligation which has not been performed is only a minor part of the contractual obligation of the non-performing party.

Article 7.1.6 - Exemption Clauses

A clause which limits or excludes one party's liability for non-performance or which permits one party to tender performance substantially different from what the other party reasonably expected may not be invoked if it would be grossly unfair to do so, having regard to the purpose of the contract.

Article 7.1.7 - Force Majeure

- (1) Non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it 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) When the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on performance of the contract.
- (3) The party who fails to perform must give notice to the other party of the impediment and its effect on its 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, it is liable for damages resulting from such non-receipt.

(4) Nothing in this article prevents a party from exercising a right to terminate the contract or to withhold performance or request interest on money due.

Section 2 - Right to Performance

Article 7.2.1 - Performance of monetary Obligation

Where a party who is obliged to pay money does not do so, the other may require payment.

Article 7.2.2 - Performance of Non-Monetary Obligation

Where a party who owes an obligation other than one to pay money does not perform, the other party may require performance, unless

- (a) performance is impossible in law or fact;
- (b) performance or, where relevant, enforcement is unreasonably burdensome or expensive;
- (c) the party entitled to performance may reasonably obtain performance from another source;
- (d) performance is of an exclusively personal character; or
- (e) the party entitled to performance does not require performance within a reasonable time after it has, or ought to have, become aware of the non-performance.

Article 7.2.3 - Repair and Replacement of Defective Performance

The right to performance includes in appropriate cases the right to require repair, replacement, or other cure of defective performance. The provisions of Articles 7.2.1 and 7.2.2 apply accordingly.

Article 7.2.4 - Judicial Penalty

- (1) Where the court orders a party to perform, it may also direct that this party pay a penalty if it does not comply with the order.
- (2) The penalty shall be paid to the aggrieved party unless mandatory provisions of the law of the forum provide otherwise. Payment of the penalty to the aggrieved party does not exclude any claim for damages.

Article 7.2.5 - Change of Remedy

- (1) An aggrieved party who has required performance of a non-monetary obligation and who has not received performance within a period fixed or otherwise within a reasonable period of time may invoke any other remedy.
- (2) Where the decision of a court for performance of a non-monetary obligation cannot be enforced, the aggrieved party may invoke any other remedy.

Section 3 - Termination

Article 7.3.1 - Right to Terminate the Contract

- (1) A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental performance.
- (2) In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether
 - (a) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract unless the other party did not foresee and could not reasonably have foreseen such result;
 - (b) strict compliance with the obligation which has not been performed is of essence under the contract;
 - (c) the non-performance is intentional or reckless;
 - (d) the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance;
 - (e) the non-performing party will suffer disproportionate loss as a result of the preparation or performance if the contract is terminated.
- (3) In the case of delay the aggrieved party may also terminate the contract if the other party fails to perform before the time allowed under Article 7.1.5 has expired.

Article 7.3.2 - Notice of Termination

- (1) The right of a party to terminate the contract is exercised by notice to the other party.
- (2) If performance has been offered late or otherwise does not conform to the contract the aggrieved party will lose its right to terminate the contract unless it gives notice to the other party within a reasonable time after it has or ought to have become aware of the non-conforming performance.

Article 7.3.3 - Anticipatory Non-Performance

Where prior to the date for performance by one of the parties it is clear that there will be a fundamental non-performance by that party, the other party may terminate the contract.

Article 7.3.4 - Adequate Assurance of Due Performance

A party who reasonably believes that there will be a fundamental non-performance by the other party may demand adequate assurance of due performance and may meanwhile withhold its own performance. Where this assurance is not provided within a reasonable time the party demanding it may terminate the contract.

Article 7.3.5 - Effects of Termination in General

- (1) Termination of the contract releases both parties from their obligation to effect and to receive future performance.

- (2) Termination does not preclude a claim for damages for non-performance.
- (3) Termination does not affect any provision in the contract for the settlement of disputes or any other term of the contract which is to operate even after termination.

Article 7.3.6 - Restitution

- (1) On termination of contract either party may claim restitution of whatever it has supplied, provided that such party concurrently makes restitution of whatever it has received. If restitution in kind is not possible or appropriate allowance should be made in money whenever reasonable.
- (2) However, if performance of the contract has extended over a period of time and the contract is divisible, such restitution can only be claimed for the period after termination has taken effect.

Section 4 - Damages

Article 7.4.1 - Right to Damages

Any non-performance gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies except where the non-performance is excused under these Principles.

Article 7.4.2 - Full Compensation

- (1) The aggrieved party is entitled to full compensation for harm sustained as a result of the nonperformance. Such harm includes both any loss which it suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm.
- (2) Such harm may be non-pecuniary and includes, for instance, physical suffering or emotional distress.

Article 7.4.3 - Certainty of Harm

- (1) Compensation is due only for harm, including future harm, that is established with a reasonable degree of certainty.
- (2) Compensation may be due for the loss of a chance in proportion to the stability of its occurrence.
- (3) Where the amount of damages cannot be established with a sufficient degree of certainty, the assessment is at the discretion of the court.

Article 7.4.4 - Foreseeability of Harm

The non-performing party is liable only for harm which it foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being likely to result from its non-performance.

Article 7.4.5 - Proof of Harm in case of Replacement Transaction

Where the aggrieved party has terminated the contract and has made a replacement transaction

within a reasonable time and in a reasonable manner it may recover the difference between the contract price and the price of the replacement transaction as well as damages for any further harm.

Article 7.4.6 - Proof of Harm by Current Price

(1) Where the aggrieved party has terminated the contract and has not made a replacement transaction but there is a current price for the performance contracted for, it may recover the difference between the contract price and the price current at the time the contract is terminated as well as damages for any further harm.

(2) Current price is the price generally charged for goods delivered or services rendered in comparable circumstances at the place where the contract should have been performed or, if there is no current price at that place, the current price at such other place that appears reasonable to take as a reference.

Article 7.4.7 - Harm Due in Part to Aggrieved Party

Where the harm is due in part to an act or omission of the aggrieved party or to another event as to which that party bears the risk, the amount of damages shall be reduced to the extent that these factors have contributed to the harm, having regard to the conduct of the parties.

Article 7.4.8 - Mitigation of Harm

(1) The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps.

(2) The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the harm.

Article 7.4.9 - Interest for Failure to Pay Money

(1) If a party does not pay a sum of money when it falls due the aggrieved party is entitled to interest upon that sum from the time when payment is due to the time of payment whether or not the nonpayment is excused.

(2) The rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment.

(3) The aggrieved party is entitled to additional damages if the non-payment caused it a greater harm.

Article 7.4.10 - Interest on Damages

Unless otherwise agreed, interest on damages for non-performance of non-monetary obligations accrues as from the time of non-performance.

Article 7.4.1 - Manner of Monetary Redress

- (1) Damages are to be paid in a lump sum. However, they may be payable in instalments where the nature of the harm makes this appropriate.
- (2) Damages to be paid in instalments may be indexed.

Article 7.4.12 - Currency in which to Assess Damages

Damages are to be assessed either in the currency in which the monetary obligation was expressed or in the currency in which the harm was suffered, whichever is more appropriate.

Article 7.4.13 - Agreed Payment for Non-Performance

- (1) Where the contract provides that a party who does not perform is to pay a specified sum to the aggrieved party for such non-performance, the aggrieved party is entitled to that sum irrespective of its actual harm.
- (2) However, notwithstanding any agreement to the contrary the specified sum may be reduced to a reasonable amount where it is grossly excessive in relation to the harm resulting from the nonperformance and to the other circumstances.

Annex III

ISO Currency Codes

	Currency	Code
CONGO, Democratic Republic of	Franc	CDF
COSTA RICA	Costa Rican Colon	CRC
COTE D'IVOIRE	CFA Franc BCEAO	XOF
CROATIA		
CUBA	Croatiana Kuna	HRK
CYPRUS	Cuban Peso	CUP
	Cyprus Pound	CYP
CZECH REPUBLIC	Czech Koruna	CZK
DENMARK	Danish Krone	DKK
DJIBOUTI	Djibouti Franc	DJF
DOMINICA	East Caribbean Dollar	XCD
DOMINICAN REPUBLIC	Dominican Peso	DOP
EAST TIMOR	Timor Escudo	TPE
ECUADOR	Sucre	ECS
EGYPT	Egyptian Pound	EGP
EL SALVADOR	El Salvador Colon	SVC
EQUATORIAL GUINEA	CFA Franc BEAC	XAF
ESTONIA	Estonian Kroon	EEK
ETHIOPIA	Ethiopian Birr	ETB
FALKLAND ISLANDS (MALVINAS)	Falkland Islands Pound	FKP
FIJI	Fiji Dollar	FJD
FINLAND	Markka	FIM
FRANCE	French Franc	FRF
GABON	CFA Franc BEAC	XAF
GAMBIA	Dalasi	GMD
GERMANY	Deutsche Mark	DEM
GHANA	Cedi	GHC
GIBRALTAR	Gibraltar Pound	GIP
GREECE	Drachma	GRD
GUATEMALA	Guatemalan Quetz	GTQ
GUINEA-BISSAU	Guinea-Bissau Peso	GWP
GUYANA	Guyan Dollar	GYD
HAITI	Gourde	HTG
HONDURAS	Lempira	HNL
HONG KONG	Hong Kong Dollar	HKD
HUNGARY	Forint	HUF
ICELAND	Krona	ISK
INDIA	Indian Rupee	INR
INDONESIA	Rupiah	IDR
IRAN, Islamic Republic of	Iranian Rial	IRR
IRAQ	Iraqi Dinar	IQD
IRELAND	Irish Pound	IEP
ISRAEL	Shekel	ILS
JAMAICA	Jamaican Dollar	JMD
ITALY	Italian Lira	ITL
JAPAN	Yen	JPY
JORDAN	Jordanian Dinar	JOD
KAZAKHSTAN	Tenge	KZT

	Currency	Code
KENYA	Kenyan Schilling	KES
KOREA, Democratic People's Republic of	North Korean Won	KPW
KOREA, Republic of	Won	KRW
KUWAIT	Kuwaiti Dinar	KWD
KYRGYZSTAN	Som	KGS
LAO People's Democratic Republic	Kip	LAK
LATVIA	Latvian Lats	LVL
LEBANON	Lebanese Pound	LBP
LESOTHO	Loti	LSL
LIBERIA	Liberian Dollar	LRD
LIBYAN ARAB JAMAHIRIYA	Libyan Dinar	LYD
LITHUANIA	Lithuanian Litas	LTL
LUXEMBOURG	Luxembourg Franc	LUF
MACAU	Pataca	MOP
MACEDONIA, The former Yugoslav Republic of	Denar	MKD
MADAGASCAR	Malagasy Franc	MGF
MALAWI	Kwacha	MWK
MALAYSIA	Malaysian Ringgit	MYR
MALDIVES	Rufiyaa	MVR
MALI	CFA Franc BCEAO	XOF
MALTA	Maltese Lira	MTL
MAURITANIA	Ouguiya	MRO
MAURITIUS	Mauritius Rupee	MUR
MEXICO	Mexican Nuevo Peso	MXN
MOLDOVA, Republic of	Moldovan Leu	MDL
MONACO	French Franc	FRF
MONGOLIA	Tugrik	MNT
MOROCCO	Moroccan Dirham	
MOZAMBIQUE	Metical	
	Kyat	MAD
	Namibian Dollar	MZM
		NAD
		NPR
MYANMAR		MMK
NEPAL	Nepalese Rupee	
NETHERLANDS	Netherlands Guilder	NLG
NETHERLANDS ANTILLES	Netherlands Antillian Guilder	ANG
NICARAGUA	Cordoba Oro	NIO
NEW ZEALAND	New Zealand Dollar	NZD
NIGER	CFA Franc BCEAO	XOF
NIGERIA	Naira	NGN
NORWAY	Norwegian Kroner	NOK
OMAN	Omani Rial	OMR
PAKISTAN	Pakistan Rupee	PKR
PANAMA	Balboa	PAB
PAPUA NEW GUINEA	Kina	PGK
PARAGUAY	Guarani	PYG
PHILIPPINES	Philippine Peso	PHP
POLAND	Zloty	PLZ
PORTUGAL	Portugese Escudo	PTE

	Currency	Code
QATAR	Qatari Rial	QAR
ROMANIA		
RUSSIAN FEDERATION		RUR
RWANDA	Rwanda Franc	RWF
SAMOA	Tala	WST
SAO TOME AND PRINCIPE	Dobra	STD
SAUDI ARABIA	Saudi Riyal	SAR
SENEGAL	CFA Franc BAO	XOF
SEYCHELLES	Seychelles Rupee	SCR
SIERRA LEONE	Leone	SLL
SINGAPORE	Singapore Dollar	SGD
SLOVAKIA (SLOVAK REPUBLIC)	Slovak Koruna	SKK
SLOVENIA	Tolar	SIT
SOLOMON ISLANDS	Solomon Islands Dollar	SBD
SOMALIA	Somali Schilling	SOS
SOUTH AFRICA	Rand	ZAR
SPAIN	Spanish Peseta	ESP
SRI LANKA	Sri Lanka Rupee	LKR
SUDAN	Dinar	SDD
SURINAME	Suriname Guilder	SRG
SWAZILAND	Lilangeni	SZL
SWEDEN	Swedish Krona	SEK
SWITZERLAND	Swiss Franc	CHF
SYRIAN ARAB REPUBLIC	Syrian Pound	SYP
TAIWAN, Province of China	New Taiwan Dollar	TWD
TAJIKISTAN	Tajik Ruble	TJR
TANZANIA, United Republic of	Tanzanian Schilling	TZS
THAILAND	Baht	THB
TOGO	CFA Franc BCEAO	XOF
TONGA	Pa'anga	TOP
TRINIDAD AND TOBAGO	Trinidad and Tobago Dollar	TTD
TUNISIA	Tunisian Dinar	TND
TURKEY	Turkish Lira	TRL
TURKMENISTAN	Manat	TMM
UGANDA	Uganda Schilling	UGX
UKRAINE	Karbovanet	UAK
UNITED ARAB EMIRATES	United Arab Emirates Dirham	AED
UNITED KINGDOM	Pound Sterling	GBP
UNITED STATES	US Dollar	USD
URUGUAY	Peso Uruguayo	UYU
UZBEKISTAN	Uzbekistan Sum	UZS
VANUATU	Vatu	VUV
VENEZUELA	Bolivar	VEB
VIET NAM	Dong	VND
YEMEN	Tekst Yemeni Rial	YER
YUGOSLAVIA	Yugoslavian Dinar	YUN
ZAMBIA	Kwacha	ZMK
ZIMBABWE	Zimbabwe Dollar	ZWD