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The ICC Madel Contract for the Turnkey Supply of an Industrial Plant

IGG

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**Foreword**



*By Maria Livanos Cattaui, Secretary General of !CC*

The purpose of this ICC mode! contract is to save resources for companies and their advisers by providing a balanced contractual framework that facilitates and shortens the negotiation process between parties negotiating the turnkey supply of an industrial plant.

The contract covers a particular category of turnkey contracts, i.e. contracts for the supply of a plant or production line to be erected within facilities which already exist or which are constructed by the purchaser. The ICC Commission on Commercial Law and Practice (CLP) is currently preparing a mode! "comprehensive" turnkey contract, which is more suitable for large civil works or for contracts for the supply of a plant where the contractor undertakes to supply a complete factory.

The publication follows extensive discussion within ICC 's Commission on Commercial Law and Practice (CLP), and particularly involving the Task Force on Turnkey Transactions, chaired by Prof. Fabio Bortolotti (Italy). Other task force members were: Cecily Davis (UK). Erik Dormaar (Netherlands), Bengt Kristrôm (Sweden) and jan Pieter Witsen Elias (Netherlands).

**1 ntroduction**

1 . THE TU RN KEY CONTRACT CONSIDERED IN THIS MODEL

This madel contract intends to caver a particular category of turnkey contracts, i.e. contracts for the supply of a complete plant or production line to be erected within facilities which already exist or which are constructed by the purchaser (or by a third party, for the purchaser's account). In other words, the madel refers to a contract which is called "turnkey" because itcomprises in principle whatever is necessary for a certain purpose (a complete production unit), but such "turnkey approach" is limited to the plant or production line, i.e. to the equipment necessary for manufacturing certain products, and does not extend to the items which "surround" the plant, such as buildings, supply of energy, etc., which remain outside the scope of the contract.

From this point of view, this turnkey con tract must be clearly distinguished from more comprehensive turnkey contracts which caver ali other items, like civil works, etc. The ICC is at present also preparing a madel of an ali-comprehensive turnkey contract, which is more suitable for large civil works or contracts for the supply of a plant where the contractor undertakes to supply a complete factory (including civil works, etc.).

The difference between the two types of turnkey contracts is substantial. While in a "full turnkey", the contractor undertakes to perform a work (i.e. to build a factory, a bridge, etc.). in the contract for the turnkey supply of a plant, the supplier's main obligation is to supply the equipment and to assist the purchaser during erection and start up, together with an overall warranty that the plant as a whole (and not only each single part of the equipment) will meet certain performance parameters.

A first consequence of this different approach is that the turnkey contract for a plant is mainly a contract for the sale of equipment, governed by the rules on sale con tracts, and particularly the United Nations Convention on the International Sale of Goods (CISG) 1, although with peculiar characteristics which are closer to a construction (works) contract (like the involvement of the supplier in erection, start up, etc. and the overail warranty of performance of the plant). In other words, this contract is main!y a contract for the sale of equipment, with accessory obligations regarding erection,

start up, training of personnel, etc. This is shawn *inter alia* by the fact that the con tract

priee mainly relates to the equipment and is normally paid (for the greatest part)

against delivery of the equipment.

Another important difference is that, while in the full turnkey contract the contractor will commonly have complete control and responsibility over the site until taking over, in the turnkey contract for the supply of a plant or production line, the supplier will

perform its obligations regarding assistance during erection, start up, etc. within facilities that are under the purchaser 's control: this is particularly the case when a line is to be instalied within an existing factory. Moreover, it is normal that the purchaser takes delivery of the equipment before erection and that consequently during the stage of erection, start up. etc., the purchaser contrais the equipment and bears the respective risk.

2. THE DRAFTING TECHNIQUES USED

Drafting a mode!of a contract which is not easy to standardise gives rise to a number of problems. The more the individual contracts differ from case to case, the more difficult it is to find common solutions that can be used for ali contracts of the same type.

The easiest way to overcome these problems is to recognise that it is impossible to draft a mode! and to invite the potential users to draft *ad hoc* contracts with the assistance of an experienced lawyer. The Task Force on Turnkey Transactions has decided not to adopt this approach and has tried to work out a flexible mode! that takes into account, to the greatest possible extent, the need for differentiation .

In arder to leave the greatest possible space to alternative solutions, many issues have been put in the annexes. In particular, the Task Force has worked out a Contract Schedule where a number of variable issues are mentioned and where the parties are given the opportunity to choose between different solutions and to fill in the points which are specifie to their contract.

Ali this implies, however, that the mode! cannot be used as such. It requires a number of adaptations in arder to take into account the actual needs of the parties and should consequently be drafted with the assistance of a lawyer specialised in this type of contract.

3. THE ENTRY INTO FORC E OF THE CONTRACT

Parties often make the entry into force of the contract conditional upon certain events, sorne of which are wholly or in part outside their control (e .g. government authorisations) and others not (e.g. advance payment or bank guarantee) .

The Task Force is of the opinion that the contract should come into force from the date of signature and that the events indicated above should only be conditions for the effectiveness of the contract.

Accordingly Article 3.1 provides that the contract is in force as of the date of signature, and the parties are obliged to take the necessary steps for its effectiveness (such as, for example, providing a bank guarantee or an advance payment). while the main obligations under the contract only arise at the commencement date, i.e. if and when the events listed in Contract Schedule B occur.

As regards the events which are necessary for the contract's effectiveness, the Task Force preferred not to use the ward "condition" since within sorne jurisdictions certain events (for example, the provision of an advance payment by a party) are not "conditions" in the legal meaning of such ward. In arder to avoid possible disputes that this might cause, a more neutra! term ("event") has been used.

It is, of course, up to the parties to decide which events must occur before the contract becomes effective: Contract Schedule C contains a list of possible options in arder to facilitate the drafting to suit the parties.

4. SHIPMENT OF THE EQUIPMENT

While, under the full turnkey contract, it is common that shipment of the equipment or other materials to the site remains an internai matter of the contractor, who undertakes to deliver the complete works at taking over, within the turnkey supply of a plant the normal solution is that the supplier first delivers the equipment to the purchaser and thereafter performs fur ther activities (supervision of erection, start up, etc.) with respect to such equipment.

In practice, there are two main options used:

1. shipment of the equipment to a port in the purchaser's country. and subsequent transportation by the purchaser to the site; or

2. shipment of the equipment to the site, where it is taken over by the purchaser.

In the first case the purchaser will take delivery of the equipment as per the selected Incoterm and provide for transportation to the site. This may cause problems if there is a risk that certain parts of the equipment could get !ost or deteriorate: although the risk of such loss or deterioration would be for the purchaser (if it can be proven that such events took place after delivery), the fa ct remains that the performance of the contract would be impossible until the missing or deteriorated parts were repaired and replaced. This is why in many cases a direct shipment to the site may be preferable.

It should be noted that the risk of loss or damage to the goods passes when delivery (according to the applicable Incoterm) occurs. So, for example, when using CIP (Cast Insurance Paid), the risk will pass when the goods are delivered to the first carrier; when using FOB or CIF, when they pass the ship's rail at the port of shipment; when using DDU (Delivered Duty Unpaid), when the goods are placed at the purchaser 's disposai at the place of destination.

This aspect is important because if goods are !ost or damaged before delivery, it will be the seller 's responsibility to replace them (and he will in principle be responsible for the delay caused by su ch replacement) , while in the case of loss after delivery. the purchaser will bear the consequences of such loss.

As regards the choice of the most appropriate Incoterm , Article 11.2 provides CIP (Cast Insurance Paid) as the "default solution". If the parties prefer another solution, they may make their choice within Schedule E.

5. THE VARIOUS STAGES OF PERFORMANCE OF THE CONTRACT

The turnkey supply of a plant is a complex operation which entails a number of stages. Although these may vary from contract to con tract, we can try to give a general overview of the most common way these contracts are carried out.

The supply of a plant implies, of course, the need for a description of the plant. Normally the supplier will prepare a very general description when submitting the offer and, if the contract is concluded, he will proceed to a more detailed design (layout) thereafter. Such layout will take into account the information provided by the purchaser and will define the purchaser's obligations regarding civil works, water and energy connections. etc.

Thereafter the supplier will produce the equipment (and/or purchase certain parts of it), which will be shipped to the purchaser (for further details see above, § 4).

When the equipment is at the site ready for erection, the purchaser will proceed to erect it under the supplier's supervision. The Task Force has considered in the mode! the most common option, i.e. that the various activities, such as erection, start up. etc., are carried out by the purchaser and that the supplier's task in this respect consists only in supervising such activity. This means that, in case erection and other activities (like start up) should be carried out directly by the supplier. the mode!should be modified accordingly.

After the erection stage, erection testing is to be carried out, under the supplier's supervision. The Task Force has avoided the use of the term "commissioning" because it was felt that, due to the rather different meanings given to this ward in practice, its use might create confusion. This is why erection testing, defined as "the running of every machine and/or group of machines of the plant with or without raw materials (as appropriate) in arder to check their correct erection and functioning" has been preferred .

When erection testing has been completed, the plant will be gradually put into operation and the purchaser's personnel will be trained in its use.

As saon as the plant has attained a sufficient production capacity, the Parties will proceed to the performance testing in arder to verify its capacity to reach the guaranteed performance.

If the performance testing is successful. the plant shall be taken over by the purchaser.

6. CONTRACT PRICE AND PAYMENT CONDITIONS

One aspect which cannat be standardised , because of the substantial differences from case to case, is that of the payment conditions.

The mode! only attempts to give, in Article 26, sorne general rules, applicable to the solutions the Parties may choose: so, for example, if the Parties choose a payment by documentary credit, Article 26.2 provides sorne default rules on the characteristics of the documentary credit. Along the same line, Article 26.4, contains provisions on interest due in case of delayed payment.

As regards specifie payment conditions, the extreme variety of schemes used in practice led the Task Force to conclude that the preferable approach would be to leave this for completion by the Parties, depending on their specifie requirements.

In many cases the purchaser makes an advance payment (against issue of a repayment guarantee by the supplier) and the remaining amount is paid against shipment of the equipment and issue of a performance guarantee, but the specifie conditions will vary substantially from case to case. Consequently, Schedule G has been left blank.

In arder to give the Parties sorne guidance when preparing the payment conditions, sorne typical examples have been put in Appendix 1.

7 . NON -PERFORMANC E AND ITS CONSEQUENCES, AND PARTICULARLY CONTR ACT TERMINATION

As a general principle of law, non-performance of the con tract by a party gives the other party the possibility of suspending performance, requesting damages, and if non­ performance implies a material breach , terminating the contract.

However, in the context of this particular contract, termination by the purchaser may

- especially if it takes place when the equipment has been already manufactured, delivered and erected - cause disproportionate damages to the supplier. In fact the extreme consequence of termination, i.e. that the supplier should dismantle and take back the plant and give back the money, would in most cases imply for the supplier a Joss much higher than the contract priee. Considering that the equipment is frequently tailor-made and cannat be resold to others and that the dismantlement and transport costs can be very important, a termination at this stage could imply unreasonably high !osses for the supplier.

On the other hand, the purchaser must be protected against the risk of being forced to keep a plant that does not fulfil its reasonable expectations. If the plant does not

correspond to what the purchaser was entitled to expect, he must retain the right ta terminate the contract and get back his money.

The madel contract attempts ta reach a warka ble compromise between the positions of the Parties by admitting the possibility of a contract termination under special circumstances and by limiting the effects of terminatian ta obligations which are still ta be performed (see Article 30.4).

Only in the extreme case, where the plant does not reach the minimum guaranteed performance, will the purchaser be entitled ta terminate the contract with retroactive effect, i.e. ta require the supplier to dismantle and take back the equipment and ta return the priee ta the purchaser.

Of course, in ali other cases, the party terminating the contract in case of default by the other party will retain the right ta recover damages within the maximum limits fixed in the contract (and even over these limits, if the default by the other party amounts ta fraud or wilful misconduct: see Article 32.3).

8. FORCE MAJEURE

As regards force majeure, the madel contract has incorporated the ICC Force Majeure

Clause 2003.

In certain cases, the parties may wish ta make an exception with respect ta acts of authority by expressly exclu ding that acts of authority, laws, regulations, etc. of the country where the plant is ta be erected (which will normally also be the purchaser's country) should be considered as force majeure for the purchaser. This is in arder ta prevent the purchaser from invoking events which, although outside his control, may be considered as being part of his risk area. In such cases, the parties can add ta Article 33 the following paragraph:

Exception. It is expressly agreed that the Purchaser accepts the risk of any impediments due ta acts of authority, laws, governmental orders, etc. - as described in paragraph 33.3, (d) - of the authorities of the Country and is consequently not entitled ta invoke this force majeure clause in case of occurrence of such impediments, unless the aforesaid impediments are caused by circumstances occurring outside the Country.

9. APPLICABLE LAW

The madel form has been based on the assumption that it will not be governed by a specifie national law, but only by the provisions of the con tract itself and the principles of law generally recognised in international trade as applicable ta contracts for the

turnkey supply of a plant (also called "lex mercatoria"). The purpose of this solution is that the rules of this mode! form can be applied in a uniform way to suppliers and purchasers of different countries, without giving one party the advantage of applying its national law.

Of course, this solution, while avoiding the particularities of nationallaws, gives a wider discretionary power to the arbitra tors, since it is based (at !east for matters not expressly governed by the contract clauses) on very general principles.

The Task Force is of the opinion that the possible disadvantage resulting from the application of rather flexible and general ru!es is counterbalanced by the grea ter certainty of a uniform set of contractual rules and by the reference to the CISG as weil as to set of general rules on contracts, like the Unidroit Principles of International Commercial Contracts2 , which offer a reasonably foreseeable legal framework for most issues which may arise.

With regard to the Unidroit Principles, it should be borne in mind that according to Article 36 A they apply only to the extent they do not conflict with general principles, trade usages and CISG, since Article 36A puts the various sources incorporated by reference in the following hierarchical order: contract clauses, general principles, CISG, trade usages, Unidroit Principles3 •

This also implies that, even when the Unidroit Principles provide that certain of its rules are mandatory, such rules will not prevail over the contractual clauses, general principles or trade usages.

In any event, if the parties wish to have their contract governed by a specifie national law, they may use the alternative set forth in Article 36 B. In such a case, they should check carefully whether any provisions of the mode!form viola te manda tory provisions of the national law they have chosen4 • The choice of submitting the contra ct to a national law is preferable if parties submit the contract to the jurisdiction of ordinary courts instead of arbitration, since it is highly unlikely that national courts would accept to consider general principles, "lex mercatoria" and the like as the governing law of the contract.

1 O. LOCAL RULES RELEVANT FOR THE PERFORMANCE OF THE CONTRA CT

The problem of the law applicable to the contract, i.e. the law governing the respective obligations of the contrac ting parties, should not be confused with the need to respect rules and regulations applicable at the site (e.g. with regard to security regulations on the site, maximum labour time, etc.).

It is obvious that, when carrying out certain services on the site, the supplier (and his personnel) need to comply with the mandatory rules of this type.

Another aspect which may be relevant is the compliance with local rules fixing certain requirements for the equipment (e.g. safety provisions) . Article 4.7 of the mode!states in this respect the supplier 's obligation to comply with the rules existing in the country where the site is located. If the supplier is unable to get informed about such rules, the contract may provide an obligation of the purchaser in this respect.

11. JURISDICTION AND ARBITRATION

Since the mode!form is a set of uniform contractual rules, avoiding (as far as possible) the direct application of conflicting domestic legislation, it is appropriate that possible disputes be resolved by a uniform resolution system organised on an international leve!.

From this point of view the best solution appears to be international commercial arbitration (see particularly Article 37.2-A), which permits a truly international approach not favouring one of the Parties.

However, the Parties may also have recourse to national courts by choosing Article

37.2, alternative B. As said before, this solution should be avoided if reference is made ta "lex mercatoria" , general principles, etc.

**FOOTNOTES**

The text of the United Nations Convention on the International Sale of Goods (CISG) can be found in Appendix 1 .

2 The text of the Unidroit Principles can be found in Appendix Il.

3 This solution takes into account that a limited number of provisions of the Unidroit Principles may not actually renect the expectations of international trade. This may be the case with respect to certain rules which protect the disadvantaged party to an extent tha t goes beyond the standards that are usual in business ta relations: see. for instance, Article 3.10 on gross disparity (particularly as concerns the end of the sentence in para 1(a). where reference is made ta " the improvidence, ignorance, inexperience or lack of bargaining skili" of a party in arder tajustify contract avoidance) and the rules on hardship contained in Ar ticles 6.2.1·6.2.3.(particularly with regard to the rule authorising courts ta modify the contrac t terms). With respec t ta such rules, general principles of law and trade usages will prevail over the Unidroit Principles. Of course. parties may a lso expressly exclude the application of specifie provisions of the Unidroit Principles that they consider inappropriate.

4 lt should in any case be considered that, even if no choice of a national law has been made. internationa lly mandatory rules (i.e. rules which would be applicable independently from the applicable law: sa called "lois de police") of a national law having a close connection with the contract may be applicable in certain circumstances under Article

36.2.

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**ICC Madel contract for the turnkey supply of an industrial plant**

**Between**

*(hereafter "the Supplier")*

**and**

*(hereafter "the Purchaser")*

**WHEREAS**

• the Purchaser desires to acquire on a turnkey basis a plant whose -technical characteristics and guaranteed performances are set out in Annex **1;**

• the Supplier has the necessary skill, know-how and resources for the design, supply, installation, testing, start up and operation of plants of the type set out in Annex 1.

**IT IS AGREED AS FOLLOWS**

**Chapter 1**

General clauses

**Article 1 Definitions**

The terms defined in this Article shall have the meanings indicated hereunder. Battery Limit

means the borderline indicated as such on the Layout drawings. Commencement Date

means the date on which the obligations to perform the work commence, according to Article 3.2.

Confidential Information

means confidential information as defined in Article 34.1. Contract

means this document, together with the attachments and subsequent alterations and additions agreed in writing. as defined more precisely in Article 35.

Contract Priee

means the priee set out in Article 25.1 for the provision of the Plant (including the supply of ali the goods and services which are indicated in Article 4.2 of this Contract), subject to such additions or deductions as may be made under the provisions of the Contract.

Country

means the country where the Plant is to be installed. Defect

means any non-conformity of the Plant as defined in Article 31.

Equipment

means any or ali of the items of equipment (machinery, materials, components, spare parts, etc.) which the Supplier undertakes to supply under this Contract as more particularly set out in Annex 2.

Erection

means ali mechanical erection, electrical and instrumentation installation, insulation, etc. which is necessary for putting the Plant in a condition to perform Erection Testing.

Erection Certificate

means the certificate referred to in Article 20.1.

Erection Equipment



means any machinery, tools and other equipment, lifting and transport equipment, power, water, raw materials, facilities and aids and any other matter reasonably necessary for the Erection, Start Up and Performance Testing and any other operations which are to be performed before Taking Over.

Erection Testing

means the running of every machine and/or group of machines of the Plant with or without raw materials (as appropria te) in arder to check their correct erection and functioning.

Guaranteed Performance

means the production parameters of the Plant specified in Annex 1-B. Incoterms

means the trade terms issued by the International Cham ber of Commerce as in force

at the date on which this Contract is signed. Layout

means the layout of the Equipment constituting the Plant indicating the Battery

Limits, as established by the Supplier according to Article 8. Minimum Performance Levels

means the minimum performance parameters specified in Annex 1-C below which

Taking Over shall not take place. Party

means either the Supplier or the Purchaser, and together the Parties.

Performance Test Procedures

means the procedures and prescriptions to be observed during Performance

Testing, as specified in Annex 9. Performance Testing

means the operation of the Plant intended to demonstrate that the Plant, when used in production, reaches the performance and other characteristics as guaranteed in this Contract, according to Article 22.

Plant

means the production unit which is the subject-matter of this Contract. Products

means the products to be manufactured with the Plant.

Project Representative

means the representative of either Party nominated in accordance with Article 6.4.

Site

means the premises where the Plantis to be installed in accordance with this Contract, as defined in Contract Schedule A.

Site Representative

means the persan who represents either Party on the Site, the authority and functions of whom are described in Article 6.4.

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Start Up

means the stage during which the Plant is gradually put into production for the purpose of testing its correct operation, which stage ends with the completion of the Performance Testing.

Taking Over

means the moment when the Plant is deemed to be fully accepted by the

Purchaser according to Article 23.1. Taking Over Certificate

means the certificate referred to in Article 23.2. Technical Documentation

means the documentation regarding the Equipment, Erection, operation and maintenance of the Plant, to be provided by the Supplier, which is listed in Annex 4.

Time Schedule

means the Time Schedule defined in Article 7.1, as may be altered according to

Article 7.2.

**Article 2 Good faith and fair dealing**

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2 .1 Good faith in performing the Contract. In carrying out their obligations under this Contract the Parties will act in accordance with the principles of good faith and fair dealing.

2. 2 Good faith in interpreting the Con tract. The provisions of this Con tract, as weil as any statements made by the Parties in connection with it, shall be

interpreted in good faith.

**Article 3**

**Entry into force of the Contract**

3.1 Entry into force. This Contract shall enter into force on the date of signature by bath Parties.

The Parties will undertake ali necessary steps for facilitating the occurrence of the events indicated in Article 3.2.

3. 2 Commencement Date. The Commencement Date shall be the date on which the latest of the events listed in Contract Schedule B has occurred. If no event has been listed in Contract Schedule B, the Commencement Date shall be the date of signature of this Contract.

3. 3 Non-occurrence of the Commencement Date. If the Commencement Date has not occurred, according to Article 3.2, within six (6) months from the date of signature (or within such other term as may be agreed between the Parties: see Contract Schedule C), either Party may terminate the Con tract by written communication to the other Partyt .

**Article 4**

**Subject matter and scope of the Contract**

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4. 1 Scope. The purpose and subject matter of this Contract is the supply, on a turnkey basis, of an industrial plant as described in Annex 1.

4. 2 Supplier's obligations. The turnkey supply of the Plant comprises the following: (a) the design and engineering of the Plant;

(b) the preparation of the Layout of the Plant, according to Article 8; (c) the supply of the Equipment specified in Annex 2-A;

(d) the supply of the Technical Documentation specified in Annex 4;

(e) the supply of spare parts and consumables as specified in Annex 2-B and 2-C;

(f) the supervision of Erection, Erection Testing, Start Up and Performance Testing of the Plant, as specified in Articles 18 to 22;

(g) the training of Purchaser's personnel in accordance with Article 24;

(h) the supply of product know-how, according to the license contained in Annex

12, if the Parties have filled in such Annex.

4 . 3 Scope of Purchaser's work. The Purchaser shall provide:

(a) ali civil works, including but not limited to buildings, roads, foundations;

(b) the supply and setting up of general services such as main branches up to the

Battery Limits for electricity, water, etc;

(c) the Erection Equipment and personnel necessary for Erection, Erection Testing, Start Up, and Performance Testing, as defined in Annex 8.

4 . 4 Guaranteed Performance. The Supplier guarantees that the Plant, once erected and started up in conformity with this Contract, will have the performance characteristics specified in Annex 1. It is agreed that the successful completion of the Performance Test in conformity with the requirements specified in this Contract, means that the Supplier has fulfilled its obligation to guarantee the performance, as indicated in this paragraph.

4.5 Purchaser's general obligation to observe Supplier's instructions. The Guaranteed Performance and, more generally, ali guarantees given by the Supplier with respect ta performance and operation of the Plant are conditional upon the observance by the Purchaser of the following obligations:

(a) the Purchaser must follow the instructions and procedures specified by the

Supplier;

(b) the materials used for production and/or maintenance must fulfil the requirements stipulated by the Supplier. In case of dispute, the Purchaser must supply samples and allow testing;

(c) the management, operation and maintenance of the Plant must be in accordance with the written instructions and procedures given by the Supplier and the information provided during the training.

4. 6 Complete Plant. The Supplier guarantees that the Plant has been designed with due care and that it includes everything which is patently necessary for the Plant to provide the operating characteristics as defined in the Contract and for obtaining the Guaranteed Performance. The Plant does not include items which are outside the Battery Limit.

4. 7 Laws, regulations. The Plant shall be designed and manufactured in accordance with the legislative requirements in force in the Country at the date of signature of this Contract and in accordance with the standards specified, if any, in Annex 1. In case of a change of such legislative requirements after the date of signature of this Contract, and before Taking Over, the Supplier shall be obliged to conform to this change and the Purchaser shall be obliged to pay the additional costs related therewith and shall accept any consequent time extension.

4.8 Purchaser's duty to cooperate. The Purchaser shall take ali reasonable steps in arder to assist the Supplier in performing its obligations under this Contract.

The Purchaser shall obtain import permits and/or licenses required for any part of the Equipment in accordance with the applicable Incoterm and, to the extent applicable, building permits and operating permits. The Purchaser shall, at the Supplier's request, assist the Supplier in obtaining (temporary) import permits and/ or licenses for Supplier's Erection Equipment, visa and/or work permits required in the Country for Supplier's personnel and any further authorisations, consents and/ or approvals necessary for the performance of this Contract in the Country. The Purchaser shall obtain such permits and licenses, or render such assistance within the time limits stated in the Time Schedule or, if not so stated, within reasonable time having regard to the time for delivery of the Equipment and the time for Erection and Start Up.

**Article 5 Alterations and additional work**

5.1 Non-substantial alterations. The Supplier is entitled until Taking Over to make any non-substantial alterations and additions to the Plant. Non-substantial alteration means any modification or addition which does not affect the characteristics of the Plant , its Guaranteed Performance and the time for completion of the Supplier's obligations in accordance with the Time Schedule and which does not entail charges or costs for the Purchaser.

The Supplier must notify the Purchaser in writing of the proposed modifications and shall be entitled to carry them out if the Purchaser does not abject within fifteen (15) days from the date of receipt of such notification.

The Purchaser shall not unreasonably withhold its consent.

5. 2 Alterations requested by the Purchaser. The Purchaser may at any moment before Taking Over request such alterations or additions ta the Plant which he considers appropriate and which had not been considered when negotiating the Contract. In such case the Supplier shall submit an estimate of the cost variations and the possible implications with respect to the Time Schedule and the Guaranteed Performance, and the Purchaser will decide if it wants ta accept such conditions. If the Purchaser does not accept the Supplier's proposais, the Purchaser shall reimburse the Supplier the reasonable costs for preparing the estimate at its request.

**Article a Assignment - Subcontractors - Parties' representatives**

6.1 Prohibition of assignment. Neither Party is entitled ta assign this Contract without the previous written agreement of the other Party.

6 . 2 Sub-contractors and sub-suppliers. The Supplier has the right to sub-contract any part but not ali of this Contract to sub-contractors and to purchase any Equipment from third parties. Sub-contractors or sub-suppliers mentioned in Annex 3 cannat be changed without the Purchaser's approval, and such approval shaH not be unreasonably withheld or delayed.

6.3 Liability for sub-contractors or sub-suppliers. The Supplier is Hable to the Purchaser for goods, work and other undertakings as supplied by a sub-contractor or sub-supplier.

6.4 Project Representative and Site Representative. Each Party will nominate within thirty (30) days from the date of signature of this Contract a Project Representative and a Site Representative. Nominations of each Party must be notified to the other Party in writing.

The Project Representative shall be authorised during the period up to Taking Over to take decisions on behalf of the respective Party with regard ta the performance of the Contract.

The Site Representative shaH have the authority to take, on behalf of the respective party, ali decisions of a technical nature regarding the activities to be performed on the Site.

The Project Representative and the Site Representative must be fluent in English and/or other languages, as may be agreed upon between the Parties.

**Article 7 Time schedules and co-operation**

7.1 Time Schedule. The Time Schedule, which is attached hereto as Annex 5, specifies the dates for the performance by the Parties of the main obligations under this Contract.

7 . 2 Alterations to the Time Schedules. Save for extensions of time due to force majeure under Article 33, it is agreed that, if either Party

(a) does not comply with the dates specified in the Time Schedule for its obligations;

(b) does not perform in a timely manner any obligation upon which the performance of the other party's obligations is conditional; or

(c) otherwise causes situations which delay the timely performance (e.g. by

requiring alterations or modifications to the Layout),

the deadlines for performance by the other Party shall be automatically extended, to the extent they have been influenced by the above-mentioned circumstances. In such case. the Parties will agree as saon as possible upon the corrections to be made to the Time Schedule.

**FOOTNOTE**

1 The right to terminael the contract does not of course prevent the Parties from renegotiating the contrac t terms

(e.g. priee. payment conditions. etc.) .

**Chapter 2**

Supply oftechnical documentation, equipment and spare parts

**Article 8 Layout**

8.1 Layout. The Purchaser will transmit as saon as possible (and in any case not later than within thirty (30) days after the Commencement Date) the information as set out in Contract Schedule D, which is necessary for the preparation of the Layout. Within thirty (30) days, or such other period as agreed by the Parties, from receipt of such information the Supplier will provide the Purchaser with the Layout. If the Purchaser does not abject in writing within fifteen (15) days from receipt of the Layout, such Layout shaH be final.

8. 2 Corrections to the Layout. If the Purchaser ascertains that the Layout of the Plant does not conform to the indications given to the Supplier oris incomplete, it will return the respective documentation together with its observations to the Supplier within 30 days from receipt of the Layout. The Supplier shall make the necessary corrections within 15 days and will send the corrected Layout to the Purchaser at its own expense.

If the Purchaser abjects in writing within 15 days from receipt of the corrected Layout to the Supplier, then the Parties' representatives shall convene within 15 days to agree on the final Layout.

**Article 8 Technical Documentation**

9.1 Technical Documentation to be provided by the Supplier. The Supplier will provide the Purchaser with the Technical Documentation, which is listed in Annex 4 in accordance with the timing set out in such Annex and in the Time Schedule.

9.2 Corrections to the Technical Documentation. If an error or omission in the Technical Documentation is discovered before Taking Over, any additional cast for work or material resulting from the error or omission shaH be for the account of the Supplier. However, if errors are caused by inaccurate or incomplete information from the Purchaser, the Purchaser shall reimburse the Supplier for ali costs incurred in this respect.

9. 3 Use of Technical Documentation. The Technical Documentation can be used only for the purpose of operating and maintaining the Plant.

**Article 10 Supply of the Equipment**

10.1 Deadlines for shipping. The Supplier agrees ta ship the Equipment, in accordance with Article 11 hereunder, within the deadlines set out in the Time Schedule.

10.2 Storage. If the shipment cannat be effected at the date defined in the Time Schedule due to reasons for which the Purchaser is responsible, the Supplier shall be entitled ta store the Equipment at the Purchaser's risk and expense in suitable

premises.

**Article 11 Shipment - Packing - Marking**

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11.1 Reference to Incoterms. Any reference to trade terms in this Contract is deemed ta be a reference ta the lncoterms.

11.2 Shipment. Unless otherwise agreed (particularly in Contract Schedule E), the Supplier will deliver the Equipment according to the Incoterm "Carriage and Insurance Paid to" (CIP) . In case the Parties have not specified otherwise in Contra ct Schedule E, the Site will be the named place of destination.

11.3 Packing. The Supplier will provide, at its expense, such packing as is usual for the respective Equipment and is suitable for the agreed means of transportation and for the foreseeable conditions of storage at the destination.

11.4 Marking - Packing list and other documents. Details regarding marking, packing list and other documents are contained in Contract Schedule E.

11.5 Transfer of risk. The risk of Joss or damage to the Equipment will be transferred to the Purchaser in accordance with the applicable Incoterm.

**Article 12 Taking delivery of the Equipment**

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12.1 Taking delivery of the Equipment. The Purchaser shall take delivery of the Equipment at the agreed place of destination. If the place of destination is other than the Site (e.g. a port in the Country), the Purchaser shall be responsible for the transportation from such place of destination ta the Site.

12.2 Examination of the Equipment. The Purchaser shall examine the Equipment at the place where he has to take delivery as saon as possible and in any case not later than ten (10) days after the Equipment arrives at the place of destination.

The Purchaser shall, in particular, check that the packing is not damaged and that ali the Equipment indicated in the respective shipping lists has been received and has not been damaged.

12.3 Notification. The Purchaser shall notify the results of the above examination of the Equipment, by registered letter with return receipt or by fax followed by registered letter with return receipt or by courier, within ten (10) days of the examination.

12.4 joint examination of the Equipment at arrivai. The Supplier is entitled to take part, through a representative, in the examination indicated in Article 12.2. If the Supplier informs the Purchaser that it desires to take part in such examina tian, the Purchaser shall give timely notice of the arrivai of the Equipment and the date fixed for the examination. In case of joint examination the Parties will make a protocol indicating the results of such examination, which protocol will be signed by both Parties. Such protocol replaces the notification indicated under Article 12.3.

12.5 Missing or damaged Equipment. If it appears that certain Equipment is missing or damaged:

(a) the Purchaser shall attempt to limit the damage by taking suitable measures;

(b) the Purchaser shall not return, or attempt to repair the Equipment without the

Supplier's prior written consent;

(c) the Parties shall consult each other in arder to agree upon the repair or replacement of missing or damaged Equipment and to evaluate the impact of such occurrence upon the Time Schedule. If it is not clear from the circumstances that the loss or damage is the Supplier's responsibility (or that it occurred before the risk passed to the Purchaser), the Purchaser shaH bear the cost and risk relating to the above repair or replacement, provided that if it should subsequently be determined that the Supplier was responsible, the Supplier shall reimburse the above costs;

(d) the Purchaser shaH immediately notify the event of loss or damage both to the insurance company as indicated in the transportation insurance policy, if any, and to the carrier; and give notice thereof without any delay to the Supplier.

**Article 13 Spare parts, raw materials and components**

13.1 Spare parts. The spare parts indicated in Annex 2-B are included in the Contract

Priee.

13.2 Cost of spare parts. Any further spare parts may be supplied, on request of the Purchaser, at the priee in force at the time of receipt of the request, for a period of 10 years from Taking Over.

**Chapter 3**

Erection, testing, taking over and training

**Article 14 Obligations of the Parties**

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14.1 Scope of Supplier's obligations. The Supplier undertakes to supervise the Erection, Erection Testing, Start Up and Performance Testing, as set out in detail hereafter.

14.2 Purchaser's personnel. The Purchaser shall provide the Supplier, for ali the time that it is necessary, sufficient qualified personnel for the performance of the activities indicated in Article 14.1 hereabove. The number and the qualifications of such personnel are specified in Annex 8-C; however, should it appear that the personnel indicated in Annex 8-C are not sufficient, the Purchaser will provide such further personnel as appears to be necessary.

14.3 Preparatory work. The Purchaser shali complete, within the deadline fixed in the Time Schedule for starting the . Erection, ali works, foundations, utility connections for which it is responsible, as provided in the Layout, and will provide any supplies that are not at the Supplier's charge as weil as whatever may be necessary for the Erection.

14.4 Storage of the Equipment. The Purchaser will store ali received Equipment at the Site (or at another place of its choice) at its risk and expense in premises that are adequate for preserving the Equipment from any loss, damage or deterioration.

14.5 Erection Equipment. The Parties will provide in a timely manner the Erection

Equipment and services in accordance with Annex 8-A and 8-B.

14.6 Telephone and fax connections. The Purchaser shall provide international telephone and fax connections to areas outside the Country.

**Article 15 Management of the Site**

*Parties*

15.1 Responsibilities of the Parties with respect to operations at the Site. The Purchaser shali be responsible for the working conditions and for maintaining order on the Site, and for the care, custody and safekeeping of the Equipment and ali other goods which are at the Site.

The Supplier shaH be responsible for the supervision during the stages from the start of Erection until Taking Over. The Supplier's Site Representative shall be responsible for ali questions regarding the timing and operation during Erection, Start Up and Performance Testing.

The Purchaser shaH ensure that its personnel and its contractors act in accordance with the reasonable instructions of the Supplier's Site Representative. Any possible disagreement between the Parties shaH be noted in the work diary indicated in Article

15. 2 hereunder.

15.2 Work diary. The Site Representatives will, during the periad from the commencement of Erection un til Taking Over, keep a work diary on which they willjointly record, in chronological arder, ali the activities which have been performed, any substantial facts which may influence the progress of the operations, and the hours spent by each member of Supplier's personnel. The work diary will be signed every day by the Site Representatives of the Parties (or by their authorised representatives).

15.3 Interpreter. During the stay of Supplier's personnel in the Country, the Purchaser shall make available, on the request of the Supplier, an interpreter fluent in English and the dominant language of the Country.

**Article 18 Supplier's personnel**

16.1 Number of persans and duration. The Supplier will provide its technical personnel for the performance of the activities indicated in Article 14.1. The number of persans and periods of stay are indicated in Annex 7-A. The Supplier warrants that the manpower indicated above is sufficient, under normal conditions, for providing the services that are indicated in Article 14.1.

16. 2 Additional manpower. Should it appear necessary to provide Supplier's technical personnel at the Site for periods of time which exceed those indicated in Annex 7-A, the Supplier shaH make available such personnel, at the Purchaser's request, as saon as available. To the extent the need of such additional manpower is due to reasons for which the Supplier is not responsible, the Purchaser shaH pay for each additional man/day of such personnel the dai!y fees indicated in Annex

7-B. Such daily fees will be invoiced monthly to the Purchaser and will be paid by the latter before the end of the month following the month of the respective invoice.

**Article 17 Travel and lodging expanses of Supplier's personnel**

17. 1 Travel expenses. Travel expenses of Supplier's personnel from the Supplier 's business place to the Site will be for the Supplier 's account. Local travel expenses between the place where the personnel is lodged and the Site will be borne by the Purchaser.

17.2 Living expenses. The Purchaser will directly pay ail living expenses (board and lodging, etc.) incurred by Supplier's personnel in the Country.

**Article 18 Erection**

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18.1 Notice of availability and confirmation by Purchaser. Not later than thirty (30) days before the deadline indicated in the Time Schedule for the commencement of Erection, the Supplier shall notify the Purchaser of the date on which the Erection shall start. The Purchaser shall confirm without delay, and in any case with an advance of at !east fifteen (15) days the date of commencement of Erection, that it is rea dy to start Erection and that the Erection Equipment, services and personnel specified in Annex 8 will be available before such date.

18.2 Personnel present at the Site. The Supplier shall ensure that its Site Representative and such other personnel as may be necessary for the preparation of the Erection are present at the Site in due time. The remaining personnel shall be present as required.

18.3 Preparation of the Erection. Before starting Erection the Site Representatives will jointly check that:

(a) the Equipment to be erected is at the Site and is ready for installation;

(b) ali preparatory works, connections, etc., have been completed according to the Layout and possible updating of the same; and

(c) ali skilled personnel, as necessary for the Erection, are available.

18.4 Commencement of the Erection. The Erection shall be deemed to have started when the Parties sign a protocol stating that ali the conditions for commencing the Erection are me t. The Parties may however decide to commence Erection also in case sorne of the above conditions are not met, provided such fact is mentioned in the protocol, together with an indication of the measures to be taken in order to remedy the unmet conditions.

18.5 Carrying out of the Erection. The Erection will be carried out by the Purchaser's personnel under the supervision and guidance of the technical personnel of the Supplier.

The Supplier is entitled to inspect and check at any time the performance of the

Erection and to give reasonable instructions to the Purchaser's personnel.

**Article 19 Erection Testing**

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19.1 Commencement of Erection Testing. As saon as the Erection has been completed, the Supplier will notify the Purchaser, at !east fifteen (15) days in advance, of the date of commencement of the Erection Testing.

19.2 Performance of Erection Testing. The Erection Testing shali be carried out by the Purchaser's personnel under the supervision of the Supplier.

The Purchaser shall put at the Supplier's disposai, for the whole period of Erection Testing, whatever is necessary for its performance, such as skilled personnel, tools, spare parts, energy. raw materials, etc.

19.3 Completion of Erection Testing. When Erection Testing has been completed to the Supplier's satisfaction, the Supplier shall so notify the Purchaser in writing.

**Article 20 Erection Certificate**

20.1 Drawing up of the Erection Certificate. Immediately after the notification under Article 19.3, the Parties will inspect the Plant and will jointly draw up an Erection Certificate stating the completion of the Erection. The Erection Certificate shali in particular indicate:

(a) that the Supplier has provided ali Equipment to be delivered in accordance with the Contract; and

(b) that the Plant has been correctly erected and that ali the Equipment operates correctly from the mechanical and electrical point of view.

20.2 Defaults or deficiencies. Should the above inspection reveal any defaults or deficiencies which do not allow the Start Up, the Party responsible for such deficiencies shall remedy them within the shortest possible time, and a new inspection shall be carried out before drawing up of the Erection Certificate. Minor defaults or deficiencies that do not hinder the Start Up shall not delay the drawing up of the Erection Certificate, but they shall be mentioned in the Erection Certificate, together with the indication of the deadlines and actions that the defaulting party will take to remedy them.

20.3 Completion of Erection Testing in absence ofthe Purchaser. If the inspection and/or Erection Testing are not carried out, and the Erection Certificate is not issued within thirty (30) days after the date of completion of the Erection Tes ting indicated in Article 19.3, due to the absence of the Purchaser's Representatives or for any other reason for which the Purchaser is responsible, the Erection shaH be deemed to be completed when such 30-day term expires, and the Supplier will be entitled to draw up the Erection Certificate without the Purchaser's participation.

**Article 21 Start Up of the Plant**

21.1 Commencement of Start Up. When the Erection Testing has been completed the Supplier shall commence the Start Up.

21. 2 Operation of the Plant during Start Up. During the Start Up the Supplier shall be responsible for the technical operation of the Plant, and will operate the technical process with its supervisory personnel together with the Purchaser's operators. The Purchaser shall instruct its personnel diligently to observe ali the directions given by the Supplier's supervisory personnel.

21.3 Purchaser's obligations during Start Up. During the Start Up period the Purchaser shall make available its operating personnel, tools, energy, raw materials indicated by the Supplier, spare parts and whatever else may be necessary for the correct operation of the Plant.

**Article 22 Performance Testing**

22.1 Commencement of the tests. When the Supplier considers that the Plant is ready for Performance Testing, it shall notify the Purchaser in writing of its intention to start the Performance Testing and will indicate the date on which such testing can be commenced. Within ten (10) days from receipt of the above notice, the Purchaser shall name its representatives to witness the Performance Testing. If the Purchaser does not fulfil the above obligation, the Performance Testing may start at the notified commencement date without the witnessing of Purchaser's Representatives.

22.2 Performance of the tests and protocol. Performance Testing will be carried out in accordance with the Performance Test Procedures set out in Annex 9 and, with respect to matters not indicated in such document, in accordance with the standards and principles normally applied in test runs for plants of a similar kind.

The Supplier shall draw up a protocol that will report ali the results of the tests and which will be signed by bath Parties. If there is disagreement between the Parties about the successful completion of the Performance Testing, the Site Representatives will state their respective point of view in the protocol.

22.3 Repeated Performance Testing. If testing reveals that the Plant does not meet the Guaranteed Performance, the Supplier shall without delay take ali necessary steps to correct such deviation. If the deviation is not insignificant, new testing will be carried out within a reasonable time at the request of either party, with respect to the portion of the Plant that did not meet the Guaranteed Performance.

22.4 Time-limit for Performance Testing. In any case the Performance Testing must be completed within sixty (60) days, or such other period as may be agreed in writing by the Parties, from the date on which Start Up has commenced. If it has not been possible to carry out the Performance Testing, or the repeated Performance Testing, within the above time-limit, for reasons for which the Purchaser is responsible, such time limit shall be extended for a further sixty (60)

days. If after such further time limit no Performance Testing has been carried out, and provided this is due to reasons for which the Purchaser is responsible, the Performance Testing shaH be considered as having been successfully carried out at that date.

22.5 Modifjcations, additions and repairs. The Supplier shall, during the time from completion of the Erection to Taking Over perform, at its expense, ali repairs, modifications, replacements and additions to the Equipment that are necessary for the purpose of attaining the Guaranteed Performance and respecting the Supplier 's obligations under this Contract.

**Article 23 Taking Over**

23.1 Taking Over. The Plant shall be deemed to have been taken over by the

Purchaser, and Taking Over is deemed therefore to occur at the time when:

(a) the Performance Testing has shown that the Plant can attain the Guaranteed

Performance; or

(b) the repeated Performance Testing has shown that the Plant has attained the

Minimum Performance Levels; or

(c) the Performance Testing has not been carried out within the time limit of Article

22.4 for reasons for which the Purchaser is responsible.

23. 2 Taking Over Certificate. Within five (5) days from the date on which Taking Over has occurred, the Purchaser shall issue the Taking Over Certificate conforming to the form in Annex 11 to confirm Taking Over in accordance with Article 23. 1. In the event that the Purchaser has not so issued the Taking Over Certificate notwithstanding that Taking Over has occurred in accordance with Article 23.1, the Supplier shaH issue the Thking Over Certificate and submit it to the Purchaser.

23.3 Minor adjustments, etc. Deviations from the agreed operating characteristics, together with other deficiencies or shortcomings in the Plant, including but not limited to those specified in the protocol mentioned in Article 20. 2, that can be rectified by means of minor adjustments or additions and do not hinder the Plant from being operated in accordance with the Contract, shaH not constitute any due reasons for not Taking Over the Plant.

Such deviations shaH be considered a defect under Article 31.

23.4 No right to dispose of the Plant. Until the Plant has been taken over in accordance with Article 23.1, the Purchaser shaH have no right to dispose of the Plant and the Equipment without written agreement between the Parties1 , nor shall the Purchaser be entitled to take the Plant or portions thereof into operation other than for Performance Testing purposes.

23.5 Taking into operation without the Supplier's permission. If the Plant, or a portion thereof, is taken into operation without the Supplier's permission, and before Ta king Over in accordance with Article 23.1, the Plant, or that portion of it which has been taken into operation, shall be deemed to have been taken over.

The Supplier shall notify the Purchaser in writing of the date and time when the Plant or portion thereof is deemed to have been taken over under the provisions of this paragraph.

23.6 Responsibility for care, custody and control. Upon Taking Over the Purchaser assumes full responsibility for the Plant and its operation.

**Article 24 Training of Purchaser's personnel**

24.1 Personnel to be put at the Purchaser's disposai for training. The Purchaser shall provide skilled personnel to be trained in the operation of the Plant. ln particular, such personnel shall have previous experience in the operation and maintenance of technical and computerised systems similar to the ones found in the Plant.

24.2 Training in the Supplier's country. Specialised personnel of the Purchaser shall be given an adequate opportunity to study the operation of the Equipment in the Supplier's country, as indicated in detail in Annex 10-A.

The travel and living expenses and ali other expenses for such personnel shaH be borne by the Purchaser.

24.3 Training at the Site. The Supplier agrees to send one or more technicians or experts to train the Purchaser's personnel at the Site in connection with the operation of the Plant. The number of persans dispatched and the dura tion of their presence at the Site is indicated in Annex 10-B.

The expenses for travel, board and lodging of Supplier's personnel will be borne by the Parties in accordance with Article 17.

24.4 No provision of production know-how without separate agreement. The Parties may agree, under a separate licence or transfer of technology agreement (Annex 12), upon the supply by the Supplier (or by a third party indicated by the Supplier) of the know-how and technical assistance necessary for manufacturing the Products. In the absence of such agreement, the Supplier's obligations will only extend to providing to personnel skilled in the manufacture of the Products the training for operating the Plant.

**FOOTNOTE**

1 Any such agreement should incorporate the changes in the Time Schedule and the Purchaser's responsibilities arising out of the facl that the Purchaser is permitted to dispose of lhe Plant or Equipment and to take the Plant or portions thereof into operation before Taking Over.

**Chapter 4**

Priee, payment conditions, bank guarantees

**Article 25 Contract Priee**

25.1 Contraet Priee. The Contract Priee for the turnkey supply of the Plant is stated in Contract Schedule F.

25.2 Priee revision. The Contract Priee is fixed and is not subject to revision, except in case the Commencement Date does not occur according to Article 3.3.

**Article 28 Payment conditions**

26.1 General. Payment of the Contract priee shall be made by the Purchaser to the Supplier in accordance with the payment conditions set out in Con tract Schedule G at a bank designated by the Supplier. Banking charges incurred inside the Supplier's country shall be for the account of the Supplier, while those incurred outside the Supplier's country shall be borne by the Purchaser.

Ail sums duly invoiced by the Supplier shall be paid in full by the Purchaser without any set off, counterclaim or deduction whatsoever and are not subject to any settlement, discount or other special terms of payment.

The amounts due shall be transferred, unless otherwise agreed, by teletransmission or SWIFT to the Supplier's bank in the Supplier's country to the account of the Supplier, and the Purchaser shall be deemed to have performed its payment obligations when the respective sums due have been received in full by the Supplier's bank in immediately available funds.

26.2 Doeumentary Credit (LIC). If the Parties have agreed on payment by documentary credit (LIC), then, unless otherwise agreed, the Purchaser must arrange for a documentary credit (L/C) to the amount specified in Contract Schedule G in favour and to the satisfaction of the Supplier, to be issued by a reputable bank and, unless otherwise agreed, confirmed by a bank acceptable to Supplier, subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce as in force at the date of signing the Contract. Unless otherwise agreed, the documentary credit (LIC) shall be payable at sight and allow partial shipments and transhipments.

THE ICC MODEL CONTRACT FOR THE TURNKEY SUPPLY OF AN INDUSTRIAL PLANT

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26.3 Payment Security (Guarantee). To the extent that the Parties have agreed that payment has to be backed by a bank guarantee, the Purchaser shall, unless stated otherwise in Contract Schedule G, provide within thirty (30) days from the date of signing the Contract, a first demand bank guarantee subject to the Uniform Rules for Demand Guarantees published by the International Chamber of Commerce, or a standby LIC subject either to such Rules orto the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, in either case to the amount stated in Annex A-7 of the Contract Priee, to the satisfaction of the Supplier and issued by a first class-international bank.

26.4 Delay Interest. If a payment which the Purchaser is to pay under this Contract is not received by the Supplier by the due date, or if notification of the opening (and confirmation) of the LIC or of the bank guarantee under this Con tract is not received by the due date, the Purchaser shall pay overdue interest, or respectively, late opening fees on the overdue amount, until the payment is made in full to the Supplier or the notification of opening (and confirmation) of the LIC or of the bank guarantee has been received by the Supplier.

Unless otherwise agreed, the rate of interest shall be two percentage points (2%) above the average bank short-term lending rate to prime borrowers 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, the rate of interest shall be the appropria te rate fixed by the law of the state of the currency of payment.

**Article 27 Bank guarantees provided by the Supplier**

27.1 Advance Payment Guarantee. To secure the repayment of the advance payment (if any) specified in Con tract Schedule G, the Supplier shall, within the time limit indicated therein, obtain at its cast, from a first-class international bank in the Supplier's country, a first demand bank guarantee of same amount, which shall be subject to the Uniform Rules for Demand Guarantees published by the International Chamber of Commerce, or a standby LIC subject either to such Rules or to the Uniform Customs and Practice for Documentary Credits published by the International Cham ber of Commerce, in either case to the amou nt stated in Contract Schedule H-1, to the satisfaction of the Purchaser and issued by a first-class international bank. The advance payment guarantee shall be valid from the date of receipt by Supplier of the ad vance payment into its designated bank account. The value of the guarantee shall automatically decrease pro rata the value of each shipment of Equipment and shall become nuli and void and be returned to the issuing bank when ali Equipment has been delivered.

27.2 Performance guarantee. To secure the proper performance of the Contract the Supplier shall, before the date stated in Contract Schedule H (or if not *so* stated, before shipment of the Equipment), obtain at its cast, from a first-class international bank in the Supplier's country, a first demand bank guarantee amounting to ten percent (10%) of the Contract Priee, unless otherwise agreed, which shall be subject to the Uniform Rules for Demand Guarantees published by the International Chamber of Commerce, or a standby L/C subject either to such Rules or to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce issued by a first-class international bank.

The value of this performance guarantee shall automatically reduce to five percent (5%) of the Contract Priee upon completion of Erection Testing in accordance with the provisions of Article 19 and shall become null and void and be returned to the issuing bank upon Thking Over. In the event the Plantis taken over in separate stages or sections, the performance guarantee shall be decreased in value and be returned pro rata the value of each such stage or section.

**Article 28 Taxes, duties, etc.**

28.1 Taxes and other charges payable in the Country. Ail taxes, duties or other charges which may be incurred by the Supplier in the Country in relation with this Contract and its performance shall be paid and borne by the Purchaser.

In case of taxes, duties or other charges which, according to locallaws or regulations are to be paid by the Supplier, the Purchaser will reimburse the amounts paid by the Supplier within thirty (30) days following payment by the Supplier.

28.2 Taxes and other charges payable outside the Country. Ail taxes and duties or other charges incurred by the Supplier outside the Country in relation with this Contract and its performance will be borne by the Supplier.

**Chapter 5**

Non-performance and its consequences

**Article 28 Consequences of non-performance - Liquidated damages**

29.1 Late delivery of Equipment. If Delivery of the Equipment occurs later than specified in the Time Schedule and provided such delay is neither the result of force majeure nor the result of circumstances for which the Purchaser is responsible, the Purchaser shall be entitled to liquidated damages in accordance with Contract Schedule 1-1, unless it is evident that the Purchaser has suffered no Joss due to the delay.

29.2 La te Take-Over. If Take-Over of the Plant occurs la ter than specified in the Time Schedule and provided such delay is neither the result of force majeure nor the result of circumstances for which the Purchaser is responsible, the Purchaser shall be entitled ta liquidated damages in accordance with Contract Schedule 1- 2.

29.3 Cumulation of liquidated damages. The cumulated liquil;l.ated damages for delay set out in Article 29.1 and Article 29.2 hereof shall not exceed the percentage stated in Contract Schedule 1-3.

29.4 Non-attainment of the Guaranteed Performance. If, notwithstanding the observance of the testing procedures contained in Annex 9, the Plant does not reach the Guaranteed Performance, but does reach the Minimum Performance Levels at the latest time for Taking-Over specified in the Time Schedule, provided this Jack of performance is neither the result of force majeure nor the result of circumstances for which the Purchaser is responsible, the Purchaser shall be entitled ta liquidated damages in accordance with Annex 1-C, ta the extent that the Guaranteed Perform­ ance is not attained. Such liquidated damages shall not not exceed the maximum amount stated in Annex 1-C.

29.5 Suspension of performance. Each Party is entitled ta suspend performance of its obligations under this Contract in the event the other Party fails ta perform in a timely manner any material obligation under this Contract until the default is remedied, without prejudice ta other remedies that may be available and subject ta the following: a Party shall notify the other Party in writing of its intent ta suspend and grant a final time period to the other Party to remedy the default, failing which the right of suspension may be exercised without further delay.

**Article 30 Contract termination**

30.1 Termination for Supplier's Default . The Purchaser shall be entitled to terminate this Contract in whole or in part in case:

(a) cumulated liquidated damages for delay exceed the maximum amount indicated

in Contract Schedule 1-3; or

(b) notwithstanding the observance of the testing procedures contained in Annex

9, the Plant fails to attain the Minimum Performance Levels at the latest time for Taking Over specified in the Time Schedule, provided this is neither the result of force majeure nor the result of circumstances for which the Purchaser is responsible; or

(c) the Supplier has failed to perform a substantial obligation under the Cont ract after having been served a notice of failure and make good by Purchaser within a reasonable period ; or

(d) the Supplier becomes bankrupt or insolvent, goes into liquidation or any act is done or an event occurs that under applicable law has a similar effect to any of these events or acts, and the Supplier fails to provide, at the Purchaser's request, an adequate security (e.g. bank guarantee, insurance company guarantee) for the fulfilment of its obligations under this Con tract; or

(e) the Supplier gives or offers to give, directly or indirectly, to any persan any bribe, gift, gratuity, commission or other thing of value as an inducement or reward for doi ng or forbearing to do any action in relation to this Contract.

30.2 Termination for Purchaser's default. The Supplier shall be entitled to terminate this Contract in whole or in part in case:

(a) the Purchaser has failed to perform a substantial obligation under the Contract after having been served a notice of failure and make good by Supplier within a reasonable period ; or

(b) the Purchaser is in breach of any of its payment obligations or of its obligation to provide a documentary credit *(LIC)* or a bank guarantee, where required in the Contract, and this breach continues longer than ninety (90) days, or such other period as the Parties may agree; or

(c) the Purchaser becomes bankrupt or insolvent, goes into liquidation or any act is done or event occurs that under applicable law has a similar effect to any of these events or acts, and the Purchaser fails to provide, at the Supplier 's request, an adequate security (e.g. bank guarantee, insurance company guarantee) for the fulfilment of its obligations under this Contract.

30.3 Termination in case oflasting force majeure. Either Party is entitled to terminate this Contract in case of force majeure lasting for more than six (6) months and having the effect of substantially depriving either or bath of the Parties of what they were reasonably entitled to expect under this Contract, as specified in Article

33.7.

30.4 Effects of termination on obligations already performed. Exceptas provided under Article 30.5 hereunder, termina tion of this Contract shaH not affect obligations which have already been performed at the time when the termination notice is given nor the right to receive payment for obligations already performed.

30.5 Supplier's obligation in case ofnon-attainment of the Minimum Performance Levels. In case of terminatian pursuant to Article 30.1 (b), the Purchaser may require the Supplier at its own cast to dismantle and remove the Equipment from the Site and to pay back the Contract Priee, in as far as received, to the Purchaser.

30.6 Compensation for the loss suffered. In case of termination for default of the other Party under paragraphs 30.1 and 30.2 the terminating party will be entitled to compensation for the Joss it has suffered as a direct consequence of the default justifying termination. Except where the defaultjustifying the Contract termination amounts to fraud or wilful misconduct, the total liability for damages (including possible liquidated damages) shaH be limited to a maximum amount equivalent ta ........% of the Contract Priee.

30.7 Sole remedy. Con tract terminatian by a Party is admitted only in the cases specified in this Article 30.

**Article 31 Defects in the Plant after Taking Over**

31.1 Warranty. The Supplier shall make good, ta the extent defined in this Article, any defect or non-conformity in the Plant (hereafter referred ta as a Defect), arising from faulty design, materials or workmanship.

If the Plantis fa und ta have a Defect that can be assumed to be present also in sorne other portion ofthe Plant, the Supplier shall investigate whether such further Defect is present, and shall make good any further Defects found.

Failure ta attain the Guaranteed Performance shall not as su ch be regarded as Defect coming under the provisions of this Ar ticle, but shall be dealt with under Article

29.4 and 30.1.

31.2 Defects liability period. Unless otherwise specified in the Contract, the liability of the Supplier under the provisions of Article 31.1 a pplies only ta Defects that appear within a periad of one (1) year from the date of Taking Over of the Plant or eighteen

18 months from the date of delivery of the Equipment, whichever occurs first.

31.3 Conditions for liability for Defects. The liability of the Supplier does not extend to Defects caused by circumstances for which the Supplier is not responsible, such as but not limited to improper or insufficient maintenance or incorrect operation, improper operationing conditions not in accordance with the Contract, failure to store the Equipment or other materials appropriately, alterations or repairs made without the Supplier 's written permission, repairs carried out improperly by the Purchaser, or normal wear and tear.

31.4 Notification of Defects. Defects as covered by Article 31.1 shall be notified to the Supplier in writing without undue delay after the Defects have appeared, and in any event no la ter than fourteen (14) days after the expiry of the defects liability period. Such notification shall include a description of the type and extent of the Defect.

If the Purchaser has not notified the Supplier of a Defect as required by the provisions of this Article, it forfeits its right to have the Defect made good in accordance with Article 31.1.

31.5 Making good of Defects. Upon receipt from the Purchaser of a notification of a Defect of the type defined in Article 31.1, the Supplier shall apply with such speed as the circumstances require, due and proper measures to make good the Defect.

31.6 Immediate action in connection with risk of damage. If a Defect as defined in Article 31.1 appears, requiring immediate action due to the risk of resultant damage, and if the Supplier cannot make immediately good the Defect, the Purchaser is entitled and obliged to apply ali necessary measures to prevent or limit damage.

31.7 Liability for replaced or repaired parts. Parts replaced or repaired under the provisions of Article 31.1 are subject to the same warranty from the Supplier, and under the same conditions as apply for the rest of the Plant, for a period of one (1) year after such replacement or repair has been effected. The defects liability period for the rest of the Plant is extended only by the time during which the Plant has been out of operation as a result of a Defect covered by the provisions of Article 31.1. Nothing contained in this Article 31.7 shall however extend the defects liability period by a period beyond two (2) years after Taking Over.

31.8 Property in replaced defective parts. Defective parts which have been replaced shaH be made available to the Supplier without cost and shaH become the property of the Supplier.

31.9 Final period for making good Defects. If the Supplier has not made good a Defect within a time that can be regarded as reasonable with respect to the type and extent of the Defect and to other circumstances, the Purchaser shaH determine a reasonable final period within which the Supplier shall have made good the Defect.

31.10 Failure to make good a Defect. If the Supplier has not made good a Defect within the final period determined by the Purchaser in accordance with Article

31.9, the Purchaser is entitled, at its option, either to apply the measures required

to make good the Defect at the Supplier's cost, or to receive a reasonable deduction from the Contract Priee. If the Defect is so substantial asto significantly de prive the Purchaser of the benefit of the Contract, the Purchaser may termina te the Contract under Article 30.1 (c) .

31.11 Unjustified notification of Defects. If the Purchaser has notified a Defect as described in Article 31, and if it is found that there is no Defect for which the Supplier is Hable, the Supplier is entitled to compensation for the costs which it has thereby incurred.

**Article 32 Limitation of liability**

32.1 Sole reason for termination. The remedies mentioned in Articles 29 and 30 shall be the Purchaser's sole remedies for Supplier's delay and failure ta reach the Guaranteed Performance.

The remedies mentioned in Article 31 shall be the Purchaser's sole remedies for

Defects in the Plant after Taking Over.

32.2 Indirect or consequential damages. Neither Party shall be Hable ta the other Party for any indirect and consequential damages, such as but not limited ta loss of profit, production, or contracts.

32.3 Fraud and wilful misconduct. The limitation of liability under this Article shall not apply in case of fraud or wilful misconduct.

**Chapter 6**

Final clauses

**Article 33 Force majeure**

33.1 Definition of force majeure. Where a Party fails to perform one or more of its obligations under this Contract, the consequences set out in Articles 33.4 to 33.7 will follow if and to the extent that the Party proves:

(a) that its failure to perform was caused by an impediment beyond its reasonable control; and

(b) that it could not reasonably have been expected to have taken the occurrence of the impediment into account at the time of the conclusion of the Contract; and

(c) that it could not reasonably have avoided or overcome the effects of the

impediment.

33.2 Failure to perform by a third party. Where a Party fails to perform one or more of its obligations under this Con tract because of a default by a third party whom it has engaged to perform the whole or part of this Contract, the consequences set out in paragraphs hereunder shall apply to that Party only:

(a) if and to the extent that Party establishes the requirements set out in Article

33.1; and

(b) if and to the extent that Party proves that the same requirements apply to the third party.

33.3 Listed impediments. In the absence of proof to the contrary and unless otherwise agreed in this Contract expressly or impliedly, a Party invoking this force majeure clause shaH be presumed to have established the conditions described in paragraph

33.1 (a) and (b) in case of the occurrence of one or more of the following impediments: (a) war (whether declared or not), armed conflict or the serious threat of same (including but not limited to hostile attack, blockade, military embargo).

hostilities, invasion, act of a foreign enemy, extensive military mobilisation;

(b) civil war, riot rebellion and revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience;

(c) act of terrorism, sabotage or piracy;

(d) act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expro­ priation, compulsory acquisition, seizure ofworks, requisition, nationalisation;

(e) act of Cod, plague, epidemie, natural disaster such as but not limited to violent

storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought;

(f) explosion, fire, destruction of machines, equipment, factories and of any ki nd of installation, prolonged breakdown of transport, telecommunication or electric current;

(g) general labour disturbance such as but not limited to boycott, strike and Jock­

out, go-slow, occupation of factories and premises.

33.4 Consequences of force majeure. A Party successfully invoking Article 33.1 is, subject to Article 33.5 below, relieved of:

(a) its duty to perform its obligations under this Contract; and

(b) any liability in damages or any other contractual remedy for breach of contract from the time at which the impediment causes the failure to perform if notice

thereof is given without delay or, if notice thereof is not given without delay, from

the time at which notice thereof reaches the other Party.

33.5 Temporary force majeure. Where the effect of the impediment or event invoked is temporary, the consequences set out under paragraph 33.4 above shall apply only insofar, to the extent that and as long as the impediment or the listed event invoked impedes performance by the Party invoking this clause of its contractual duties. Where this paragraph applies, the Party invoking this clause is under an obligation to notify the other Party as saon as the impediment or listed event ceases to impede performance of its contractual duties.

33.6 Duty to mitigate. A Party invoking this clause is under an obligation to take ali reasonable means to limit the effect of the impediment or event invoked upon performance of its contractual duties.

33.7 Contract termination in case of lasting force majeure. Where the duration of the impediment invoked under Article 33.1 or of the listed event invoked under Article

33.3 exceeds six (6) months and has the effect of substantially depriving either

or bath of the Parties of what they were reasonably entitled to expect under this Contract, either Party has the right to terminate this Contract by notification within a reasonable period to the other Party.

Where this Article 33.7 applies and where either Party has, by reason of anything clone by the other Party in the performance of this Contract, derived a benefit before the termination of this Contract, the Party deriving such a benefit shall be under a duty topay to the other Party a sum of money equivalent to the value of such benefit.

**Article 34 Confidentiality**

34.1 Definition of Confidential Information. Confidential Information in this Contract means any and ali technical, financial or commercial information stated by either party to be confidential or confidential in nature, provided, however, that the term "Confidential Information" shall not include any information which: (a) was already known to the receiving Party at the time of disclosure by or on behalf

of the other Party; or

(b) at the time of disclosure to a Party is part of literature or other sources of knowledge accessible to the public or which after such disclosure becomes part ofliterature or other sources ofknowledge accessible to the public, without the culpable negligence or action of the other Party, its employees or third parties it is responsible for; or

(c) was available to the receiving Party from a source other than the disclosing Party, provided that such source is not under any confidentiality obligation to the disclosing Party; or

(d) is developed by a Party independently of any information disclosed by or on behalf of the disclosing Party.

The burd en of proof in respect of this Article 34 is on the party claiming that any of the exceptions specified under (a) to (d) shall apply.

34. 2 Duty of confidentiality. Each Party shall keep in strict confidence ali Confidential Information obtained from the other Party in the course of performance of this Contract. Each Party shaH use Confidential Information only to the extent necessary to fulfil its obligations under this Contract and for the use of the Plant.

34.3 Disclosure to employees. Each Party may disclose Confidential Information to its employees and to third parties only to the extent strictly necessary for the performance of this Con tract and for the use of the Plant, or as required by law. A Party so disclosing shall cause its employees and third parties to observe the obligations of this Article.

34.4 Storage of Confidential Information. Each Party shall store away carefully the Confidential Information disclosed by the other Party and shall take reasonable measures to prevent disclosure to unauthorised parties. A receiving Party shall copy the Confidential Information disclosed by the other Party only to the extent that this is necessary in the context of the purpose.

34.5 Survival. The obligations contained in this Article shall survive any termination or expiration of this Contract.

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**Article 35 Contract documents**

35.1 Contract and contract documents. This Contract includes this document and its attached Annexes specified hereafter and subsequent alterations and additions thereto agreed in writing.

This Contract constitutes the entire agreement between the Supplier and the Purchaser with respect to the subject matter of the Contract and supersedes ali communications, negotiations and agreements (whether written or oral) of the Parties with respect thereto made prior to the date of the Con tract.

Wherever in this contract the ward "agreed" is used, it shall be read as meaning agreed in writing or confirmed in writing.

35.2 Attachments. The following attachments constitute an integral part of this

Contract:

Contract Schedules - Specifie issues to be determined by the Parties

*Contract Schedule A* Definition of the Site

*Contract Schedule B* Events to occur before Commencement Date (Article 3.2) *Contract Schedule C* Contract termination before effectiveness (Article 3.3) *Contract Schedule D* Information needed for preparing the Layout of the Plant

(Article 8.1)

*Contract Schedule E* Shipment of Equipment - Marking - Packing list and other documents

*Contract Schedule F Contract Schedule G Contract Schedule H*

*Contract Schedule I*

Priee of the Contract (Article 25) Payment conditions (Article 26) Bank guarantees (Article 27) Liquidated damages (Article 29)

*Annex 1* General description of the Plant, Guaranteed Performance and

Minimum Performance levels

*Annex2*

*Annex3*

*Annex4*

*Annex5*

*Annex6*

*Annex 7*

*Annex 8*

*Annex9*

*Annex JO Annex 11*

*Annex 12*

Equipment and other goods to be provided by the Supplier

Main sub-contractors and sub-suppliers (Article 6.2)

Technical documentation to be provided by the Supplier (Article 9) Time Schedule

Raw materials, components and consumables

Technical personnel provided by Supplier for supervision and assistance (Article 16)

Erection equipment (specification)/Specialised Personnel provided by Purchaser

Performance Test Procedures

Training of Purchaser 's personnel (Article 24) Taking Over Certificate

Product Know-How license (if applicable)

**Article 38 Applicable law**

A B

36.1 Unless otheiWise agreed, any questions relating to this Contract which are not expressly or impliedly settled by the provisions contained in this Contract shall be governed in the following arder:

(a) by the principles oflaw generally recognised in international trade as applicable to international turnkey contracts,

(b) by the United Nations Conven­

tion on the International Sale of

Goods (CISG),

(c) by the relevant trade usages, and (d) by the Unidroit Principles oflnter­ national Commercial Contracts,

with the exclusion of the clauses

6.2.1 - 6.2.3,

with the exclusion of nationallaws.

36.1 This Contract shall be governed by the laws of .......... .................... (Country) 1

36.2 Internationally mandatory rules. In any event, consideration shall be given to mandatory provisions of the law of a country having a close connection with this Contract which would be applicable even if this Contract is governed by a foreign law. Any such provisions will be taken into account to the extent they embody principles that are universally recognised and provided their application appears reasonable in the context of international trade.

**Article 37 Resolution of disputes**

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37.1 Alternative Dispute Resolution. The Parties may at any time, without prejudice to any other proceedings, seek to settle any dispute arising out of or in connection with this Contract in accordance with the ICC ADR Rules2 •

37.2. A

Ail 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 one or more arbitrators appointed in accordance with the said

Rules.

37.2. B

In case of dispute the courts of ............. (place) .................... (country)

shall have exclusive jurisdiction.

/(place) -------- -- (date)

(the Supplier)

(the Purchaser)

FOOTNOTES

Before choosing the law of a given country, Parties should check if the provisions of this madel contract conform with such law.

2 The ICC ADR Rules can be found on the Web site [www.iccadr.org.](http://www.iccadr.org/)

Contract schedules

**SPECIFIC ISSUES TO BE DETERMINED BY THE PARTIES**

These Contract Schedules con tain a number of aspects which the Parties should specify in their contract.

The main purpose of the Contract Schedules is to help the Parties to identify the issues on which they should take a decision and to propose sorne standard solutions or examples which may facilitate drafting.

**Contract Schedule A**

Definition of the Site

*To be filled in by the Parties.*

**Contract Schedule B**

Events to occur before the Commencement Date

(Article 3.2)

The Parties agree that the following events must occur before the Commencement Date.

D Payments by Purchaser

D Receipt by the Supplier on its bank account of an advance payment of ........

D Notification of issuance of a documentary credit, confirmed by ....................... for ....................................................................................................................................

D Other ..............................................................................................................................

D Official authorisations

D Import licenses

D Authorisation of the con tract by ................................................................................

D Other

D Securities by Supplier

D Advance payment guarantee

D Other

**Contract Schedule C**

Contract termination before effectiveness (Article 3.3)

*To be filled in if the Parties wish to modify the six (6} months' lerm already set out in*

*Article 3.3.*

The Parties are entitled to terminate the Contract according to Article 3.3 in case of non-occurrence of ali the events under Contract Schedule B within ............................... after signing the Contract.

**Contract Schedule D**

Information needed for preparing the Layout of the Plant (Article 8.1)

The Purchaser will transmit to the Supplier, in conformity with Article 8.1, the following information necessary for preparing the Layout:

**Contract Schedule E**

Shipment of Equipment- Marking

Packing list and other documents

E-1 SHIPMENT (SEE INTRODUCTION,§ 4)

*This part should be filled in only if the Parties wish to devia te from the solution provided under Article 11.2.*

The Equipment will be shipped as follows:

D CIP - Carriage and Insurance Paid To ........................... (named place of destination) D CFR- Cast and Freight Paid To ...................................... (named port of destination) D CPT - Carriage Paid To ..................................................... (named place of destination) D CIF - Cast, Insurance and Freight ................................. (named port of destination) D DDU - Delivered Duty Unpaid ....................................... (named place of destination) D DDP -- Delivered Duty Paid ............................................ (named place of destination) D Other.......................................................................................................................................

E-2 MARKING

Each case/parce!shall be marked with the following indications:

E-3 PACKING LIST AND OTHER DOCUMENTS

Each case/parce!or container shall contain a detailed packing list indicating its content. For each shipment the Supplier will send to the Purchaser a complete list of ali cases/ parcels or containers, indicating their number, weight and size, together with the packing list of each case/parcel, in arder to allow the Purchaser to check the goods at arrivai.

**Contract Schedule F**

**Priee of the Contract (Article 25)**

**The contract priee for the turnkey supply of the Plantis:** ................................................... 1

1 lt is of course also possible ta specify the various components of the priee. e.g.. the various parts of equipment. spare parts. shipping costs. technical assistance. etc.

- -

**Contract Schedule G**

**Payment conditions (Article 26)**

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CONTRACT SCHEDULES

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**Contract Schedule H**

Bank guarantees provided by the supplier (Article 27)

It is advisable that the Parties specify here the exact wording of the guarantees in order to avoid possible future misunderstandings, possibly after having checked that the issuing bank agrees with the terms of the guarantees. The Parties should also specify the time when such guarantees must be issued.

H-1 ADVANCE PAYMENT GUARANTEE (ARTICLE 27 1)

H-2 PERFORMANCE GUARANTEE (ARTICLE 27.2)

- --

**Contract Schedule 1**

Liquidated damages for delay (Article 29)

Sinee the eontraet ean be terminated by the purehaser under Article 30.1 (a) when cumulated damages for delay exeeed the maximum amount indieated in Sehedule I-3, Parties should be very eareful when defining sueh maximum amount.

1 -1 LIQUIDATED DAMAGES FOR LATE DELIVERY OF THE EQUIPMENT (ARTICLE 29.1)

The amount ofliquidated damages for late delivery of the Equipment shaH be ........%

of the Contraet Priee for eaeh ............... (week/month) of delay.

1-2 LIQUIDATED DAMAGES FOR LATE TAKE OVER

The amount of liquidated damages for late Take Over of the Plant shall be ........ %

of the Contraet Priee for eaeh ............... (week/month) of delay.

1-3 MAXIMUM CUMULATED LIQUIDATED DAMAGES FOR DELAY (ARTICLE 29.3)

The maximum amou nt of eumulated liquidated damages for delay shall be ......%

of the Contraet Priee.

**Annex 1**

General description of the Plant,

Guaranteed Performance and Minimum Performance levels

1-A DESCRIPTION OF THE PLANT

1-B GUARANTEED PERFORMANCE OF THE PLANT

*(Details can also be put in Annex 9, together with the performance testing procedures)*

1-C MINIMUM PERFORMANCE LEVELS AND LIQUIDATED DAMAGES

*This is a possible example of a scheme considering three different parameters. Of course, any actual solution has to be worked out case by case, taking into account the specifie charactieristics of the plant, the needs of the Parties, etc.*

If, notwithstanding the observance of the testing procedures contained in Annex 9, the Plant does not attain the Guaranteed Performance within the time limits indicated in Article 22.3, the Supplier will pay liquidated damages equal ta a percentage ofthe Contract Priee. Liquidated damages for different aspects (capacity, quality, consomption of raw

materials) will be cumulated.

**Production** capacity from 100% ta 95% 0%

from 94% ta 90% 2%

from 89% ta 85% 5%

Minimum Guaranteed Leve!

85%

~~--~~----

Quality of the Products from 100% to 97% 0%

from 97% to 95% 2%

from 95% to 90% 5%

Minimum Guaranteed Leve)

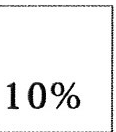
90%

Consomption of raw materials from .....% to ......% 0%

from .....% to ......% 1%

from .....% to ......% 3%

Minimum guaranteed leve)



..............%

Maximum cumulated amount of liquidated damages for not attaining the guaranteed performance

**Annex 2**

Equipment and other goods to be provided by the supplier

2-A EQUIPMENT TO BE SUPPLIED BY SUPPLIER

The Equipment to be supplied under this contract is the following:

2-B SPARE PARTS TO BE SUPPLIED BY SUPPLIER

The Supplier warrants that the following spare parts, which he agrees to supply under the present contract, are reasonably necessary for normal use of the plant:

|  |  |  |
| --- | --- | --- |
| D | during a period of............................. | (months/years) for ................ hours per day |
| D | for a total of........................................ | operating hours. |

2-C CONSUMABLES TO BE SUPPLIED BY SUPPLIER

The Supplier warrants that the following consumables, which he agrees to supply under the present contract, are reasonably necessary for normal use of the plant:

D du ring a period of............................. (months/years) for ................. hours per day

D for a total of........................................ operating hours

**Annex 3**

Main sub-contracts and sub-suppliers (Article 6.2)

The Supplier will have recourse to the following sub-contractors or sub-suppliers:

|  |  |
| --- | --- |
| **Item of Equipment Name of sub-contractor or sub-supplier**  1 | |
|  |  |
|  |  |
|  | -- |
| - - | -- |
| f---- - |  |

-

**Annex 4**

Technical documentation

to be provided by the supplier (Article 9)

*The list hereunder is of course only an example. Parties may also specify in what language the technical documentation will be and which measurement system (metric system or other) is used.*

|  |  |  |
| --- | --- | --- |
| **Type of documentation**  Lay out | **Number of copies** | **Time of delivery** |
| Complete technical documentation of the production Equipment |  |  |
| Technical documenta tion regarding erection of the Equipment delivered |  |  |
| Opera ting and maintenance manual s of produc tion equipment |  |  |
| As build dra wings |  |  |
| List of consumables |  |  |
|  | | |

**Annex 5**

**Timeschedule**

|  |  |  |
| --- | --- | --- |
| Commencement date | |  |
| Delivery by Purchaser of information needed for preparing the Layout (Art.B.1) | |  |
| Delivery by Supplier of Layout | |  |
| Shipment of the Equipment  -·  Completion by the Purchaser of works preliminary to Erection |  |  |
|  |  |
| Commencement of Erection | -- r | ---- |
| 1---  Completion of Erection |
| Commencement of Erection Testing  -------------------------------------------  Completion of Erection Testing |  |  |
|  |  |
| 1 | |
| Start Up | |  |
| Performance Testing  -·  Taking Over |  |  |
|  |  |

**Annex 6**

Raw materials, components and consumables

----------------------

**Annex 7**

Technical personnel provided by supplier for supervision and assistance (Article 16)

7-A NUMBER OF PERSONS AND DURATION (ARTICLE 16.1)

|  |  |  |
| --- | --- | --- |
| Stage  Erection | Number and qualification  engineer(s)  technician(s) | Time  ...... ............ days  .................. days |
|  | |  |
| E-rect-io-n\_T\_e-s tin\_g j \_ :\_:.\_:·\_:\_:.\_:\_.\_::.\_· :ne\_cgh c ;s\_l i :.\_·:..\_.·\_:··\_:\_·:\_:: ·\_\_:.::::  Start Up ...... ................. engineer(s) ................... days  1 | | |
|  | technician(s) . .................. days | |
| Performance Testing | engineer(s) ................... days  technician(s) ................... days | |

TOTAL

Engineers ma n/days

Technicians man/days

7-B COST OF ADDITIONAL TIME (ART. 16.2) Engineer € ......... .. .... per day

Technician

€ ................. per day

**Annex 8**

**Erection Equipment (specification/specialised personnel provided by purchaser)**

8-A ERECTION EQUIPMENT AND SERV ICES TO BE PROVIDED BY THE SUPPLIER

8-B ERECTION EQUIPMENT AND SERVICES TO BE PROVIDED BY THE SUPPLIER

8-C SPECIALISED PERSONNEL TO BE MADE AVAILABLE BY PURCHASER (ARTICLE 14.2)

|  |  |  |
| --- | --- | --- |
| **Stage**  **Erection** | **Number and qualification**  engineer(s) technician(s) other | **Ti me**  ..... . ..... days  ........... days days |
| **Erection Testing** | engineer(s) technician(s) other | days  ........... days  ........... days |
| **Start Up** | engineer(s) technician(s) other | ........... days  ........... days  .......... days |
| **Performance Testing** | engineer(s) technician(s) other | ........... days  ........... days  ........... days |

**Annex 9**

Performance Testing Procedures (priee reduction in case of non-attainment of the guaranteed performance)

*ft is very important thal the Parties define very clearly all aspects of performance testing that may influence the result of such tests; for example, duration, procedures, raw materials, personnel, etc.*

**Annex 10**

Training of Purchaser's Personnel (Article 24)

10-A PURCHA SER'S PERSONNEL TO BE TRAINED IN THE SUPPLIER'S COUNTRY (ART. 24.2)

**Quaiification**

**Number**

**Duration**

10-B SUPPLIER'S PERSONNEL SENT TO THE SITE FOR TRAINING PURCHASER'S PERSONNEL (ART. 24.3)

|  |  |  |
| --- | --- | --- |
| **Qualification** | **Number** | **Duration** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

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ANNEXES

**Annex 11**

Taking Overcertificate

**Annex 12**

Transfer ofTechnology (know-how) License

*This Annex is to be used only if the Supplier is to supply specifie product know-how, i.e. proprietary information about the products to be manufactured in the Plant.*

**Appendix 1**

United Nations Convention on

Contracts for the 1 nternational Sale of Goods

PREAMBLE

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 Economie 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 ofthe opinion that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economie and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

Have agreed as follows:

**Part 1 - Sphere of application and general provisions**

CHAPT ER Il- SPHERE OF APPLICATION

**Article1**

(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 Conu·acting States; or

(b) when the ru!es 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 conl:!·act.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the con tract 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 persona!. 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;

(0 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 con tracts 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 con tract. 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 con tract may have on the property in the goods sold.

**Article 5**

This Convention does not apply to the liability of the seller for dea th or persona! injury caused by the goods to any person.

**Article 8**

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 Il- GENERAL PROVISIONS

**Article 7**

(1) In the interpretation of this Convention, regard is to be had toits 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 conforrnity 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 deterrnining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to ali 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 bou nd 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 con tract 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 con tracts 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 habituai residence.

**Article 11**

A con tract 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 Il - Formation of the contract**

**Article14**

(1) A proposai for concluding a contract addressed to one or more specifie persans constitutes an olfer if it is sufficiently defmite and indicates the intention of the olferor to be bou nd in case of acceptance. A proposai is sufficiently definite if it indicates the goods and expressly or implicitly fiXes or makes provision for determining the quantity and the priee.

(2) A proposai other than one addressed to one or more specifie persans is to be considered merely as an invitation to make olfers, unless the contrary is clearly indicated by the person making the proposai.

**Article 15**

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

(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 18**

(1) Un til a contract is concluded an offer may be revoked if the revocation reaches the offeree before he hasdispatched an acceptance.

(2) However, an olier 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 olier as being irrevocable and the offeree has acted in reliance on the olier.

**Article 17**

An olier, 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 olier is an acceptance.

Silence or inactivity does not in itself amount to acceptance.

(2) An acceptance of an olier 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 olier must be accepted immediately unless the circumstances indicate otherwise.

(3) However, if, by virtue of the olier 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 priee, 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 clown in the preceding paragraph.

**Article 18**

(l) A reply to an olier which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the olier and constitutes a counteroffer.

(2) However, a reply to an olier which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the olier constitutes an acceptance, unless the offeror, without undue delay, abjects 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 olier with the modifications contained in the acceptance.

(3) Additional or different terms relating, among other things, to the priee, 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 olier materially.

**Article 20**

(l) A period of time of acceptance fixed by the offeror in a telegram or a letter begins torun 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 olier reaches the offeree.

(2) Official holidays or non-business days occurring du ring the period for acceptance are included in calcula ting 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 ta 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 la te 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 ta 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 con tract 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 ta him or delivered by any other means ta **him** personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, ta his habituai residence.

**Part Ill - Sale of goods**

CHAPTER 1- 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 ta deprive him of what he is entitled ta expect under the con tract, unless the party in breach did not foresee and a reasonable persan of the same kind in the same circumstances would not have foreseen su ch a result.

**Article 28**

A declaration of avoidance of the contract is effective only if made by notice ta 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 ta rely on the communication.

**Article 28**

If, in accordance with the provisions of this Convention , one party is entitled ta require performance of any obligation by the other party, a court is not bound ta enter ajudgement for specifie performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

**Article28**

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

(2) A contract in writing which contains a provision reqtùring any modification or termination by agreement to be in writing may not be othe1wise 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 thatconduct.

CHAPTER Il- OBLIGATIONS OF THE SELLER

**Article 30**

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

**Section 1 - Delivery of the goods and handing over of documents**

**Article 31**

If the seller is not bou nd 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 frrst

carrier for transmission to the buyer;

(b) if, in cases not within the preceding subparagraph, the contract relates to specifie goods, or unidentified goods to be drawn from a specifie 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 disposai at that place;

(c) in other cases - in placing the goods at the buyer's disposai at the place where the seller had his place of business at the time of the conclusion of the con tract.

**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 dearly identified to the con tract 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 ali available information necessary to enable him to effect such insurance.

**Article 33**

The seller must deliver the goods:

(a) if a date is fvœd by or determinable from the con tract, on that date;

(b) if a period of tirne is flXed by or determinable from the con tract, 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 Jack of conformity in the documents, if the exercise ofthis right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to daim damages as provided for in this Convention.

**Section Il - 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 con tract 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 ski!!and judgement;

(c) possess the qualities of goods which the seller has held out to the buyer as a sample or mode!; (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 Hable under subparagraphs (a) to (d) of the preceding paragraph for any Jack of conformity of the goods if at the time of the conclusion of the con tract the buyer knew or could not have been unaware of such Jack of conformity.

**Article 38**

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

(2) The seller is also Hable for any Jack 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 sorne particular purpose or wU! 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 deHvered, or deliver goods in replacement of any non-conforming goods delivered or remedy any Jack 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 daim 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 con tract 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 redispatched 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 redispatch, examination may be deferred until after the goods have arrived at the new destination.

**Article 39**

(1) The buyerloses the right to rely on a Jack of conformity of the goods if he does not give notice to the seller specifying the nature of the Jack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer !oses the right to rely on a Jack 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 Jack 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 daim of a third party. unless the buyer agreed to take the goods subject to that right or daim. However, if such right or daim 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 daim 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 righi or daim 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 daim; or

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

**Article 43**

(1) The buyer !oses 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 daim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or daim.

(2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or daim 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 redu ce the priee in accordance with article 50 or daim damages, except for loss of profit. if he has a reasonable excuse for his failure to give the required notice.

**Section** Ill - **Remedies for breach of contract by the seller**

**Article45**

(1) If the seller fails to perform any of his obligations under the con tract or this Convention, the buyer may: (a) exercise the rights provided in articles 46 to 52;

(b) daim damages as provided in articles 74 to 77.

(2) The buyer is not deprived of any right he may have to daim 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 con tract, the buyer may require delivery of substitute goods only if the Jack of conformity constitutes a fundamental breach of con tract 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 Jack of conformity by repair, unless this is unreasonable having regard to ali 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 flXed, the buyer may not, du ring that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to daim 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 daim 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 indude 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 48**

(1) The buyer may declare the contlâct 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 contJ·act; 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 ( l) 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 !oses the right to declare the con tract avoided unless he does so:

(a) in respect of tate 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 performances.

**Article 50**

If the goods do not conform with the contract and whether or not the priee has already been paid, the buyer may reduce the priee 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 priee.

**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 grea ter 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 ali or part of the excess quantity, he must pay for it at the contract rate.

CHAPTER Ill- OBLIGATIONS OF THE BUYER

**Article 53**

The buyer must pay the priee for the goods and take delivery of them as required by the contract and this

Convention.

**Section 1 - Paymant of the priee**

**Article 54**

The buyer's obligation topay the priee includes ta king 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 priee, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the priee generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

**Article 58**

If the priee is flxed according to the weight of the goods, in case of doubt it is to be deterrnined by the net weight.

**Article 57**

(1) If the buyer is not bound to pay the priee at any other particular place, he must pay it to the seller: (a) at the seller's place of business; or .

(b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

(2) The seller must bear any increase in the ex penses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the cont:ract.

**Article 58**

(l) If the buyer is not bou nd to pay the priee at any other specifie time he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposai 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 con tract 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 priee.

(3) The buyer is not bound to pay the priee un til 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 priee 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** Il - **Taking delivery**

**Article80**

The buyer's obligation to take delivery consists:

(a) in doing ali the acts whieh could reasonably be expected ofhim in arder to enable the seller to make delivery; and

(b) in taking over the goods.

**Section** Ill - **Remedias for braach of contract by the buyer**

**Article81**

(l) If the buyer faits 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) daim damages as provided in articles 74 to 77.

(2) The seller is not deprived of any right he may have to daim 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 82**

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

**Article 83**

(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 con tract. However, the seller is not deprived thereby of any right he may have to daim damages for delay in performance.

**Article 84**

(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 priee 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 priee, the seller !oses the right to declare the contract avoided unless he does so:

(a) in respect of la te 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 flXed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

**Article 85**

(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 flXed, the specification made by the seller is binding.

CHAPTER IV - PASSING OF RISK

**ArticleS&**

Loss of or damage to the goods after the risk has passed to the buyer does not d.ischarge him from his obligation topay the priee, unless the Joss or damage is due to an act or omission of the seller.

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**Article87**

(1) If the con tract 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 clearlyidentified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

**Article 88**

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 89**

(l) In cases not within articles 671md 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 disposai and he commits a breach of contract by failing to take delivery.

(2) However, if the buyer is bou nd 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 disposai at that place.

(3) If the cont:ract relates to goods not then identified, the goods are considered not to be placed at the disposai of the buyer until they are clearly identified to the con tract.

**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 1 - Anticipatory breach and instalment contracts**

**Article71**

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

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

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

(2) If the seller has aiready 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 perlormance, 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 perlormance.

**Article 72**

(1) If prior to the date for performance of the con tract 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 installments, 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** Il - **Damages**

**Article74**

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 con tract.

**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 priee and the priee in the substitute transaction as weil

as any further damages recoverable under article 74.

**Article76**

(1) If the contract is avoided and there is a current priee 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 priee fixed by the contract and the current priee at the tirne of avoidance as weil as any further damages recoverable under

article 74. If. however, the party clairning damages has avoided the contract after ta king over the goods,

the current priee at the time of such taking over shaH be applied instead of the eurrent priee at the time of avoidance.

(2) For the purposes of the preceding paragraph, the current priee is the priee prevailing at the place where delivery of the goods should have been made or, if there is no eurrent priee at that place, the priee at such ather place as serves as a reasonable substitute, making due allowance for differences in the cast 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 Joss, including Joss of profit, resulting from the breach. If he fails to take such measures, the party in breach may daim a reduction in the damages in the amount by which the Joss should have been mitigated.

**Section** Ill - **lnterest**

**Article78**

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

**Section IV - Exemption**

**Article78**

(1) A party is not Hable 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 lime 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 persan whom he has engaged to perform the whole or a part of the con tract, that party is exempt from liability only if:

(a) he is exempt under the preceding paragraph; and

(b) the persan whom he has so engaged would be so exempt if the provisions ofthat paragraph were applied to him.

(3) The exemption provided by this article has e!Tect for the period during which the impediment exists. (4) The party who fails to perform must give notice to the ather party of the impediment and its e!Tect

on his ability to perform. If the notice is not received by the other party within a reasonable lime

after the party who fails to perform knew or ought to have known of the imped.iment, he is liable for damages resulting from such nonreceipt.

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

**Article 80**

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

**Section V - Effects of avoidance**

**Article81**

(1) Avoidance of the contract releases bath 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 ather provision of the contract goveming the rights and obligations ofthe parties consequent upon the avoidance of the contract.

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

**Article 82**

(1) The buyer !oses the right to declare the contract avoided orto require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in whieh he reeeived them.

(2) The preeeding 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 whieh the buyer received them is not due to his act or omission;

(b) the goods or part of the goods have perished or deteriorated as a result of the examination

provided for in article 38; or

(c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

**Article 83**

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

**Article 84**

(1) If the seller is bound to refund the priee, he must also pay interest on it, from the date on whieh the priee was paid.

(2) The buyer must account to the seller for ali benefits whieh 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) ifit is impossible for him to make restitution of ali or part of the goods orto make restitution

of ali or part of the goods substantially in the condition in which he reeeived them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

**Section** VI - **Preservation of the goods**

**Article85**

If the buyer is in delay in ta king delivery of the goods or, where payment of the priee and delivery of the goods are to be made concurrently, if he fails to pay the priee, 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 un til he has been reimbursed his reasonable expenses by the buyer.

**Article 86**

(l) 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 toretain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placecl at his disposai 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 clone without payment of the priee and without unreasonable inconverùence or unreasonable expense. This provision does not apply if the seller or a persan 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.

**Article87**

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

**Article 88**

(l) 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 priee or the cast 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**

**Article89**

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 theil· 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 ali 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 ali 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**

(l) 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 liiof 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 (l) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

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**Article93**

(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 ali 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 ali 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 ali territorial units ofthat State.

**Article 84**

(1) 'IWo 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 abject 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 etfect of a declaration made under paragraph (1) , provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

**Article 85**

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 88**

A Contracting State whose legislation req uires 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 terrnination by agreement or any otfer, acceptance, or other indication ofintention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

**Article87**

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

this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964

Hague Sales Convention by notifying the Government of the Netherlands to that effect.

(5) AState 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 orto 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 proposai for concluding the con tract is made on or after the date when the Convention enters into force in respect of the Contracting States referred ta 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 ta in subparagraph (1) (a) or the Contracting State referred ta 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 formai notification in writing addressed to the depositary.

(2) The denunciation takes etfect 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 etfect is specified in the notification, the denunciation takes etfect 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 Arabie, 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.

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**Explanatory note**

bythe UNCITRALSecretariat

on the united Nations Convention

on Contracts for the 1 nternational Sale of Goods\*

INTRODUCTION

(1) The United Nations Convention on Con tracts for the International Sale of Goods provides a uniform text of law for international sales of goods. The Convention was prepared by the United Nations Commission on Internationalltade Law (UNCITRAL) and adopted by a diplomatie conference on 11

April1980.

(2) Preparation of a uniform law for the international sale of goods began in 1930 at the International Institute for the Unification ofPrivate Law (UNIDROIT) in Rome. After a long interruption in the work as a result of the Second World War, the draft was submitted to a diplomatie conference in The Hague in 1964, which adopted two conventions, one on the international sale of goods and the other on the formation of contracts for the international sale of goods.

(3) Almost immediatey! upon the adoption of the two conventions there was wide-spread criticism of their provisions as reflecting primarily the legal traditions and economie realities of continental Western Europe, which was the region that had most actively contributed to their preparation. As a result, one of the first tasks undertaken by UNCITRAL on its organization in 1968 was to enquire of States whether or not they intended to adhere to those conventions and the reasons for their positions. In the light of the responses received, UNCITRAL decided to study the two conventions to ascertain whieh modifications might render them capable of wider acceptance by countries of different legal, social and economie systems. The result of this study was the adoption by diplomatie conference on Il April1980 of the United Nations Convention on Contracts for the International Sale of Goods, which combines the subject matter of the two prior conventions.

(4) UNCITRAL's success in preparing a Convention with wider acceptability is evidenced by the fact that the original eleven States for whieh the Convention came into force on 1 january 1988 included States from every geographieal region, every stage of economie development and every major legal, social and economie system. The original eleven States were: Argen tina, China, Egypt, France, Hungary, Italy. Lesotho, Syria, United States, Yugoslavia and Zambia.

(5) As of31 january 1988, an additional four States, Austria, Finland, Mexico and Sweden, had become a party to the Convention.

(6) The Convention is divided into four parts. Part One deals with the scope of application of the Convention and the general provisions. Part 1Wo contains the rules governing the formation of contracts for the international sale of goods. Part Three deals with the substantive rights and obligations ofbuyer and seller arising from the contract. Part Four contains the final clauses of the Convention concerningsuch matters as how and when it cornes into force, the reservations and declarations that are permitted and the application ofthe Convention to international sales where both States concerned have the sa me or

similar law on the subject.

This note has been prepared by the Secretariat of the United Nations Commission on International Trade Law for informational purposes; it is not an official commentary on the Convention Part One Scope of application and general provisions.

**Part One - Scope of Application and General Provisions**

A- SCOPE OF APPLICATION

7. The articles on scope of application state both what is included in the coverage of the Convention and what is excluded from it. The provisions on inclusion are the most important. The Convention applies to contracts of sale of goods between parties whose places of business are in different States and either both of those States are Contracting States or the rules of private international law lead to the law of a Contracting State. A few States have availed themselves of the authorization in article 95 to declare that they would apply the Convention only in the former and not in the latter of these two situations. As the Convention becomes more widely adopted, the practical significance of such a declaration will diminish.

8. The final clauses make two additional restrictions on the territorial scope of application that will be relevant to a few States. One applies only if a State is a party to another international agreement that contains provisions concerning matters governed by this Convention; the other permits States that have the same or sirnilar domestic law of sales to declare that the Convention does not apply between them.

9. Con tracts of sale are distinguished from contracts for services in two respects by article 3. A contract for the supply of goods to be manufactured or produced is considered to be a sale unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for their manufacture or production. When the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services, the Convention does not apply.

10. The Convention contains a list of types of sales that are excluded from the Convention, either because of the purpose of the sale (goods bought for personal, family or household use), the nature of the sale (sales by auction, on execution or otherwise by law) or the nature of the goods (stocks, shares, investment securities, negotiable instruments, money, ships, vessels, hovercraft , aircraft or electricity). In many States sorne or ali of such sales are governed by special rules reflecting their special nature.

11. Severa!articles make clear that the subject matter of the Convention is restricted to the formation of the contract and the rights and duties of the buyer and seller arising from such a contract. In particular, the Convention is not concerned with the validity of the con tract, the effect which the con tract may have on the property in the goods sold or the liability of the seller for death or persona! injury caused by the goods to any person.

B - PARTY AUTONOMY

12. The basic principle of contractual freedom in the international sale of goods is recognized by the provision that permits the parties to exclude the application of this Convention or derogate from or vary the effect of any ofits provisions. The exclusion of the Convention would most often result fi·orn the choice by the parties of the law of a non-contracting State or of the domestic law of a contracting State to be the law applicable to the contract. Derogation from the Convention would occur whenever a provision in the contract provided a different rule from that found in the Convention.

C- INTERPRETATION OF THE CONVENTION

13. This Convention for the unification of the law governing the international sale of goods will better fulfill its purpose if it is interpreted in a consistent manner in ail legal systems. Great care was taken in its preparation to make it as clear and easy to understand as possible. Nevertheless, disputes will arise asto

its meaning and application. When this occurs, ali parties, including domestic courts and arbitral tribunals, are admonished to observe its international character and to promote uniformity in its application and the observance of good faith in international trade. In particular, when a question concerning a matter governed

- APPENDIX 1: EXPLANATORY NOTE BY THE UNCITRAL SECRETARIAT

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by this Convention is not express!y settled in it. the question is to be settled in conformity with the general principles on which the Convention is based. On!y in the absence of such principles should the matter be settled in conforrnity with the law applicable by virtue of the rules of private international law.

D - INTERPRETATION OF THE CONTRACT; USAGES

14. The Convention contains provisions on the manner in which statements and conduct of a party are to be interpreted in the context of the formation of the contract or its implementation. Usages agreed toby the parties, practices they have established between themselves and usages ofwhich the parties knew or ought to have known and which are widely known to, and regularly observed by. parties to con tracts of the type involved in the particular trade concerned may ali be binding on the parties to the contract of sale.

E - FORM OF THE CONTRACT

15. The Convention does not subject the contract of sale to any requirement as to form. In particular, article 11 provides that no written agreement is necessary for the conclusion of the contract. However, if the contract is in writing and it contains a provision requiring any modification or termina tian by agreement to be in writing, article 29 provides that the contract may not be otherwise modified or terminated by agreement. The only exception is that a party may be precluded by his conduct from asserting such a provision to the extent that the other persan has relied on that conduct.

16. In order to accommodate those States whose legislation requires con tracts of sale to be concluded in or evidenced by writing, article 96 entitles those States to declare that neither article 11 nor the exception to article 29 applies where any party to the contract has his place of business in that State.

**Part Two- Formation of the contract**

17. Part 'IWo of the Convention deals with a number of questions that arise in the formation of the contract by the exchange of an offer and an acceptance. When the formation of the con tract takes place in this manner, the contract is concluded when the acceptance of the offer becomes effective.

18. In arder for a proposai for concluding a contract to constitute an offer. it must be addressed to one or more specificpersons and it must be sufficiently definite. For the proposai to be sufficiently definite, it must indicate the goods and expressly or implicitly fix or make provision for determining the quantity and the priee.

19. The Convention takes a middle position between the doctrine ofthe revocability of the offer until acceptance and its general irrevocability for sorne period of time. The general rule is that an offer may be revoked. However, the revocation must reach the offeree before he has dispatched an acceptance. Moreover, an offer cannat be revoked if it indicates that it is irrevocable, which it may do by stating a fixed time for acceptance or otherwise. Furthermore, an offer may not be revoked 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.

20. Acceptance of an offer may be made by means of a statement or other conduct of the offeree indicating assent to the offer that is communicated to the offerer. However, in sorne cases the acceptance may consist of perforrning an act, such as dispatch of the goods or payment ofthe priee. Such an act would normal!y be effective as an acceptance the moment the act was performed.

21. A frequent problem in con tract formation, perhaps especially in regard to contracts of sale of goods, aJ.ises out of a reply to an offer that purports to be an acceptance but contains additional or different terms. Under the Convention, if the additional or different terms do not materially alter the ter ms of the offer.

the reply constitutes an acceptance, unless the offeror without undue delay abjects to those terms. If he

does not abject, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

22. If the additional or different terms do materially alter the terms of the contract, the reply constitutes a counter-offer that must in turn be accepted for a contract to be conduded. Additional or different terms relating, among other things, to the priee, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or sett lement of disputes are considered to alter the terms of the offer materially.

**Part Three - Sale of goods**

A - OBLIGATIONS OF THE SELLER

23. The general obligations of the seller are to 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. The Convention provides supplementary rules for use in the absence of contractual agreement asto when, where and how the seller must perform these obligations.

24. The Convention provides a number of rules that implement the seller's obligations in respect of the quality of the goods. In general, the seller must deliver goods that are of the quantity, quality and description required by the contract and that are contained or packaged in the manner required by the contract. One set of rules of particular importance in international sales of goods involves the seller's obligation to deliver goods that are free from any right or daim of a third party, induding rights based on industrial property or other intellectual property.

25. In connection with the seller's obligations in regard to the quality of the goods, the Convention contains provisions on the buyer's obligation to inspect the goods. He must give notice of any lack of their conformity with the contract within a reasonable time after he has discovered it or ought to have discovered it, and at the la test 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.

B- OBLIGATIONS OF THE BUYER

26. Compared to the obligations of the seller, the general obligations of the buyer are less extensive and relatively simple; they are to pay the priee for the goods and take delivery of them as required by the contract and the Convention. The Convention provides supplementary rules for use in the absence of contractual agreement asto how the priee is to be determined and where and when the buyer should perform his obligation to pay the priee.

C- REMEDIES FOR BREACH OF CONTRACT

27. The remedies of the buyer for breach of contract by the seller are set forth in connection with the obligations of the seller and the remedies of the seller are set forth in connection with the obligations of the buyer. This makes it easier to use and understand the Convention.

28. The general pattern of remedies is the same in both cases. If ali the required conditions are fulfilled, the aggrieved party may require performance of the other party's obligations, daim damages or avoid the contract. The buyer also has the right to reduce the priee where the goods delivered do not conform with the contract.

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29. Among the more important limitations on the right of an aggrieved party to daim a remedy is the concept of fundamental breach. For a breach of contract to be fundamental, it must result in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the result was neither foreseen by the party in breach nor foreseeable by a reaonsable person of the same kind in the same circumstances. A buyer can require the dellvery of substitute goods on!y if the goods

delivered were not in conformity with the contract and the lack of conf01mity constituted a fundamental breach of contract. The existence of a fundamental breach is one of the two circumstances thatjustifies a declaration of avoidance of a contract by the aggrieved party; the other circumstance being that, in the case of non-delivery of the goods by the seller or non-payment of the priee or failure to take delivery by the buyer, the party in breach faits to perform within a reasonable period of time fiXed by the aggrieved party.

30. Other remedies may be restricted by special circumstances. For example, 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 ali the circumstances. A party cannot recover damages that he could have rnitigated by taking the proper measures. A party may be exempted from paying damages

by virtue of an impediment beyond his controL

D- PASSING OF RISK

3L Determining the exact moment when the risk of loss or damage to the goods passes from the seller to the buyer is of great importance in contracts for the international sale of goods. Parties may regulate that issue in their contract either by an express provision or by the use of a trade term. However, for the frequent case where the contract does not contain such a provision, the Convention sets forth a complete set of rules.

32. The two special situations contemplated by the Convention are when the contract of sale involves carriage of the goods and when the goods are sold while in transit In ali other cases the risk passes to the buyer when he takes over the goods or from the time when the goods are placed at his disposai and he comrnits a breach of contract by failing to take delivery, whichever cornes first. In the frequent case when the contract relates to goods that are not then identified, they must be identified to the contract before they can be considered to be placed at the disposai of the buyer and the risk of their loss can be considered to have passed to him.

E- SUSPENSION OF PERFORMANCE AND ANTICIPATORY BREACH

33. The Convention contains special rules for the situation in which, prior to the date on which performance is due, it becomes apparent that one of the parties will not perform a substantial part of his obligations or will commit a fundamental breach 'of contract. A distinction is drawn between those cases in which the other party may suspend his own performance of the contract but the contract remains in existence awaiting future events and those cases in which he may declare the contractavoided.

F - EXEMPTION FROM LIABILITY TO PAY DAMAGES

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34. When a party fails to perfmm any of his obligations due to an impediment beyond his control that he could not reasonably have been expected to take into account at the time of the conclusion of the contract and that he could not have avoided or overcome, he is exempted from paying damages. This exemption may also apply if the failure is due to the failure of a third person whorn he has engaged to perform the whole or a part of the contract However, he is subjectto any other remedy, including reduction of the priee, if the goods were defective in sorne way.

G- PRESERVATION OF THE GOODS

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35. The Convention imposes on bath parties the duty to preserve any goods in their possession belonging to the other party. Such a duty is of even greater importance in an international sale of goods where the

ather party is from a foreign country and may not have agents in the country where the goods are located. Under certain circumstances the party in possession ofthe goods may seli them, or may even be required to sell them. A party selling the goods has the right toretain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them and must account to the ather party for the balance.

**Part Four - Final clauses**

36. The final clauses contain the usual provisions relating to the Secretary-General as depositary and providing that the Convention is subject to ratification, acceptance or approval by those States that signed it by 30 September 1981, that it is open to accession by ali States that are not signatory States and that the text is equally authentic in Arabie, Chinese, English, French, Russian and Spanish.

37. The Convention permits a certain number of declarations. Those relative to scope of application and the requirement asto a written contract have been mentioned above. There is a special declaration for States that have different systems of law governing contracts of sale in different parts of their territory. Finally. a State may declare that it will not be bound by Part II on formation of contracts or Part III - on the rights and obligations of the buyer and seller. This latter declaration was included as part of the decision to combine into one convention the subject matter of the two 1964 Hague

Conventions.

*Further information can be obtained from*

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**Appendix Il**

UNIDROIT Principles

of International Commercial Contracts·

PREAMBLE- PURPOSE OF THE PRINCIPLES

These Principles set forth general rules for international commercial contracts.

They shaH 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 contract 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 the applicable law.

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

They may serve as a mode!for national and internationallegislators.

CHAPTER 1 - GENERAL PROVISIONS

ARTICLE 1.1. (fREEDOM OF CONTRACT)

The parties are free to enter into a contract and to 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 manda tory rules, whether of national, international or supranational origin, which are applicable in accordance with the relevant rules of priva te international law.

ARTICLE 1.5. (EXCLUSION OR MODIFICATION BY THE PARTIES)

The parties may exclude the application of these Princip!es or derogate from or vary the elfect 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.

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ARTICLE 1.7. (GOOD FAITH AND FAIR DEALING)

l. 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)

l. 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)

l. Where notice is required it may be given by any means appropriate ta the circumstances.

2. A notice is effective when it reaches the persan to whom it is given.

3. For the purpose of paragraph 2 a notice "reaches" a persan when given ta that persan orally or delivered at that person's place or 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 ta the contract and its performance having regard to the circumstances known ta or contemplated by the parties at any time before or at the conclusion of the con tract;

- "obligor" refers ta the party who is ta perform an obligation and "obligee" refers ta 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 proposai for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bou nd in case of acceptance.

ARTICLE 2.3. (WITHDRAWAL OF OFFER)

1. An offer becomes effective when it reaches the alTeree.

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 con tract is concluded an offer may be revoked if the revocation reaches the offeree before it has dispatched an acceptance.

2. However, an offer cannat 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 ta rely on the offer as being irrevocable and the offeree has acted in reliance on 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 alTeree indicating assent to an olfer 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 perfoming 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 irnmediately 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 shawn on the letter or, if no such date is shawn, from the date shawn 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 the offer reaches the offeree.

2. Official holidays or non-business days occurring du ring the period for acceptance are included in

calculating the period. However, if a notice of acceptance cannat 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 con tains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, abjects to the discrepancy. If the offeror does not abject, the terms of the contract are the tenns 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 con tract 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 con tract or the recipient, without undue delay, abjects to the discrepancy.

ARTICLE 2.13. (CONCLUSION OF CONTRACT DEPENDENT ON AGREEMENT ON SPECIFIC MAITERS 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 specifie matters or in a specifie 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 orto be determined by a third persan does not prevent a contract from coming into existence.

2. The existence of the contract is not afTected by the fact that subsequently a) the parties reach no agreement on the term; or

b) the third persan does not determine the term,

provided that there is an alternative means of rendering the term definite that is reasonable in the circurnstances. 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 Hable for the !osses 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. (0UTY 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 CLAUSES)

A contract in writing which contains a clause indicating that the writing completely embodies the terms on which the parties have agreed cannat 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. (WRIITEN MODIFICATION CLAUSES)

A contract in writing which con tains 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 bath parties use standard terms in concluding a contract, the general rules on formation apply. subject to Articles 2.20-2.22.

2. Standard terms are provisions which are prepared in ad vance 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 shall be had to its content. language and presentation.

ARTICLE 2.21. (CONFLICT BETWEEN STANDARD TERMS AND NON-STANDARD TERMS)

ln case of conflict between a standard term and a term which is not a standard lerm the latter prevails.

ARTICLE 2.22. (BATTLE OF FORMS)

Where bath 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. thal it does not intend to be bound by such a contract.

CHAPTER 3- VALIDITY

ARTICLE 3.1. (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 requirement.

ARTICLE 3.3. (INITIAL IMPOSSIBILITY)

1. The mere fact that at the ti me 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 con tract a party was not entitled to dispose of the assets to which the con tract 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 con tract was concluded.

ARTICLE 3.5. (RELEVANT MISTAKE)

1. A party may only avoid the con tract for mistake if, when the contract was concluded, the mistake was of such importance thal a reasonable persan in the same situation as the party in error would only have concluded the con tract on materially different terms or would not have concluded it at ali 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 ta 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 persan from whom the declaration emanated.

ARTICLE 3.7. (REMEDIES FOR NON-PERFORMANCE)

A party is not entitled to avold 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 it is wrongful to use it as a means to obtain the conclusion of the contract.

ARTICLE **3.10.** (GROSS DISPARITY)

1. A party may avoid the con tract or an individual term of it if, at the time of the conclusion of the contract, the contract or 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, economie distress or urgent needs, or of its improvidence, ignorance, inexperience or lack of bargaining skill; and

b) the nature and pm·pose of the contract.

2. Upon the request of the party entitled to avoidance, a court may adapt the contract or term in arder 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, oris known or ought to be known by, a third persan 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 persan 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 con tract.

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 torun, avoidance of the contract is excluded.

ARTICLE **3.13.** (loss OF RIGHT TO AVOlD)

1. If a party is entitled to avoid the contract for mistake but the other party declares itself willing to perform or performs the contractas 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

su ch a declaration or render su ch 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 reliaf)ce on a notice of avoidance.

2. After such a declaration or performance the right to avoidance is !ost 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 daim restitution of whatever it has 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 cannat make restitution in kind, it makes an allowance for

what it has received.

ARTICLE 3.18. (DAMAGES)

lrrespective of whether or not the contract has been avoided, the party who knew or ought to have known of the ground for avoidance is Hable for damages so asto 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 con tract shall be interpreted according to the common intention of the parties.

2. 1f such an intention cannat be established, the contract shall be interpreted according to the meaning that reasonable persans 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 persan 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 ali 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 con tract;

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 ali the terms rather than to deprive sorne 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 con tract 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 shaH be had, among other factors, to

a) the intention of the parties:

b) the nature and purpose of the con tract;

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 con tract;

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 ofthat party's obligations.

ARTICLE **5.4.** (0UTY TO ACHIEVE A SPECIFIC RESULT. 0UTY OF BEST EFFORTS)

1. To the extent that an obligation of a party involves a duty to achieve a specifie result, that party is bou nd 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 persan 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 a duty to achieve a specifie result, regard shall be had, among other factors, to a) the way in which the obligation is expressed in the contract;

b) the contractual priee 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 con tract a party is bound to render a 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 priee, the parties are considered, in the absence of any indication to the contrary, to have made reference to the priee 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 priee is available, to a reasonable priee.

2. Where the priee is to be determined by one party and that determination is manifestly unreasonable, a reasonable priee shall be substituted notwithstanding any contract term to the contrary.

3. Where the priee is to be fiXed by a third persan, and that persan cannat or will not do so, the priee shall be a reasonable priee.

4. Where the priee 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- PE RFORMANCE

**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 con tract, 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 con tract.

ARTICLE **6.1.2.** (PERFORMANCE AT ONE TIME OR IN INSTALMENTS)

In cases under Article 6.1.1(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 **6.1.4.** (OROER OF PERFORMANCE)

1. To the extent that the performances of the parties can be rendered simultaneously, the parties are bou nd 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 **6.1.5.** (EARLIER PERFORMANCE)

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

2. Acceptance by a party of an earlier performance does not affect the time for the performance of its own obligations if that time has been fJXed irrespective of the performance of the ether party's obligations.

3. Additional expenses caused to the obligee by earlier performance are to be borne by the obliger, without prejudice to any ether remedy.

ARTICLE **6.1.6.** (PLACE OF PERFORMANCE)

1. If the place of performance is neither fJXed by, nor determinable from, the contract, a party is to perform:

a) a monetary obligation, at the obligee's place of business;

b) any ether obligation, at its own place of business.

2. A party must bear any increase in the ex penses 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 (l) or voluntarily, a cheque, any other arder to pay or a promise to pay, is presumed to do so on!y 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 hasan account.

2. In case of payment by a transfer 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 ether than that of the place for payment, it may be paid by the obliger in the currency of the place for payment unless

a) that currency is not 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. Ifit is impossible for the obliger 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 (l) (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 obliger 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 severa) monetary obligations ta the same obligee may specify at the time of payment the debt to which it intends the payment ta be applied. However, the payment discharges frrst 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 ta the obligor the obligation ta 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 ta that obligation which satisfies one of the following criteria and in the arder indicated:

a) an obligation which is due or which is the first ta fall due;

b) the obligation for which the obligee has )east security;

c) the obligation which is the most burdensome for the obligor;

d) the obligation which has arisen frrst.

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

ARTICLE **6.1.13.** (IMPUTATION OF NON-MONETARY OBLIGATIONS)

Article 6.1.12 applies with appropriate adaptations ta 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 ta

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 ta take the measures necessary to obtain the permission shall do sa without undue delay and shall bear any expenses incurred.

2. That party shall whenever appropriate give the other party notice of the grant or refusai 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 ali 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 con tract, either party is entitled ta terminale the contract.

2. Where the permission affects sorne terms orùy, paragraph (1) does not apply if, having regard ta the circumstances, it is reasonable to uphold the remaining con tract even if the permission is refused.

ARTICLE **6.1.17.** (PERMISSION REFUSED)

1. The refusai of a permission affecting the validity ot the contract renders the contract void. If the refusai affects the validity of sorne terms only, orùy such terms are void if, having regard ta the circumstances,

it is reasonable ta uphold the remaining contract.

2. Where the refusai of a permission renders the performance of the contract impossible in whole or in part, the rules on non-performance apply.

ARTICLE **6.2.1.** (CONTRACT TO BE OBSERVED)

**Section 2 - Hardship**

Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound ta perform its obligations subject ta 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 in 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)

l. Where the parties are to perform simultaneously, either party may withhold performance until the other party tenders its performance.

2. Where the parties are to perform consecutively, the party that is to perform later may withhold its pertormance until the fu·st party has performed.

ARTICLE **7.1.4.** (CURE BY NON·PERFORMING PARTY)

l. 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 non­

performing party's performance are suspended until the time for cure has expired.

4. The aggrieved party may withhold performance pending cure.

5. Notwithstanding cure, the aggrieved party re tains the right to daim damages for delay as weil as for any harm caused or not prevented by the cure.

ARTICLE **7.1.5.** (ADDITIONAL PERIOD FOR PERFORMANCE)

l. 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 daim 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 render 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 reasonably be expected to have taken the impediment into account at the time of conclusion of the con tract or to have avoided or overcome it or its consequences.

2. When the impediment is only temporary, the excuse shall have elfect for such period as is reasonable having regard to the effect of the impediment on the performance of the contract.

3. The party who fails to perform must give notice to the other party of the impediment and its elfect 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 party 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 in 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 persona! 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 ot the forum provide otherwise. Payment of the penalty to the aggrieved party does not exclude any daim 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 ftXed 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 cannat 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 termina te the contract where the failure of the other party ta perform an obligation under the con tract amounts to a fundamental non-performance.

2. In determining whether a failure ta perform an obligation amounts ta a fundamental non-performance

regard shall be had, in particular, ta 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 ta believe that it cannat 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 con tract is terminated.

3. In the case of delay the aggrieved party may also terminale the contract if the other party fails ta

perform before the time allowed it 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 ta the other party.

2. If performance has been offered late or otherwise does not conform ta the con tract the aggrieved party will lose its right ta terminate the contract unless it gives notice to the other party within a reasonable time after it has or ought ta have become aware of the offer or of the non-conforming performance.

ARTICLE **7.3.3.** (ANTICIPATORY NON-PERFORMANCE)

Where prior ta 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 con tract.

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 terminale the contract.

ARTICLE 7.3.5. (EFFECTS OF TERMINATION IN GENERAL)

1. Termination of the contract releases bath parties from their obligation to effect and to receive future performance.

2. Termination does not preclude a daim 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 whieh is to operate even after termination.

ARTICLE 7.3.6. (RESTITUTION)

1. On termination of the con tract either party may daim 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 con tract 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)

l. The aggrieved party is entitled to full compensation for harm sustained as a result of the non- performance. Such harm includes both any Joss whieh it suffered and any gain ofwhich 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. (CERTAINTV OF HARM)

l. 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 Joss of a chance in proportion to the probability of its occurrence.

3. Where the amount of damages cannat be established with a sufficient degree of certainty, the assessment is at the discretion of the court.

ARTICLE 7.4.4. (FORESEEABILITV OF HARM)

The non-performing party is Hable only for harm which it foresaw or could reasonably have foreseen at the time of the conclusion of the contractas 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 con tract and has made a replacement transaction within a reasonable time and in a reasonable manner it may recover the difference between the contract priee and the priee of the replacement transaction as weil as damages for any further harm.

ARTICLE 7.4.6. (PROOF OF HARM BV CURRENT PRICE)

l. Where the aggrieved party has terminated the con tract and has not made a replacement transaction but there is a currernt priee for the performance contracted for, it may recover the difference between the contract priee and the priee current at the time the contract is terminated as weil as damages for any further harm.

2. Current priee is the priee 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 priee at that place, the CUITent priee at such other place that appears reasonable to take as a reference.

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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 each of the parties.

ARTICLE 7.4.8. (MITIGATION OF HARM)

1. The non-performing party is not Hable 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)

l. If a party does not paya 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 non-payment 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 OAMAGES)

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

ARTICLE 7.4.11. (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 specilled sum may be reduced to a

reasonable amount where it is grossly excessive in relation to the harm resulting from the non-performance and to the other circumstances.

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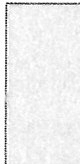
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