

รายการอ้างอิง

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ภาคผนวก

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UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL
SALE OF GOODS (1980) [CISG]

For U.S. citation purposes, the UN-certified English text is published in 52 Federal Register 6262, 6264-6280 (March 2, 1987); United States Code Annotated, Title 15, Appendix (Supp. 1987).

THE STATES PARTIES TO THIS CONVENTION,

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

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

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

HAVE AGREED as follows:

PART I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Chapter I

SPHERE OF APPLICATION

Article 1

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

(a) when the States are Contracting States; or

(b) when the rules of private international law lead to the application of the law of a Contracting State.

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

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

Article 2

This Convention does not apply to sales:

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

(b) by auction;

(c) on execution or otherwise by authority of law;

(d) of stocks, shares, investment securities, negotiable instruments or money;

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

(f) of electricity.

Article 3

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

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

Article 4

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

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

Article 5

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

Article 6

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

Chapter II

GENERAL PROVISIONS

Article 7

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

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

Article 8

(1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.

(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

Article 9

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

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

Article 10

For the purposes of this Convention:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

Article 11

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

Article 12

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

Article 13

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

PART II

FORMATION OF THE CONTRACT

Article 14

(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.

(2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

Article 15

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

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

Article 16

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

(2) However, an offer cannot be revoked:

- (a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or
- (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

Article 17

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

Article 18

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

(2) An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

Article 19

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the

discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

Article 20

(1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.

(2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

Article 21

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

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

Article 22

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

Article 23

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

Article 24

For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

PART III

SALE OF GOODS

Chapter I

GENERAL PROVISIONS

Article 25

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

Article 26

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

Article 27

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the

communication or its failure to arrive does not deprive that party of the right to rely on the communication.

Article 28

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

Article 29

- (1) A contract may be modified or terminated by the mere agreement of the parties.
- (2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

Chapter II

OBLIGATIONS OF THE SELLER

Article 30

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

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

Article 31

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

- (a) if the contract of sale involves carriage of the goods - in handing the goods over to the first carrier for transmission to the buyer;
- (b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the

goods were at, or were to be manufactured or produced at, a particular place - in placing the goods at the buyer's disposal at that place;

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

Article 32

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

(2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.

(3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

Article 33

The seller must deliver the goods:

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

(b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or

(c) in any other case, within a reasonable time after the conclusion of the contract.

Article 34

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer

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

Section II. Conformity of the goods and third party claims

Article 35

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

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

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

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

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

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

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

Article 36

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

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

Article 37

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

Article 38

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

Article 39

- (1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.
- (2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from

the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

Article 40

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

Article 41

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

Article 42

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

(a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or

(b) in any other case, under the law of the State where the buyer has his place of business.

(2) The obligation of the seller under the preceding paragraph does not extend to cases where:

(a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or

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

Article 43

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

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

Article 44

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

Section III. Remedies for breach of contract by the seller

Article 45

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

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

(2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

Article 46

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.

(2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of

contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

(3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

Article 47

(1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.

(2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 48

(1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

(2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.

(3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.

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

Article 49

(1) The buyer may declare the contract avoided:

(a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.

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

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

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

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

(ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or

(iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance.

Article 50

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

Article 51

(1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.

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

Article 52

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

Chapter III

OBLIGATIONS OF THE BUYER

Article 53

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

Section I. Payment of the price

Article 54

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

Article 55

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally

charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

Article 56

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

Article 57

(1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

(a) at the seller's place of business; or

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

(2) The seller must bear any increases in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

Article 58

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

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

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

Article 59

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

Section II. Taking delivery

Article 60

The buyer's obligation to take delivery consists:

- (a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
- (b) in taking over the goods.

Section III. Remedies for breach of contract by the buyer

Article 61

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

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

(2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

Article 62

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

Article 63

(1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.

(2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 64

(1) The seller may declare the contract avoided:

(a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.

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

(a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or

(b) in respect of any breach other than late performance by the buyer, within a reasonable time:

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

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

Article 65

(1) If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without

prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.

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

Chapter IV

PASSING OF RISK

Article 66

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

Article 67

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

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

Article 68

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of

the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

Article 69

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

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

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

Article 70

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

Chapter V

PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

Section I. Anticipatory breach and instalment contracts

Article 71

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

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

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

(2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to

the buyer even though the buyer holds a document which entitles him to obtain them.

The present paragraph relates only to the rights in the goods as between the buyer and the seller.

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

Article 72

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

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

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

Article 73

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

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

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

Section II. Damages

Article 74

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

Article 75

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

Article 76

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

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

Article 77

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the

breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

Section III. Interest

Article 78

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

Section IV. Exemptions

Article 79

(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:

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

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

(3) The exemption provided by this article has effect for the period during which the impediment exists.

(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.

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

Article 80

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

Section V. Effects of avoidance

Article 81

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

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

Article 82

(1) The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

(2) The preceding paragraph does not apply:

(a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;

(b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; or

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

Article 83

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

Article 84

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

(2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

(a) if he must make restitution of the goods or part of them; or

(b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

Section VI. Preservation of the goods

Article 85

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 86

(1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them

on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

Article 87

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

Article 88

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

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

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

PART IV

FINAL PROVISIONS

Article 89

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

Article 90

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

Article 91

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

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

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

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

Article 92

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

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

Article 93

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

one or more of them, and may amend its declaration by submitting another declaration at any time.

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

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

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

Article 94

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

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

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

Article 95

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

Article 96

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

Article 97

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

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

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

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

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

Article 98

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

Article 99

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

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

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

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

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

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

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

Article 100

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

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

Article 101

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

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

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

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

ภาคผนวก ข

U.C.C. - ARTICLE 2 – SALES

PART 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER [Table
of Contents]

§ 2-101. Short Title.

This Article shall be known and may be cited as Uniform Commercial Code-Sales.

§ 2-102. Scope; Certain Security and Other Transactions Excluded From This Article.

Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

§ 2-103. Definitions and Index of Definitions.

(1) In this Article unless the context otherwise requires

(a) "Buyer" means a person that buys or contracts to buy goods.

(b) "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. A term in an electronic record intended to evoke a response by an electronic agent is conspicuous if it is presented in a form that would enable a reasonably configured electronic agent to take it into account or react to it without review of the record by an individual. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(i) for a person:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language; and

(ii) for a person or an electronic agent, a term that is so placed in a record or display that the person or electronic agent may not proceed without taking action with respect to the particular term.

(c) "Consumer" means an individual who buys or contracts to buy goods that, at the time of contracting, are intended by the individual to be used primarily for personal, family, or household purposes.

(d) "Consumer contract" means a contract between a merchant seller and a consumer.

(e) "Delivery" means the voluntary transfer of physical possession or control of goods.

(f) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(g) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(h) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(i) "Foreign exchange transaction" means a transaction in which one party agrees to deliver a quantity of a specified money or unit of account in consideration of the other party's agreement to deliver another quantity of a different money or unit of account either currently or at a future date, and in which delivery is to be through funds transfer, book entry accounting, or other form of payment order, or other agreed means to transfer a credit balance. The term includes a transaction of this type involving two or more moneys and spot, forward, option, or other products derived from underlying moneys and any combination of these transactions. The term does not include a transaction involving two or more moneys in which one or both of the parties is obligated to make physical delivery, at the time of contracting or in the future, of banknotes, coins, or other form of legal tender or specie.

[(j) Reserved]

[(j) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.]

Legislative Note: The definition of "good faith" should not be adopted if the jurisdiction has enacted this definition as part of Article 1.

(k) "Goods" means all things that are movable at the time of identification to a contract for sale. The term includes future goods, specially manufactured goods, the unborn young of animals, growing crops, and other identified things attached to realty as described in Section 2-107. The term does not include information, the money in which the price is to be paid, investment securities under Article 8, the subject matter of foreign exchange transactions, or choses in action.

(l) "Receipt of goods" means taking physical possession of goods.

(m) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Legislative Note: The definition of "record" should not be adopted if the jurisdiction has enacted revised Article 1.

(n) "Remedial promise" means a promise by the seller to repair or replace goods or to refund all or part of the price of goods upon the happening of a specified event.

(o) "Seller" means a person that sells or contracts to sell goods.

(p) "Sign" means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic sound, symbol, or process.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance". Section 2-606.

"Between merchants". Section 2-104.

"Cancellation". Section 2-106(4).

"Commercial unit". Section 2-105.

"Conforming to contract". Section 2-106.

"Contract for sale". Section 2-106.

"Cover". Section 2-712.

"Entrusting". Section 2-403.

"Financing agency". Section 2-104.

"Future Goods". Section 2-105.

"Goods". Section 2-103.

"Identification". Section 2-501.

"Installment contract". Section 2-612.

"Lot". Section 2-105.

"Merchant". Section 2-104.

"Person in position of Seller". Section 2-707.

"Present sale". Section 2-106.

"Sale". Section 2-106.

"Sale on approval". Section 2-326.

"Sale or return". Section 2-326.

"Termination". Section 2-106.

(3) "Control" as provided in Section 7-106 and the following definitions in other Articles apply to this Article:

"Check". Section 3-104(f).

"Consignee". Section 7-102(3).

"Consignor". Section 7-102(4).

"Consumer Goods". Section 9-102(a)(23).

"Dishonor". Section 3-502.

"Draft". Section 3-104(e).

"Honor". Section 5-102(a)(8).

"Injunction against honor". Section 5-109(b).

"Letter of credit". Section 5-102(a)(10).

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

§ 2-104. Definitions: "Merchant"; "Between Merchants"; "Financing Agency".

(1) "Merchant" means a person that deals in goods of the kind or otherwise holds itself out by occupation as having knowledge or skill peculiar to the practices or goods involved in the transaction or to which the knowledge or skill may be attributed by the person's employment of an agent or broker or other intermediary that holds itself out by occupation as having the knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person that in the ordinary course of business makes advances against goods or documents of title or that by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. The term includes also a bank or other person that similarly intervenes between persons that are in the position of seller and buyer in respect to the goods (Section 2-707).

(3) "Between Merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

§ 2-105. Definitions: Transferability; "Future" Goods; "Lot"; "Commercial Unit".

(1) Goods must be both existing and identified before any interest in them may pass. Goods that are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(2) There may be a sale of a part interest in existing identified goods.

(3) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of the bulk or any quantity thereof agreed upon by number, weight, or other measure may to the extent of the seller's interest in the bulk be sold to the buyer that then becomes an owner in common.

(4) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(5) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

§ 2-106. Definitions: "Contract"; "Agreement"; "Contract for sale"; "Sale"; "Present sale"; "Conforming" to Contract; "Termination"; "Cancellation".

(1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

§ 2-107. Goods to Be Severed From Realty: Recording.

(1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and

shall then constitute notice to third parties of the buyer's rights under the contract for sale.

§ 2-108. Transactions Subject to Other Law

(1) A transaction subject to this article is also subject to any applicable:

(a) [list any certificate of title statutes of this State covering automobiles, trailers, mobile homes, boats, farm tractors, or the like], except with respect to the rights of a buyer in ordinary course of business under Section 2-403(2) which arise before a certificate of title covering the goods is effective in the name of any other buyer;

(b) rule of law that establishes a different rule for consumers; or

(c) statute of this state applicable to the transaction, such as a statute dealing with:

(i) the sale or lease of agricultural products;

(ii) the transfer of human blood, blood products, tissues, or parts;

(iii) the consignment or transfer by artists of works of art or fine prints;

(iv) distribution agreements, franchises, and other relationships through which goods are sold;

(v) the misbranding or adulteration of food products or drugs; and

(vi) dealers in particular products, such as automobiles, motorized wheelchairs, agricultural equipment, and hearing aids.

(2) Except for the rights of a buyer in ordinary course of business under subsection (1)(a), in the event of a conflict between this article and a law referred to in subsection (1), that law governs.

(3) For purposes of this article, failure to comply with a law referred to in subsection (1) has only the effect specified in that law.

(4) This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001-et seq., except that nothing in this article modifies, limits, or supersedes Section 7001(c) of that Act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that Act.

PART 2. FORM, FORMATION AND READJUSTMENT OF CONTRACT [Table of Contents]

§ 2-201. Formal Requirements; Statute of Frauds.

(1) A contract for the sale of goods for the price of \$5,000 or more is not enforceable by way of action or defense unless there is some record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against which enforcement is sought or by the party's authorized agent or broker. A record is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in the record.

(2) Between merchants if within a reasonable time a record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against the recipient unless notice of objection to its contents is given in a record within 10 days after it is received.

(3) A contract that does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against which enforcement is sought admits in the party's pleading, or in the party's testimony or otherwise under oath that a contract for sale was made, but the contract is not enforceable under this paragraph beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Sec. 2-606).

(4) A contract that is enforceable under this section is not unenforceable merely because it is not capable of being performed within one year or any other period after its making.

§ 2-202. Final Expression in a Record: Parol or Extrinsic Evidence.

(1) Terms with respect to which the confirmatory records of the parties agree or which are otherwise set forth in a record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be supplemented by evidence of:

(a) course of performance, course of dealing, or usage of trade (Section 1-303); and

(b) consistent additional terms unless the court finds the record to have been intended also as a complete and exclusive statement of the terms of the agreement .

(2) Terms in a record may be explained by evidence of course of performance, course of dealing, or usage of trade without a preliminary determination by the court that the language used is ambiguous.

§ 2-203. Seals Inoperative.

The affixing of a seal to a record evidencing a contract for sale or an offer to buy or sell goods does not constitute the record a sealed instrument. The law with respect to sealed instruments does not apply to such a contract or offer.

§ 2-204. Formation in General.

- (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including offer and acceptance, conduct by both parties which recognizes the existence of a contract, the interaction of electronic agents, and the interaction of an electronic agent and an individual.
- (2) An agreement sufficient to constitute a contract for sale may be found even if the moment of its making is undetermined.
- (3) Even if one or more terms are left open, a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.
- (4) Except as otherwise provided in Sections 2-211 through 2-213, the following rules apply:
 - (a) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.
 - (b) A contract may be formed by the interaction of an electronic agent and an individual acting on the individual's own behalf or for another person. A contract is formed if the individual takes actions that the individual is free to refuse to take or makes a statement, and the individual has reason to know that the actions or statement will:
 - (i) cause the electronic agent to complete the transaction or performance; or
 - (ii) indicate acceptance of an offer, regardless of other expressions or actions by the individual to which the electronic agent cannot react.

§ 2-205. Firm Offers.

An offer by a merchant to buy or sell goods in a signed record that by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but in no event may the period of irrevocability exceed three months. Any such term of assurance in a form supplied by the offeree must be separately signed by the offeror.

§ 2-206. Offer and Acceptance in Formation of Contract.

(1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances:

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but the shipment of nonconforming goods is not an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror that is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

(3) A definite and seasonable expression of acceptance in a record operates as an acceptance even if it contains terms additional to or different from the offer.

§ 2-207. Terms of Contract; Effect of Confirmation.

Subject to Section 2-202, if (i) conduct by both parties recognizes the existence of a contract although their records do not otherwise establish a

contract, (ii) a contract is formed by an offer and acceptance, or (iii) a contract formed in any manner is confirmed by a record that contains terms additional to or different from those in the contract being confirmed, the terms of the contract are:

- (a) terms that appear in the records of both parties;
- (b) terms, whether in a record or not, to which both parties agree; and
- (c) terms supplied or incorporated under any provision of this Act.

[§ 2-208. Reserved]

§ 2-209. Modification, Rescission and Waiver.

- (1) An agreement modifying a contract within this Article needs no consideration to be binding.
- (2) An agreement in a signed record which excludes modification or rescission except by a signed record may not be otherwise modified or rescinded, but except as between merchants such a requirement in a form supplied by the merchant must be separately signed by the other party.
- (3) The requirements of Section 2-201 must be satisfied if the contract as modified is within its provisions.
- (4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3), it may operate as a waiver.
- (5) A party that has made a waiver affecting an executory portion of a contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

§ 2-210. Delegation of Performance; Assignment of Rights.

(1) If the seller or buyer assigns rights under a contract, the following rules apply:

(a) Subject to paragraph (b) and except as otherwise provided in Section 9-406 or as otherwise agreed, all rights of the seller or the buyer may be assigned unless the assignment would materially change the duty of the other party, increase materially the burden or risk imposed on that party by the contract, or impair materially that party's chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of its entire obligation may be assigned despite an agreement otherwise.

(b) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not an assignment that materially changes the duty of or materially increases the burden or risk imposed on the buyer or materially impairs the buyer's chance of obtaining return performance under paragraph (a) unless, and only to the extent that, enforcement of the security interest results in a delegation of a material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective. However, the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and a court may grant other appropriate relief, including cancellation of the contract or an injunction against enforcement of the security interest or consummation of the enforcement.

(2) If the seller or buyer delegates performance of its duties under a contract, the following rules apply:

(a) A party may perform its duties through a delegate unless otherwise agreed or unless the other party has a substantial interest in having the original promisor perform or control the acts required by the contract. Delegation of performance does not relieve the delegating party of any duty to perform or liability for breach.

(b) Acceptance of a delegation of duties by the assignee constitutes a promise to perform those duties. The promise is enforceable by either the assignor or the other party to the original contract.

(c) The other party may treat any delegation of duties as creating reasonable grounds for insecurity and may without prejudice to its rights against the assignor demand assurances from the assignee under Section 2-609.

(d) A contractual term prohibiting the delegation of duties otherwise delegable under paragraph (a) is enforceable, and an attempted delegation is not effective.

(3) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances, as in an assignment for security, indicate the contrary, it is also a delegation of performance of the duties of the assignor.

(4) Unless the circumstances indicate the contrary, a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

§ 2-211. Legal Recognition of Electronic Contracts, Records, and Signatures

(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) This article does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed by electronic means or in electronic form.

(4) A contract formed by the interaction of an individual and an electronic agent under Section 2-204(4)(b) does not include terms provided by the individual if the individual had reason to know that the agent could not react to the terms as provided.

§ 2-212. ATTRIBUTION

An electronic record or electronic signature is attributable to a person if it was the act of the person or the person's electronic agent or the person is otherwise legally bound by the act.

§ 2-213. ELECTRONIC COMMUNICATION

(1) If the receipt of an electronic communication has a legal effect, it has that effect even if no individual is aware of its receipt.

(2) Receipt of an electronic acknowledgment of an electronic communication establishes that the communication was received but, in itself, does not establish that the content sent corresponds to the content received.

PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT [Table of Contents]

§ 2-301. General Obligations of Parties.

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

§ 2-302. Unconscionable contract or Term.

(1) If the court as a matter of law finds the contract or any term of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable term, or it may so limit the application of any unconscionable term as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the contract or any term thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

§ 2-303. Allocation or Division of Risks.

Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

§ 2-304. Price Payable in Money, Goods, Realty, or Otherwise.

(1) The price may be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods that the party is to transfer.

(2) Even if all or part of the price is payable in an interest in real property the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in real property or the transferor's obligations in connection therewith.

§ 2-305. Open Price Term.

(1) The parties if they so intend may conclude a contract for sale even if the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price;

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price to be fixed in good faith.

(3) If a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at the party's option treat the contract as cancelled or the party may fix a reasonable price.

(4) If, however, the parties intend not to be bound unless the price is fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable to do so must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

§ 2-306. Output, Requirements and Exclusive Dealings.

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

§ 2-307. Delivery in Single Lot or Several Lots.

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

§ 2-308. Absence of Specified Place for Delivery.

Unless otherwise agreed

(a) the place for delivery of goods is the seller's place of business or if none, the seller's residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

§ 2-309. Absence of Specific Time Provisions; Notice of Termination.

(1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

(2) If the contract provides for successive performances but is indefinite in duration, it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. A term specifying standards for the nature and timing of notice is enforceable if the standards are not manifestly unreasonable.

§ 2-310. Open Time for Payment or Running of Credit; Authority to Ship Under Reservation.

Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery;

(b) if the seller is required or authorized to send the goods, the seller may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless the inspection is inconsistent with the terms of the contract (Section 2-513);

(c) if tender of delivery is agreed to be made by way of documents of title otherwise than by paragraph (b), then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents, or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) if the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

§ 2-311. Options and Cooperation Respecting Performance.

(1) An agreement for sale which is otherwise sufficiently definite (Section 2-204(3)) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed, specifications relating to assortment of the goods are at the buyer's option and specifications or arrangements relating to shipment are at the seller's option.

(3) If the specification would materially affect the other party's performance but is not seasonably made or if one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) is excused for any resulting delay in that party's performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of that party's performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

§ 2-312. Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement.

(1) Subject to subsection (3), there is in a contract for sale a warranty by the seller that:

(a) the title conveyed shall be good and its transfer rightful and shall not unreasonably expose the buyer to litigation because of any colorable claim to or interest in the goods; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) Unless otherwise agreed, a seller that is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer that furnishes specifications to the seller must hold the seller harmless against any such claim that arises out of compliance with the specifications.

(3) A warranty under this section may be disclaimed or modified only by specific language or by circumstances that give the buyer reason to know that the seller does not claim title, that the seller is purporting to sell only the right or title as the seller or a third person may have, or that the seller is selling subject to any claims of infringement or the like.

§ 2-313. Express Warranties by Affirmation, Promise, Description, Sample.

(1) In this section, "immediate buyer" means a buyer that enters into a contract with the seller.

(2) Express warranties by the seller to the immediate buyer are created as follows:

(a) Any affirmation of fact or promise made by the seller which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(3) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that the seller have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

(4) Any remedial promise made by the seller to the immediate buyer creates an obligation that the promise will be performed upon the happening of the specified event.

§ 2-313A Obligation to Remote Purchaser Created by Record Packaged With or Accompanying Goods

(1) In this section:

(a) "Immediate buyer" means a buyer that enters into a contract with the seller.

(b) "Remote purchaser" means a person that buys or leases goods from an immediate buyer or other person in the normal chain of distribution.

(2) This section applies only to new goods and goods sold or leased as new goods in a transaction of purchase in the normal chain of distribution.

(3) If in a record packaged with or accompanying the goods the seller makes an affirmation of fact or promise that relates to the goods, provides a description that relates to the goods, or makes a remedial promise, and the seller reasonably expects the record to be, and the record is, furnished to the remote purchaser, the seller has an obligation to the remote purchaser that:

(a) the goods will conform to the affirmation of fact, promise, or description unless a reasonable person in the position of the remote purchaser would not believe that the affirmation of fact, promise, or description created an obligation; and

(b) the seller will perform the remedial promise.

(4) It is not necessary to the creation of an obligation under this section that the seller use formal words such as "warrant" or "guarantee" or that the seller have a specific intention to undertake an obligation, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create an obligation.

(5) The following rules apply to the remedies for breach of an obligation created under this section:

(a) The seller may modify or limit the remedies available to the remote purchaser if the modification or limitation is furnished to the remote purchaser no later than the time of purchase or if the modification or limitation is contained in the record that contains the affirmation of fact, promise, or description.

(b) Subject to a modification or limitation of remedy, a seller in breach is liable for incidental or consequential damages under Section 2-715, but not for lost profits.

(c) The remote purchaser may recover as damages for breach of a seller's obligation arising under subsection (3) the loss resulting in the ordinary course of events as determined in any reasonable manner.

(6) An obligation that is not a remedial promise is breached if the goods did not conform to the affirmation of fact, promise, or description creating the obligation when the goods left the seller's control.

§ 2-313B Obligation to Remote Purchaser Created by Communication to the Public

(1) In this section:

(a) "Immediate buyer" means a buyer that enters into a contract with the seller.

(b) "Remote purchaser" means a person that buys or leases goods from an immediate buyer or other person in the normal chain of distribution.

(2) This section applies only to new goods and goods sold or leased as new goods in a transaction of purchase in the normal chain of distribution.

(3) If in an advertisement or a similar communication to the public a seller makes an affirmation of fact or promise that relates to the goods, provides a description that relates to the goods, or makes a remedial promise, and the remote purchaser enters into a transaction of purchase with knowledge of and with the expectation that the goods will conform to the affirmation of fact, promise, or description, or that the seller will perform the remedial promise, the seller has an obligation to the remote purchaser that:

(a) the goods will conform to the affirmation of fact, promise, or description unless a reasonable person in the position of the remote purchaser would

not believe that the affirmation of fact, promise, or description created an obligation; and

(b) the seller will perform the remedial promise.

(4) It is not necessary to the creation of an obligation under this section that the seller use formal words such as "warrant" or "guarantee" or that the seller have a specific intention to undertake an obligation, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create an obligation.

(5) The following rules apply to the remedies for breach of an obligation created under this section:

(a) The seller may modify or limit the remedies available to the remote purchaser if the modification or limitation is furnished to the remote purchaser no later than the time of purchase. The modification or limitation may be furnished as part of the communication that contains the affirmation of fact, promise, or description.

(b) Subject to a modification or limitation of remedy, a seller in breach is liable for incidental or consequential damages under Section 2-715, but not for lost profits.

(c) The remote purchaser may recover as damages for breach of a seller's obligation arising under subsection (3) the loss resulting in the ordinary course of events as determined in any reasonable manner.

(6) An obligation that is not a remedial promise is breached if the goods did not conform to the affirmation of fact, promise, or description creating the obligation when the goods left the seller's control.

§ 2-314. Implied Warranty: Merchantability; Usage of Trade.

(1) Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a

merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as:

- (a) pass without objection in the trade under the contract description;
- (b) in the case of fungible goods, are of fair average quality within the description;
- (c) are fit for the ordinary purposes for which goods of that description are used;
- (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;
- (e) are adequately contained, packaged, and labeled as the agreement may require; and
- (f) conform to the promise or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2-316) other implied warranties may arise from course of dealing or usage of trade.

§ 2-315. Implied Warranty: Fitness for Particular Purpose.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

§ 2-316. Exclusion or Modification of Warranties.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed

wherever reasonable as consistent with each other; but subject to Section 2-202, negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it in a consumer contract the language must be in a record, be conspicuous, and state "The seller undertakes no responsibility for the quality of the goods except as otherwise provided in this contract," and in any other contract the language must mention merchantability and in case of a record must be conspicuous. Subject to subsection (3), to exclude or modify the implied warranty of fitness, the exclusion must be in a record and be conspicuous. Language to exclude all implied warranties of fitness in a consumer contract must state "The seller assumes no responsibility that the goods will be fit for any particular purpose for which you may be buying these goods, except as otherwise provided in the contract," and in any other contract the language is sufficient if it states, for example, that "There are no warranties that extend beyond the description on the face hereof." Language that satisfies the requirements of this subsection for the exclusion or modification of a warranty in a consumer contract also satisfies the requirements for any other contract.

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language that in common understanding calls the buyer's attention to the exclusion of warranties, makes plain that there is no implied warranty, and, in a consumer contract evidenced by a record, is set forth conspicuously in the record;

(b) if the buyer before entering into the contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods after a demand by the seller there is no implied warranty with regard

to defects that an examination in the circumstances should have revealed to the buyer; and

(c) an implied warranty may also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty may be limited in accordance with Sections 2-718 and 2-719.

§ 2-317. Cumulation and Conflict of Warranties Express or Implied.

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

§ 2-318. Third Party Beneficiaries of Warranties Express or Implied.

(1) In this section:

(a) "Immediate buyer" means a buyer that enters into a contract with the seller.

(b) "Remote purchaser" means a person that buys or leases goods from an immediate buyer or other person in the normal chain of distribution.

Alternative A to subsection (2)

A seller's warranty to an immediate buyer, whether express or implied, a seller's remedial promise to an immediate buyer, or a seller's obligation to a remote purchaser under Section 2-313A or 2-313B extends to any individual who is in the family or household of the immediate buyer or the remote purchaser or who is a guest in the home of either if it is reasonable to expect that the person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty, remedial promise, or obligation. A seller may not exclude or limit the operation of this section.

Alternative B to subsection (2)

A seller's warranty to an immediate buyer, whether express or implied, a seller's remedial promise to an immediate buyer, or a seller's obligation to a remote purchaser under Section 2-313A or 2-313B extends to any individual who may reasonably be expected to use, consume, or be affected by the goods and who is injured in person by breach of the warranty, remedial promise, or obligation. A seller may not exclude or limit the operation of this section.

Alternative C to subsection (2)

A seller's warranty to an immediate buyer, whether express or implied, a seller's remedial promise to an immediate buyer, or a seller's obligation to a remote purchaser under Section 2-313A or 2-313B extends to any person that may reasonably be expected to use, consume, or be affected by the goods and that is injured by breach of the warranty, remedial promise, or obligation. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty, remedial promise, or obligation extends.

[§ 2-319. Reserved]

[§ 2-320. Reserved]

[§ 2-321. Reserved]

[§ 2-322. Reserved]

[§ 2-323. Reserved]

[§ 2-324. Reserved]

§ 2-325. "Letter of Credit" Term; "Confirmed Credit".

If the parties agree that the primary method of payment will be by letter of credit, the following rules apply:

(a) The buyer's obligation to pay is suspended by seasonable delivery to the seller of a letter of credit issued or confirmed by a financing agency of good repute in which the issuer and any confirmer undertake to pay against presentation of documents that evidence delivery of the goods.

(b) Failure of a party seasonably to furnish a letter of credit as agreed is a breach of the contract for sale.

(c) If the letter of credit is dishonored or repudiated, the seller, on seasonable notification, may require payment directly from the buyer.

§ 2-326. Sale on Approval and Sale or Return; Consignment Sales and Rights of Creditors.

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even if they conform to the contract, the transaction is:

(a) a "sale on approval" if the goods are delivered primarily for use; and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any "or return" term of a contract for sale is to be treated as a separate contract for sale under Section 2-201 and as contradicting the sale aspect of the contract under Section 2-202.

§ 2-327. Special Incidents of Sale on Approval and Sale or Return.

(1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense.

§ 2-328. Sale by Auction.

(1) In a sale by auction, if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. If a bid is made during the process of completing the sale but before a prior bid is accepted, the

auctioneer has discretion to reopen the bidding or to declare the goods sold under the prior bid.

(3) A sale by auction is subject to the seller's right to withdraw the goods unless at the time the goods are put up or during the course of the auction it is announced in express terms that the right to withdraw the goods is not reserved. In an auction in which the right to withdraw the goods is reserved, the auctioneer may withdraw the goods at any time until completion of the sale is announced by the auctioneer. In an auction in which the right to withdraw the goods is not reserved, after the auctioneer calls for bids on an article or lot, the article or lot may not be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract a bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at the buyer's option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at an auction required by law.

PART 4. TITLE, CREDITORS AND GOOD FAITH PURCHASERS [Table of Contents]

§ 2-401. Passing of Title; Reservation for Security; Limited Application of This Section.

Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of Article 9, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale".

§ 2-402. Rights of Seller's Creditors Against Sold Goods.

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (Sections 2-502 and 2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the Article on Secured Transactions (Article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference.

§ 2-403. Power to Transfer; Good Faith Purchase of Goods; "Entrusting".

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

- (a) the transferor was deceived as to the identity of the purchaser, or
- (b) the delivery was in exchange for a check which is later dishonored, or
- (c) it was agreed that the transaction was to be a "cash sale", or
- (d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant that deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

[Note: If a state adopts the repealer of Article 6-Bulk Transfers (Alternative A), subsec. (4) should read as follows:]

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9) and Documents of Title (Article 7).

[Note: If a state adopts Revised Article 6-Bulk Sales (Alternative B), subsec. (4) should read as follows:]

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9), Bulk Sales (Article 6) and Documents of Title (Article 7).

PART 5. PERFORMANCE [Table of Contents]

§ 2-501. Insurable Interest in Goods; Manner of Identification of Goods.

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

§ 2-502. Buyer's Right to Goods on Seller's Repudiation, Failure to Deliver or Insolvency.

(1) Subject to subsections (2) and (3) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) in other cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

§ 2-503. Manner of Seller's Tender of Delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of Section 2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection.

§ 2-504. Shipment by Seller.

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment.

Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

§ 2-505. Seller's Shipment Under Reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional

delivery (subsection (2) of Section 2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

§ 2-506. Rights of Financing agency.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

§ 2-507. Effect of Seller's Tender; Delivery on Condition.

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

[Permanent Editorial Board Commentary]

§ 2-508. Cure by Seller of Improper Tender or Delivery; Replacement.

(1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

§ 2-509. Risk of Loss in the Absence of Breach.

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of possession or control of a non-negotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of Section 2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (Section 2-327) and on effect of breach on risk of loss (Section 2-510).

§ 2-510. Effect of Breach on Risk of Loss.

(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

§ 2-511. Tender of Payment by Buyer; Payment by Check.

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this Act on the effect of an instrument on an obligation (Section 3-802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

§ 2-512. Payment by Buyer Before Inspection.

(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under this Act (Section 5-109(b)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

§ 2-513. Buyer's Right to Inspection of Goods.

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of Section 2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

§ 2-514. When Documents Deliverable on Acceptance; When on Payment.

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

§ 2-515. Preserving Evidence of Goods in Dispute.

In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

PART 6. BREACH, REPUDIATION AND EXCUSE [Table of Contents]

§ 2-601. Buyer's Rights on Improper Delivery.

Subject to the provisions of this Article on breach in installment contracts (Section 2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2-718 and 2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest.

§ 2-602. Manner and Effect of Rightful Rejection.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (Sections 2-603 and 2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of Section 2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (Section 2-703).

§ 2-603. Merchant Buyer's Duties as to Rightfully Rejected Goods.

(1) Subject to any security interest in the buyer (subsection (3) of Section 2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are

perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

§ 2-604. Buyer's Options as to Salvage of Rightfully Rejected Goods.

Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

§ 2-605. Waiver of Buyer's Objections by Failure to Particularize.

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

§ 2-606. What Constitutes Acceptance of Goods.

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(b) fails to make an effective rejection (subsection (1) of Section 2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

§ 2-607. Effect of Acceptance; Notice of Breach; Burden of Establishing Breach After Acceptance; Notice of Claim or Litigation to Person Answerable Over.

(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after reasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after reasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of Section 2-312).

§ 2-608. Revocation of Acceptance in Whole or in Part.

(1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

- (a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or
 - (b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.
- (2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.
- (3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.
- (4) If a buyer uses the goods after a rightful rejection or justifiable revocation of acceptance, the following rules apply:
- (a) Any use by the buyer that is unreasonable under the circumstances is wrongful as against the seller and is an acceptance only if ratified by the seller.
 - (b) Any use of the goods that is reasonable under the circumstances is not wrongful as against the seller and is not an acceptance, but in an appropriate case the buyer is obligated to the seller for the value of the use to the buyer.

§ 2-609. Right to Adequate Assurance of Performance.

- (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially

reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

§ 2-610. Anticipatory Repudiation.

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (Section 2-703 or Section 2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 2-704).

§ 2-611. Retraction of Anticipatory Repudiation.

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (Section 2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

§ 2-612. "Installment contract"; Breach.

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

§ 2-613. Casualty to Identified Goods.

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (Section 2-324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

§ 2-614. Substituted Performance.

(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

§ 2-615. Excuse by Failure of Presupposed Conditions.

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller that complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

§ 2-616. Procedure on Notice Claiming Excuse.

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (Section 2-612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding sections.

PART 7. REMEDIES [Table of Contents]

§ 2-701. Remedies for Breach of Collateral contracts Not Impaired.

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article.

§ 2-702. Seller's Remedies on Discovery of Buyer's Insolvency.

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (Section 2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent, the seller may reclaim the goods upon demand made within a reasonable time after the buyer's receipt of the goods. Except as provided in this subsection, the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course of business or other good-faith purchaser for value under Section 2-403. Successful reclamation of goods excludes all other remedies with respect to them.

§ 2-703. Seller's Remedies in General.

(1) A breach of contract by the buyer includes the buyer's wrongful rejection or wrongful attempt to revoke acceptance of goods, wrongful failure to

perform a contractual obligation, failure to make a payment when due, and repudiation.

(2) If the buyer is in breach of contract the seller, to the extent provided for by this Act or other law, may:

- (a) withhold delivery of such goods;
- (b) stop delivery of the goods under Section 2-705;
- (c) proceed under Section 2-704 with respect to goods unidentified to the contract or unfinished;
- (d) reclaim the goods under Section 2-507(2) or 2-702(2);
- (e) require payment directly from the buyer under Section 2-325(c);
- (f) cancel;
- (g) resell and recover damages under Section 2-706;
- (h) recover damages for non-acceptance or repudiation under (Section 2-708(1) or in a proper case the price (Section 2-709);
- (j) recover the price under Section 2-709;
- (k) obtain specific performance under Section 2-716;
- (l) recover liquidated damages under Section 2-718;
- (m) in other cases, recover damages in any manner that is reasonable under the circumstances.

(3) If the buyer becomes insolvent, the seller may:

- (a) withhold delivery under Section 2-702(1);
- (b) stop delivery of the goods under Section 2-705;
- (c) reclaim the goods under Section 2-702(2).

§ 2-704. Seller's Right to Identify Goods to the Contract Notwithstanding Breach or to Salvage Unfinished Goods.

(1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

§ 2-705. Seller's Stoppage of Delivery in Transit or Otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 2-702) or if the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier that has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

§ 2-706. Seller's Resale Including Contract for Resale.

(1) Under the conditions stated in Section 2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (Section 2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser that buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2-707) or a buyer that has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of Section 2-711).

§ 2-707. "Person in the Position of a Seller".

(1) A "person in the position of a seller" includes as against a principal an agent that has paid or become responsible for the price of goods on behalf of his principal or anyone that otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller has the same remedies as a seller under this Article.

§ 2-708. Seller's Damages for Non-acceptance or Repudiation.

(1) Subject to subsection (2) and to Section 2-723:

(a) the measure of damages for nonacceptance by the buyer is the difference between the contract price and the market price at the time and place for tender together with any incidental or consequential damages provided in Section 2-710, but less expenses saved in consequence of the buyer's breach; and

(b) the measure of damages for repudiation by the buyer is the difference between the contract price and the market price at the place for tender at the expiration of a commercially reasonable time after the seller learned of the repudiation, but no later than the time stated in paragraph (a), together with any incidental or consequential damages provided in Section 2-710, less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (Section 2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

§ 2-709. Action for the Price.

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 2-610), a seller that is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

§ 2-710. Seller's Incidental Damages.

(1) Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

(2) Consequential damages resulting from the buyer's breach include any loss resulting from general or particular requirements and needs of which the buyer at the time of contracting had reason to know and which could not reasonably be prevented by resale or otherwise.

(3) In a consumer contract, a seller may not recover consequential damages from a consumer.

§ 2-711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods.

(1) A breach of contract by the seller includes the seller's wrongful failure to deliver or to perform a contractual obligation, making of a nonconforming tender of delivery or performance, and repudiation.

(2) If the seller is in breach of contract under subsection (1), the buyer, to the extent provided for by this Act or other law, may:

(a) in the case of rightful cancellation, rightful rejection, or justifiable revocation of acceptance, recover so much of the price as has been paid;

(b) deduct damages from any part of the price still due under Section 2-717;

(c) cancel;

(d) cover and have damages under Section 2-712 as to all goods affected whether or not they have been identified to the contract;

(e) recover damages for nondelivery or repudiation under Section 2-713;

(f) recover damages for breach with regard to accepted goods or breach with regard to a remedial promise under Section 2-714;

(g) recover identified goods under Section 2-502;

(h) obtain specific performance or obtain the goods by replevin or similar remedy under Section 2-716;

(i) recover liquidated damages under Section 2-718;

(j) in other cases, recover damages in any manner that is reasonable under the circumstances.

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2-706).

§ 2-712. "Cover"; Buyer's Procurement of Substitute Goods.

(1) If the seller wrongfully fails to deliver or repudiates or the buyer rightfully rejects or justifiably revokes acceptance, the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

§ 2-713. Buyer's Damages for Non-delivery or Repudiation.

(1) Subject to Section 2-723, if the seller wrongfully fails to deliver or repudiates or the buyer rightfully rejects or justifiably revokes acceptance:

(a) the measure of damages in the case of wrongful failure to deliver by the seller or rightful rejection or justifiable revocation of acceptance by the buyer is the difference between the market price at the time for tender under the contract and the contract price together with any incidental or consequential damages under Section 2-715, but less expenses saved in consequence of the seller's breach; and

(b) the measure of damages for repudiation by the seller is the difference between the market price at the expiration of a commercially reasonable time after the buyer learned of the repudiation, but no later than the time stated in paragraph (a), and the contract price together with any incidental or consequential damages provided in this Article (Section 2-715), less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

§ 2-714. Buyer's Damages for Breach in Regard to Accepted Goods.

(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

§ 2-715. Buyer's Incidental and Consequential Damages.

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

§ 2-716. Buyer's Right to Specific Performance or Replevin.

(1) Specific performance may be decreed if the goods are unique or in other proper circumstances. In a contract other than a consumer contract, specific performance may be decreed if the parties have agreed to that remedy.

However, even if the parties agree to specific performance, specific performance may not be decreed if the breaching party's sole remaining contractual obligation is the payment of money.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin or similar remedy for goods identified to the contract if after reasonable effort the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

(4) The buyer's right under subsection (3) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

§ 2-717. Deduction of Damages From the Price.

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

§ 2-718. Liquidation or Limitation of Damages; Deposits.

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. Section 2-719 determines the enforceability of a term that limits but does not liquidate damages.

(2) If the seller justifiably withholds delivery of goods or stops performance because of the buyer's breach or insolvency, the buyer is entitled to restitution of any amount by which the sum of the buyer's payments exceeds the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1)

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes:

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (Section 2-706).

§ 2-719. Contractual Modification or Limitation of Remedy.

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

§ 2-720. Effect of "Cancellation" or "Rescission" on Claims for Antecedent Breach.

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

§ 2-721. Remedies for Fraud.

Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

§ 2-722. Who Can Sue Third Parties for Injury to Goods.

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale that has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party that either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of which it may concern.

§ 2-723. Proof of Market Price: Time and Place.

(1) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(2) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

§ 2-724. Admissibility of Market Quotations.

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

§ 2-725. Statute of Limitations in Contracts for Sale.

(1) Except as otherwise provided in this section, an action for breach of any contract for sale must be commenced within the later of four years after the right of action has accrued under subsection (2) or (3) or one year after the breach was or should have been discovered, but no longer than five years after the right of action accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it. However, in a consumer contract, the period of limitation may not be reduced.

(2) Except as otherwise provided in subsection (3), the following rules apply:

(a) Except as otherwise provided in this subsection, a right of action for breach of a contract accrues when the breach occurs, even if the aggrieved party did not have knowledge of the breach.

(b) For breach of a contract by repudiation, a right of action accrues at the earlier of when the aggrieved party elects to treat the repudiation as a breach or when a commercially reasonable time for awaiting performance has expired.

(c) For breach of a remedial promise, a right of action accrues when the remedial promise is not performed when performance is due.

(d) In an action by a buyer against a person that is answerable over to the buyer for a claim asserted against the buyer, the buyer's right of action

against the person answerable over accrues at the time the claim was originally asserted against the buyer.

(3) If a breach of a warranty arising under Section 2-312, 2-313(2), 2-314, or 2-315, or a breach of an obligation, other than a remedial promise, arising under Section 2-313A or 2-313B, is claimed, the following rules apply:

(a) Except as otherwise provided in paragraph (c), a right of action for breach of a warranty arising under Section 2-313(2), 2-314, or 2-315 accrues when the seller has tendered delivery to the immediate buyer, as defined in Section 2-313, and has completed performance of any agreed installation or assembly of the goods.

(b) Except as otherwise provided in paragraph (c), a right of action for breach of an obligation, other than a remedial promise, arising under Section 2-313A or 2-313B accrues when the remote purchaser, as defined in Section 2-313A or 2-313B, receives the goods.

(c) If a warranty arising under Section 2-313(2) or an obligation, other than a remedial promise, arising under Section 2-313A or 2-313B explicitly extends to future performance of the goods and discovery of the breach must await the time for performance, the right of action accrues when the immediate buyer as defined in Section 2-313 or the remote purchaser as defined in Section 2-313A or 2-313B discovers or should have discovered the breach.

(d) A right of action for breach of warranty arising under Section 2-312 accrues when the aggrieved party discovers or should have discovered the breach. However, an action for breach of the warranty of noninfringement may not be commenced more than six years after tender of delivery of the goods to the aggrieved party.

(4) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same

breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(5) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Act becomes effective.

ภาคผนวก ค

บันทึกหลักการและเหตุผล

ประกอบร่างพระราชบัญญัติสัญญาซื้อขายสินค้าทางพาณิชย์

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หลักการ

ให้มีกฎหมายว่าด้วยสัญญาซื้อขายสินค้าทางพาณิชย์ขึ้นเป็นการเฉพาะ
แยกต่างหากจากสัญญาซื้อขายในทางแพ่ง

เหตุผล

ปัจจุบันประเทศไทยมิได้มีกฎหมายว่าด้วยสัญญาซื้อขายสินค้าทางพาณิชย์แยก
ต่างหากจากสัญญาซื้อขายในทางแพ่งไว้โดยเฉพาะ ในทางปฏิบัติศาลต้องนำประมวลกฎหมาย
แพ่ง

และพาณิชย์ลักษณะซื้อขายซึ่งออกแบบไว้สำหรับการซื้อขายทางแพ่งมาใช้บังคับกับสัญญาซื้อ
ขาย

สินค้าทางพาณิชย์ด้วย ไม่ว่าจะเป็นสัญญาซื้อขายสินค้าทางพาณิชย์ภายในประเทศ หรือ
สัญญา

ซื้อขายสินค้านี้อาจระหว่างประเทศก็ตาม ทำให้ไม่สอดคล้องกับหลักปฏิบัติและประเพณีทางการค้า

ทั้งในประเทศและระหว่างประเทศ เกิดข้อขัดข้องหลายประการ สมควรจัดให้มีกฎหมายว่าด้วย

การซื้อขายสินค้าทางพาณิชย์ขึ้นเป็นการเฉพาะ จึงจำเป็นต้องตราพระราชบัญญัตินี้

ร่างพระราชบัญญัติสัญญาซื้อขายสินค้าทางพาณิชย์

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โดยที่เป็นการสมควรให้มีกฎหมายว่าด้วยสัญญาซื้อขายสินค้าทางพาณิชย์เป็นการเฉพาะ

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มาตรา ๑ พระราชบัญญัตินี้เรียกว่า "พระราชบัญญัติสัญญาซื้อขายสินค้าทางพาณิชย์ พ.ศ."

มาตรา ๒ พระราชบัญญัตินี้ให้ใช้บังคับเมื่อพ้นกำหนดหนึ่งร้อยแปดสิบวันนับแต่วันประกาศในราชกิจจานุเบกษาเป็นต้นไป

มาตรา ๓ ในพระราชบัญญัตินี้

"สินค้า" หมายความว่า สິงหาริมทรัพย์ทั้งที่มีอยู่แล้วในขณะที่ทำสัญญา และที่จะผลิตหรือจัดทำขึ้นในภายหน้า แต่ไม่รวมถึงบุคคลลสิทธิ หรือสิทธิในทรัพย์สินทางปัญญา

[CISG Article ๓ (๑)]

"สัญญา" หมายความว่า สัญญาซื้อขายที่อยู่ภายใต้บังคับแห่งพระราชบัญญัตินี้

"อินโคเทอมส์" (Incoterms) หมายความว่า คำย่อที่กำหนดขึ้นโดยหอการค้านานาชาติ เพื่อให้คู่สัญญาซื้อขายสินค้าใช้แสดงถึงสิทธิและหน้าที่บางประการระหว่างคู่สัญญาว่าเป็นไปตาม

หลักเกณฑ์ที่หอการค้านานาชาติจัดทำไว้

"สถานประกอบการ" (Place of Business) หมายความว่า สถานที่ตั้งหรือที่แสดงต่อผู้เกี่ยวข้อง ว่าเป็นที่ตั้งของสำนักงานใหญ่ หรือสำนักงานสาขาที่คู่สัญญาใช้เป็นที่พักการทำงานหรือเป็นที่ติดต่อกันของแต่ละฝ่ายในขณะทำสัญญา ถ้าคู่สัญญาฝ่ายใดมีสถานประกอบการหลายแห่งให้ถือว่าสถานประกอบการที่เกี่ยวข้องกับสัญญานั้นมากที่สุดเป็นสถานประกอบการของคู่สัญญาฝ่ายนั้น และหากฝ่ายใดไม่มีสถานประกอบการให้ถือว่าถิ่นที่อยู่ปกติเป็นสถานประกอบการของฝ่ายนั้น [CISG Article ๑ และ ๑๐]

"ผู้ประกอบการค้าพาณิชย์" หมายความว่า นิติบุคคลที่มีวัตถุประสงค์ในการแสวงหากำไรมาแบ่งปันกัน ไม่ว่าจะเป็นิติบุคคลตามกฎหมายไทย หรือกฎหมายต่างประเทศ ห้างหุ้นส่วนสามัญไม่จดทะเบียน กลุ่มบุคคลในกิจการร่วมค้า และผู้ที่ได้จดทะเบียนภาษีมูลค่าเพิ่มหรือภาษีมูลค่าเพิ่มชั่วคราวตามประมวลรัษฎากร [ร่างพ.ร.บ. จัดตั้งฯ มาตรา ๔]

"ประเพณีทางการค้า" หมายความว่า ประเพณีหรือธรรมเนียมปฏิบัติซึ่งเป็นที่รู้จักกัน อย่างกว้างขวางและถือปฏิบัติกันอยู่เป็นปกติระหว่างผู้ค้าขายสินค้านั้น ทั้งคู่สัญญาที่เกี่ยวข้อง

ก็ได้รู้หรือควรจะได้รู้ถึงความมีอยู่ของประเพณีหรือธรรมเนียมปฏิบัติดังกล่าวด้วย

[CISG Article ๙]

"ภาระความเสี่ยง" (Risk of loss) หมายความว่า ภาระความเสี่ยงต่อการสูญหายเสียหายหรือทำลายของสินค้าที่ซื้อขาย

มาตรา ๔ ภายใต้บังคับแห่งมาตรา ๕ และมาตรา ๖ พระราชบัญญัตินี้ให้ใช้บังคับแก่สัญญาดังต่อไปนี้ [CISG Article ๑ (๓)]

(๑) สัญญาซื้อขายสินค้าภายในประเทศที่คู่สัญญาเป็นผู้ประกอบการค้าพาณิชย์

(๒) สัญญาซื้อขายสินค้านั้นระหว่างประเทศที่คู่สัญญามีสถานประกอบการ (Places of Business) ตั้งอยู่ในดินแดนของประเทศต่างกัน [CISG Article ๑]

(๓) สัญญาซื้อขายที่คู่สัญญาตกลงกันอย่างชัดแจ้งว่าให้อยู่ภายใต้บังคับแห่งพระราชบัญญัตินี้

มาตรา ๕ พระราชบัญญัตินี้ไม่ใช้บังคับแก่สัญญาซื้อขายต่อไปนี้

(๑) สินค้าที่ซื้อไปเพื่อใช้ส่วนตัว หรือในครอบครัวของผู้ซื้อ เว้นแต่ในขณะทำสัญญา
ผู้ขาย

มิได้รู้และไม่มีเหตุอันควรจะรู้ว่าผู้ซื้อต้องการซื้อไปเพื่อใช้ส่วนตัวหรือในครอบครัวของผู้ซื้อ

(๒) ในการขายทอดตลาด หรือการบังคับคดี หรือการบังคับให้เป็นไปตามกฎหมาย

(๓) สัญญาซื้อขายล่วงหน้าที่อยู่ในบังคับแห่งกฎหมายว่าด้วยสัญญาซื้อขายล่วงหน้า

(๔) หุ่น หุ่นกึ่ง ตราสารการลงทุน ตราสารหนี้ ตราสารเปลี่ยนมือ หรือเงินตรา

(๕) เรือ หรืออากาศยาน

(๖) กระแสไฟฟ้า คลื่นความถี่ หรือข้อมูล

(๗) สินค้าอื่นตามที่กำหนดในกฎกระทรวง

[ที่มา: (๑) (๖) มาจาก CISG Article ๒]

มาตรา ๖ สัญญาที่อยู่ในบังคับแห่งพระราชบัญญัตินี้ แม้จะมีการซื้อขายสินค้าอื่น หรือ
การให้บริการรวมอยู่ด้วย ก็ให้อยู่ภายใต้บังคับแห่งพระราชบัญญัตินี้ เว้นแต่การซื้อขายสินค้าอื่น
หรือการให้บริการจะเป็นสาระสำคัญแห่งสัญญายิ่งกว่า [ที่มา : CISG Article ๓]

มาตรา ๖/๑ บทบัญญัติแห่งพระราชบัญญัตินี้ไม่ใช้กับความรับผิดของผู้ขาย
กรณีเกิดความเสียหายแก่ชีวิตหรือร่างกายอันมีสาเหตุมาจากสินค้า

มาตรา ๖/๒ คู่สัญญาอาจตกลงกันไม่นำบทบัญญัติแห่งพระราชบัญญัตินี้ไปใช้บังคับ
ทั้งหมด

หรือบางส่วน หรือตกลงกันให้ผิดแผกแตกต่างไปจากบทบัญญัติในพระราชบัญญัตินี้

มาตรา ๗ ให้รัฐมนตรีว่าการกระทรวงพาณิชย์รักษาการตามพระราชบัญญัตินี้ และ
ให้มีอำนาจออกกฎกระทรวง และจัดวางระเบียบข้อบังคับทางธุรการ เพื่อปฏิบัติการให้เป็นไปตาม
พระราชบัญญัตินี้

กฎกระทรวงนั้น เมื่อได้ประกาศในราชกิจจานุเบกษาแล้วให้ใช้บังคับได้

หมวด ๑

บททั่วไป

มาตรา ๘ สิทธิหน้าที่และนิติสัมพันธ์ระหว่างผู้ซื้อและผู้ขายให้เป็นไปตามที่ตกลงกัน
 ในสัญญา เรื่องใดที่คู่สัญญามีได้ตกลงกันได้ไว้ก็ให้บังคับตามบทบัญญัติในพระราชบัญญัตินี้
 หากไม่มีบทบัญญัติเช่นนั้น ให้บังคับตามประเพณีทางการค้า และหลักทั่วไปแห่งกฎหมาย
 ตามลำดับ และหากประเพณีทางการค้าและหลักทั่วไปแห่งกฎหมายก็ไม่มีด้วยซ้ำ ท่านให้บังคับ
 ตามกฎหมายที่ใช้บังคับแก่สัญญาซื้อขายทั่วไป [ป.พ.พ. + พ.ร.บ.ว่าด้วยข้อสัญญาที่ไม่เป็นธรรม
 + พ.ร.บ. ธุรกรรมทางอิเล็กทรอนิกส์]

ให้ใช้ความในวรรคหนึ่งบังคับแก่สัญญาซื้อขายสินค้าระหว่างประเทศตามมาตรา ๔ (๒)
 เพียงเท่าที่ไม่ขัดหรือแย้งกับความตกลงระหว่างประเทศว่าด้วยสัญญาซื้อขายสินค้าระหว่าง
 ประเทศ
 ที่ประเทศไทยเป็นภาคี

มาตรา ๙ สัญญาที่อยู่ในบังคับแห่งพระราชบัญญัตินี้ ย่อมมีผลบังคับกันได้ แม้จะ
 มิได้

ทำเป็นหนังสือหรือมีหลักฐานเป็นหนังสือ [ที่มา : CISG Article ๑๑]

การตกลงแก้ไขเปลี่ยนแปลงสิทธิหน้าที่ของคู่สัญญาให้ผิดแผกแตกต่างไปจากที่กฎหมาย
 บังคับไว้หรือแตกต่างไปจากประเพณีทางการค้า หรือแนวทางที่คู่สัญญาเคยปฏิบัติต่อกันมา
 หากมิได้มีหลักฐานเป็นหนังสือลงลายมือชื่อคู่สัญญาฝ่ายที่จะต้องเสียประโยชน์จากการตกลง
 แก้ไข

เปลี่ยนแปลงนั้น ให้สันนิษฐานไว้ก่อนว่าหาได้มีข้อตกลงดังกล่าวไม่

ในกรณีที่สัญญาเดิมมีหลักฐานเป็นหนังสือลงลายมือชื่อผู้ที่จะต้องรับผิดชอบ และ
 มี

ข้อตกลงไว้ด้วยว่าการตกลงแก้ไขเปลี่ยนแปลงหรือยกเลิกสัญญานั้นจะต้องมีหลักฐานเป็นหนังสือ
 ลงลายมือชื่อฝ่ายที่จะต้องเสียประโยชน์จากการตกลงดังกล่าว การตกลงแก้ไขเปลี่ยนแปลงหรือ
 ยกเลิกข้อตกลงเดิมจะต้องมีหลักฐานตามที่กำหนดไว้จึงจะยกขึ้นเป็นข้อต่อสู้หรือฟ้องร้องบังคับ
 คดี

ได้ แต่ถ้าคู่สัญญาฝ่ายใดได้กระทำการใดอันแสดงให้เห็นได้ว่าไม่ตั้งใจที่จะให้การแก้ไข
 เปลี่ยนแปลงหรือยกเลิกสัญญาเดิมจะต้องมีหลักฐานดังกล่าวและคู่กรณีอีกฝ่ายหนึ่งได้ยอมรับ
 ตาม

นั้นด้วยแล้วเพียงใด การแก้ไขเปลี่ยนแปลงหรือยกเลิกสัญญาในกรณีนั้นจะไม่มีหลักฐานตามที่
 กำหนดไว้เดิมก็ได้เพียงเท่าที่ได้ยอมรับกันนั้น [ที่มา : CISG Article ๒๙ (๒)]

มาตรา ๑๐ สัญญาที่มีข้อตกลงว่าเป็นการซื้อขายตามอินโคเทอมส์ลักษณะใดลักษณะหนึ่ง ให้ถือว่าหลักเกณฑ์ที่หอการค้านานาชาติ กำหนดให้ใช้กับกรซื้อขายลักษณะนั้น ในขณะที่ทำสัญญาเป็นส่วนหนึ่งของข้อตกลงในสัญญานั้น เว้นแต่คู่สัญญาจะตกลงกันโดยชัดแจ้งเป็นอย่างอื่น [ที่มา: ICC]

มาตรา ๑๑ การตีความสัญญาและบทบัญญัติแห่งกฎหมายที่ใช้บังคับแก่สัญญาดังกล่าว

จะต้องคำนึงถึงปัจจัยต่อไปนี้ด้วย [ที่มา: CISG Article ๗ และ ๘]

(๑) ความสอดคล้องกับมาตรฐานและแนวทางที่ถือปฏิบัติกันอยู่ในวงการค้าพาณิชย์ทั้งในประเทศ และระหว่างประเทศ [ที่มา: CISG Article ๗ (๑)]

(๒) ความเจริญรุ่งเรืองอย่างยั่งยืนของกิจการค้าพาณิชย์ทั้งในประเทศ และระหว่างประเทศ

(๓) ประเพณีทางการค้าที่คู่สัญญารู้หรือควรจะได้รู้ และแนวทางที่คู่สัญญาเคยปฏิบัติต่อกันมาก่อน

(๔) ความสุจริตและเป็นธรรมซึ่งผู้ประกอบการค้าพาณิชย์ที่ดีจะพึงมีและปฏิบัติต่อกัน [ที่มา: CISG Article ๗ (๑)]

มาตรา ๑๒ ในกรณีที่มีการให้คำมั่นว่าจะซื้อหรือจะขายสินค้าแก่กันโดยมิได้กำหนดเวลา

สำหรับการสนองรับคำมั่นนั้นไว้ คำมั่นดังกล่าวมีผลผูกพันผู้ให้คำมั่นอยู่เพียงชั่วระยะเวลาอันสมควร

เท่านั้น และอย่างช้าต้องไม่เกินสามเดือนนับแต่วันที่การแสดงเจตนาให้คำมั่นมีผล

ในกรณีที่คำมั่นมีกำหนดเวลาสำหรับการสนองรับไว้ คำมั่นนั้นย่อมมีผลผูกพันไปจนกว่าจะพ้นกำหนดเวลาที่ระบุไว้ แต่ถ้าเป็นการให้คำมั่นโดยไม่มีค่าตอบแทน แม้จะกำหนดเวลาสนองรับไว้เกินสามเดือนก็ให้มีผลผูกพันอยู่เพียงสามเดือนเท่านั้น [ที่มา: UCC Article ๒ - ๒๐๕ Firm offers]

มาตรา ๑๓ การแสดงเจตนา การบอกกล่าว หรือการติดต่อสื่อสารใดระหว่างคู่สัญญา หากได้กระทำโดยวิธีการที่เคยใช้ระหว่างกันมาก่อน หรือโดยวิธีการที่เหมาะสมแก่สถานการณ์ ในขณะที่กระทำแล้ว ก็ให้ถือว่าการแสดงเจตนา การบอกกล่าว หรือการติดต่อสื่อสารนั้นได้ไปถึงผู้รับภายในเวลาอันควรคาดหมายได้แล้ว แม้ว่าความจริงผู้รับจะได้รับช้าไป หรือมิได้รับเลยก็ตาม [ที่มา: UCC]

มาตรา ๑๔ ในกรณีที่คู่สัญญาฝ่ายใดกระทำการหรืองดเว้นกระทำการอันเป็นการฝ่าฝืน

ข้อตกลงที่เป็นสาระสำคัญแห่งสัญญา (Breach of Fundamental Term) หรือฝ่าฝืนข้อตกลงใดที่ทำให้คู่สัญญาอีกฝ่ายหนึ่งเสียหายหรือสูญเสียสิทธิประโยชน์ที่เป็นสาระสำคัญแห่งสัญญา (Fundamental Breach) ซึ่งผู้ผิดสัญญาได้คาดเห็นหรือควรจะได้คาดเห็นถึงความเสียหายหรือสูญเสียเช่นนั้นแล้ว คู่สัญญาฝ่ายที่เสียหายจะบอกเลิกสัญญาโดยมีพักต้องบอกกล่าวล่วงหน้าก่อนก็ได้ (Avoidance or Cancellation of Contract) [ที่มา: CISG Article ๒๕]

ส่วนการผิดสัญญาในข้อที่มีได้เป็นสาระสำคัญแห่งสัญญานั้น คู่สัญญาอีกฝ่ายหนึ่งจะถือเป็นเหตุบอกเลิกสัญญาไม่ได้ แต่มีสิทธิบังคับให้ฝ่ายที่ผิดสัญญาปฏิบัติให้ถูกต้องตามสัญญาและเรียกค่าสินไหมทดแทนได้

ในกรณีที่กฎหมายหรือข้อตกลงในสัญญาให้สิทธิคู่สัญญาฝ่ายใดบอกเลิกสัญญาได้โดยคู่สัญญาอีกฝ่ายหนึ่งมิได้ผิดสัญญา การใช้สิทธิบอกเลิกสัญญาของฝ่ายนั้นจะต้องบอกกล่าวให้อีกฝ่ายหนึ่งทราบล่วงหน้าเป็นระยะเวลาพอสมควร การบอกเลิกสัญญาในกรณีนี้ทำให้สิทธิหน้าที่ที่มีต่อกันในอนาคตระงับสิ้นไป แต่ไม่กระทบถึงหนี้ที่ได้ชำระให้แก่กันไปโดยชอบก่อนหน้านั้นแล้ว ทั้งไม่กระทบถึงสิทธิรับมัดจำ เรียกเบี้ยปรับ หรือค่าสินไหมทดแทนเพื่อความเสียหายที่เกิดจากการผิดสัญญาก่อนการบอกเลิกสัญญา (Termination of Contract) [ที่มา: CISG Article ๒๖]

มาตรา ๑๕ ในกรณีที่คู่สัญญาฝ่ายใดกระทำการหรืองดเว้นกระทำการใดแสดงให้เห็นได้อย่างชัดแจ้งตั้งแต่ก่อนถึงกำหนดชำระหนี้ว่าคู่สัญญาฝ่ายนั้นจะไม่ชำระหนี้ หรือไม่สามารถชำระหนี้ตามสัญญา คู่สัญญาอีกฝ่ายหนึ่งมีสิทธิระงับการชำระหนี้ส่วนของตนไว้ได้ โดยถือว่าคู่สัญญาฝ่ายแรกผิดสัญญาล่วงหน้า (Anticipatory Breach) ทั้งยังมีสิทธิเรียกสิ่งที่ได้ชำระให้ไปก่อนหน้านั้นคืนจากฝ่ายที่ผิดสัญญาล่วงหน้าได้ด้วย แต่ไม่อาจกระทำให้นบุคคลภายนอกผู้รับโอนโดยสุจริตและเสียค่าตอบแทนต้องถูกกระทบกระเทือนสิทธิ

คู่สัญญาฝ่ายที่มีสิทธิตามวรรคหนึ่งจะต้องแจ้งให้ฝ่ายที่ผิดสัญญาล่วงหน้าได้ทราบโดยพลันว่าตนจะใช้สิทธินั้น แต่ถ้าฝ่ายที่ผิดสัญญาล่วงหน้าสามารถหาประกันที่เพียงพอมาให้ได้ สิทธิตามวรรคหนึ่งย่อมระงับสิ้นไป

ในกรณีที่การผิดสัญญาล่วงหน้ามีลักษณะเป็นการผิดสัญญาตามมาตรา ๑๔ วรรคหนึ่ง คู่สัญญาอีกฝ่ายหนึ่งจะบอกเลิกสัญญานั้นเสียก็ได้ แต่จะต้องบอกกล่าวล่วงหน้าตามสมควร เพื่อให้โอกาสฝ่ายที่ผิดสัญญามีโอกาสจัดหาประกันที่เพียงพอมาให้ก่อน เว้นแต่ฝ่ายที่ผิดสัญญาจะได้แสดงชัดแจ้งแล้วว่าเขาจะไม่ชำระหนี้อย่างแน่นอน [ที่มา: CISG Article ๗๑ - ๗๒]

มาตรา ๑๖ (Breach of Installment Contract) ในสัญญาที่ผู้ขายจะต้องส่งมอบสินค้า

เป็นงวดตั้งแต่สองงวดขึ้นไป หากผู้ขายผิดสัญญาในการส่งมอบงวดใดงวดหนึ่ง ผู้ซื้อจะบอกเลิกสัญญาเฉพาะในงวดนั้นก็ได้ หากการผิดสัญญาดังกล่าวแสดงให้เห็นว่าผู้ขายจะผิดสัญญาในงวดต่อไปอีกด้วยผู้ซื้อจะบอกเลิกสัญญาสำหรับการส่งมอบงวดต่อไปด้วยก็ได้ โดยต้องใช้สิทธินั้นภายในเวลาอันสมควร และถ้าการผิดสัญญาในงวดใดทำให้สินค้าที่ได้ส่งมอบไปก่อนและที่จะส่งมอบหลังจากงวดนั้น เป็นอันไร้ประโยชน์แก่ผู้ซื้อ เพราะเหตุแห่งสภาพของสินค้าจะต้องใช้ประกอบกัน หรือเพราะผิดวัตถุประสงค์แห่งสัญญาที่คู่สัญญาได้คาดหมายไว้ตั้งแต่ขณะทำสัญญา ให้ถือว่าเป็นการผิดสัญญาตามมาตรา ๑๔ วรรคหนึ่ง ซึ่งผู้ซื้อไม่มีสิทธิบอกเลิกสัญญาได้โดยมิพักต้องบอกกล่าวล่วงหน้า [ที่มา: CISG Article ๗๓]

หมวด ๒

การเกิดแห่งสัญญา

มาตรา ๑๗ สัญญาย่อมเกิดขึ้นโดยการตกลงกันอย่างชัดแจ้งระหว่างผู้ซื้อกับผู้ขาย หรือโดยการทำคำเสนอและคำสนองถูกต้องตรงกัน หรือโดยการกระทำของคู่สัญญาซึ่งแสดงถึงการยอมรับโดยปริยายว่ามีสัญญาผูกพันกัน ทั้งนี้ไม่ว่าจะกระทำด้วยวาจา ลายลักษณ์อักษร หรือทางอิเล็กทรอนิกส์

มาตรา ๑๘ สัญญาอาจเกิดขึ้นได้ ถึงแม้ว่าสถานที่และเวลาเกิดแห่งสัญญานั้น จะมีได้ปรากฏอย่างชัดแจ้ง

สถานที่และเวลาเกิดแห่งสัญญาจะเป็นสถานที่ใดเวลาใดนั้น ย่อมเป็นไปตามเจตนาที่แท้จริงของคู่สัญญา ในกรณีมีข้อสงสัยให้ถือว่าสถานที่และเวลาที่คู่สัญญาลงนามในเอกสารแห่งสัญญาร่วมกันเป็นสถานที่และเวลาเกิดแห่งสัญญา ถ้าไม่มีการลงนามร่วมกันให้ถือว่าสัญญา

เกิดขึ้น ณ สถานที่และเวลาที่คำสนองมีผล ส่วนในกรณีที่สัญญาเกิดโดยการกระทำของคู่สัญญาซึ่งแสดงถึงการยอมรับโดยปริยายว่ามีสัญญาผูกพันกันให้ถือว่าสัญญาเกิดขึ้น ณ สถานที่และเวลาเมื่อมีการอันใดอันหนึ่งขึ้นอันจะพึงสันนิษฐานได้ว่าเป็นการแสดงเจตนาสนองรับ

มาตรา ๑๙ เมื่อคู่กรณีได้แสดงเจตนาตรงกันว่ามีสัญญาเกิดขึ้นระหว่างกันแล้ว สัญญาย่อมเกิดขึ้นตามที่คู่กรณีตกลงกันได้ ถึงแม้ว่ายังมีข้อสัญญาบางข้อมิได้ตกลงกันก็ตาม เว้นแต่การบังคับตามสัญญานั้นจะไม่สามารถกระทำได้จนกว่าจะตกลงกันในข้อนั้นได้เสียก่อน

หรือคู่สัญญาฝ่ายใดฝ่ายหนึ่งจะได้บอกกล่าวให้อีกฝ่ายหนึ่งได้ทราบไว้ก่อนแล้วว่า สัญญาจะ
ไม่เกิดขึ้นจนกว่าจะได้ตกลงกันในข้อสัญญานั้นแล้ว [ที่มา: UCC Article ๒ ? ๒๐๔ (๓)]

มาตรา ๑๙/๑ ข้อเสนอมจะทำสัญญาที่ส่งไปยังบุคคลหนึ่งหรือบุคคลหลายคนโดยเฉพาะ
เจาะจงจะมีความผูกพันเป็นคำเสนอต่อเมื่อได้ระบุตัวสินค้า และกำหนดปริมาณและราคาของสินค้า
นั้น

ไว้ด้วย ไม่ว่าจะโดยชัดแจ้งหรือโดยปริยาย

ข้อเสนอมจะทำสัญญาที่ส่งไปยังบุคคลทั่วไปโดยไม่เจาะจง ให้ถือว่าเป็นเพียง
การเชิญให้ทำคำเสนอ เว้นแต่ผู้เสนอมจะได้แสดงเจตนาไว้อย่างชัดแจ้งว่าเป็นคำเสนอ

มาตรา ๑๙/๒ คำเสนอเมื่อไปถึงผู้รับคำเสนอ

ในกรณีที่ผู้เสนอมได้บอกถอนคำเสนอไปถึงผู้รับคำเสนอก่อนหรือพร้อมกันกับที่คำเสนอนั้น
ไปถึงผู้รับคำเสนอ คำเสนอนั้นเป็นอันไร้ผล ถึงแม้ว่าจะมีข้อกำหนดห้ามถอนคำเสนอไว้ใน
คำเสนอนั้นก็ตาม

มาตรา ๑๙/๓ ผู้เสนอมอาจยกเลิกคำเสนอเสียก็ได้ หากได้แสดงเจตนายกเลิก
ส่งไปถึงผู้รับคำเสนอก่อนผู้รับคำเสนอจะส่งคำสนอง

คำเสนอไม่อาจยกเลิกได้ ถ้า

(๑) คำเสนอระบุว่ายกเลิกไม่ได้ ไม่ว่าจะด้วยการบ่งระยะเวลาไว้แน่นอน
สำหรับการทำคำสนองหรือสำหรับกรณีอื่น หรือ

(๒) ผู้รับคำเสนอเมื่อเหตุผลเพียงพอที่จะเชื่อว่าคำเสนอนั้นเป็นคำเสนอที่
ไม่อาจยกเลิกได้ และผู้รับคำเสนอได้กระทำการอย่างใดอย่างหนึ่งไปตามคำเสนอเช่นนั้น

มาตรา ๑๙/๔ คำเสนอแม้จะเป็นคำเสนอที่ไม่อาจยกเลิกได้ตามมาตรา ๑๙/๓ วรรคสอง
ก็ให้ถือว่าเป็นอันสิ้นผลถ้าผู้รับคำเสนอได้ส่งคำปฏิเสธคำเสนอนั้นไปถึงผู้เสนอม

มาตรา ๒๐ กำหนดเวลาสำหรับการทำคำสนองตามที่ได้ระบุไว้ในคำเสนอที่ส่งให้
แก่ผู้รับทางโทรเลข หรือไปรษณีย์นั้น ให้เริ่มนับตั้งแต่เวลาที่ผู้เสนอมได้ส่งโทรเลข หรือนับแต่
วันที่ที่ระบุในจดหมายหรือบนซองจดหมายในกรณีที่ไม่มีวันที่ปรากฏอยู่ในตัวจดหมาย แล้ว
แต่กรณี [ที่มา: CISG Article ๒๐ (๑)]

มาตรา ๒๑ การนิ่งไม่เป็นคำสนอง เว้นแต่จะมีประเพณีทางการค้า หรือทางปฏิบัติ
ของคู่สัญญาแสดงให้เห็นเป็นอย่างอื่น

ในกรณีที่ผู้รับคำเสนอได้แสดงเจตนาเป็นหนังสือสนองรับคำเสนออย่างชัดแจ้งภายใน กำหนดเวลาที่คำเสนอยังมีผลผูกพันอยู่ ให้ถือเป็นคำสนองที่ชอบ และเป็นผลให้เกิดสัญญาขึ้นได้ ถึงแม้ว่าคำสนอนั้นจะมีข้อความเพิ่มเติม หรือแตกต่างไปจากที่ระบุในคำเสนออยู่ด้วยก็ตาม [UCC 8.2-206(3)] เว้นแต่จะเป็นการเพิ่มเติมหรือแตกต่างในข้อสาระสำคัญ [ที่มา: CISG Article ๑๙ (๓)]

สัญญาที่เกิดตามความในวรรคหนึ่งมีผลผูกพันคู่สัญญาตามที่มิเจตนาตรงกัน สำหรับ ข้อความในคำสนองที่เพิ่มเติมหรือแตกต่างไปจากที่ระบุในคำเสนอนั้นให้มีผลผูกพันผู้เสนอด้วย ถ้าผู้เสนอมิได้แจ้งคัดค้านไปยังผู้สนองโดยไม่ชักช้าว่าไม่ประสงค์จะผูกพันเช่นนั้น [ที่มา: CISG Article ๑๙ (๒)]

ความในวรรคหนึ่งและวรรคสองมิให้ใช้บังคับแก่คำสนองที่ตั้งเงื่อนไขโดยชัดแจ้งหรือ โดยปริยายว่า ผู้เสนอจะต้องยอมตกลงตามข้อความที่เพิ่มเติมหรือ แตกต่างไปจากที่ระบุใน คำเสนอนั้นด้วย สัญญาจึงจะเกิดขึ้น และมีให้ใช้บังคับแก่กรณีที่คำเสนอได้แสดงชัดแจ้งว่า คำสนองจะต้องไม่มีข้อความที่เพิ่มเติมหรือแตกต่างไปจากที่ระบุไว้ในคำเสนอ ในแต่ละกรณีนี้ ให้ถือว่าคำสนอนั้นเป็นคำบอกปิดไม่รับคำเสนอและกลายเป็นคำเสนอขึ้นใหม่ [ที่มา: CISG Article ๑๙ (๑) (๒)]

หมวด ๓

สิทธิและหน้าที่ระหว่างผู้ซื้อและผู้ขาย

มาตรา ๒๒ ผู้ขายมีหน้าที่โอนกรรมสิทธิ์ในสินค้า รวมทั้งส่งมอบตัวสินค้าและเอกสาร ที่เกี่ยวข้องให้แก่ผู้ซื้อ ส่วนผู้ซื้อมีหน้าที่รับโอนและรับมอบสินค้าและเอกสารที่เกี่ยวข้อง และชำระ ราคาตอบแทนให้แก่ผู้ขาย [ที่มา: CISG Article ๓๐ Article ๕๓]

มาตรา ๒๓ ในกรณีที่สัญญามิได้กำหนดสถานที่สำหรับการส่งมอบสินค้า และเอกสาร ที่เกี่ยวข้องไว้โดยเฉพาะ ให้ส่งมอบ ณ สถานที่ดังต่อไปนี้

(๑) ในกรณีที่เป็นการซื้อขายที่จะต้องมีการขนส่งสินค้าโดยผู้ขนส่ง การส่งมอบย่อม สำเร็จ

เมื่อได้ส่งมอบสินค้านั้นให้แก่ผู้ขนส่งคนแรก

(๒) ในการซื้อขายที่ไม่ต้องขนส่งสินค้าโดยผู้ขนส่ง หากเป็นการซื้อขายทรัพย์สินเฉพาะสิ่ง และคู่สัญญาได้รู้อยู่แล้วในขณะทำสัญญาว่าสินค้านั้นอยู่ ณ สถานที่ใด การส่งมอบต้องกระทำ

ณ สถานที่ที่สินค้านั้นได้อยู่ในขณะทำสัญญา แต่ถ้าเป็นการซื้อขายทรัพย์สินที่จะต้องผลิตหรือจัดทำขึ้น ณ สถานที่ใด การส่งมอบต้องกระทำ ณ สถานที่ที่ได้ผลิต หรือจัดทำสินค้านั้น

(๓) ในกรณีอื่น ผู้ขายต้องส่งมอบสินค้าที่ขายให้แก่ผู้ซื้อ ณ สถานที่ที่เป็นสถานประกอบการของผู้ขายในขณะทำสัญญา [ที่มา: CISG Article ๓๑ (๑) (๒) (๓)]

มาตรา ๒๔ ในกรณีที่ผู้ขายจะต้องส่งมอบสินค้าให้แก่ผู้ขนส่ง หากมิได้มีการบ่งระบุตัวสินค้าให้ชัดเจนโดยทำเครื่องหมายไว้ที่ตัวสินค้า หรือระบุไว้ในเอกสารกำกับการขนส่ง หรือโดยวิธีการอื่น เมื่อได้ส่งมอบสินค้าให้ผู้ขนส่งแล้วผู้ขายย่อมมีหน้าที่ต้องแจ้งให้ผู้ซื้อได้ทราบภายในเวลาอันสมควรถึงสภาพ จำนวน และเครื่องหมายของสินค้าที่ส่งหรือหีบห่อของสินค้านั้น [ที่มา: CISG Article ๓๒(๑)]

ในกรณีที่ผู้ขายมีหน้าที่จัดส่งสินค้าโดยผู้ขนส่ง ผู้ขายจะต้องทำสัญญาที่จำเป็นกับผู้ขนส่งในรูปแบบที่เหมาะสมเพื่อจัดส่งสินค้าไปยังสถานที่ที่กำหนด โดยมีข้อตกลงที่สอดคล้องกับข้อตกลง

ปกติในสัญญารับขนของรูปแบบนั้น [ที่มา: : CISG Article ๓๒(๒)]

ในกรณีที่ผู้ขายไม่มีหน้าที่ต้องทำสัญญาประกันภัยสินค้าที่อยู่ในระหว่างการขนส่ง ผู้ขายจะต้องแจ้งข้อมูลที่จำเป็นแก่การทำสัญญาประกันภัยสินค้านั้นให้ผู้ซื้อทราบตามที่ผู้ซื้อร้องขอ [ที่มา: CISG Article ๓๒(๓)]

มาตรา ๒๕ ในกรณีที่สัญญามิได้ระบุราคาสินค้าไว้ว่าเป็นจำนวนเท่าใด หรือกำหนดให้คู่สัญญาตกลงกันว่าราคาสินค้าเป็นจำนวนเท่าใด แต่ไม่อาจตกลงกันได้ หรือกำหนดให้เป็นไปตาม

ราคาตลาดหรือให้บุคคลภายนอกเป็นผู้กำหนด แต่ไม่อาจหาราคาตลาดหรือราคาที่กำหนดโดยบุคคลภายนอกได้ ผู้ซื้อจะต้องชำระราคาตามสมควรสำหรับการซื้อขายสินค้านั้นตามที่เป็นอยู่ในขณะทำสัญญาให้แก่ผู้ขาย [ที่มา: CISG Article ๕๕]

ในกรณีที่ราคาสินค้าจะต้องกำหนดตามน้ำหนักของสินค้า เมื่อกรณีเป็นที่สงสัย ท่านให้ถือตามน้ำหนักสุทธิของสินค้านั้น ในเวลาส่งมอบ [ที่มา: CISG Article ๕๖]

มาตรา ๒๖ หากในกรณีที่สัญญามิได้ระบุสถานที่และเวลาสำหรับชำระราคาไว้โดยเฉพาะ ผู้ซื้อจะต้องชำระ ณ สถานประกอบการของผู้ขาย แต่ถ้าผู้ซื้อไม่มีหน้าที่ต้องชำระราคาเมื่อผู้ขายได้

ส่งมอบสินค้า หรือเอกสารที่เกี่ยวข้องให้ผู้ซื้อชำระราคา ณ สถานที่ที่ผู้ขายส่งมอบสินค้า หรือเอกสารดังกล่าวนั้น ส่วนเวลาชำระราคานั้นให้ชำระ ณ เวลาที่ผู้ขายส่งมอบสินค้าหรือเอกสารที่เกี่ยวข้องให้แก่ผู้ซื้อ แต่ผู้ซื้อจะมีสิทธิที่จะขอตรวจสอบความถูกต้องของสินค้าที่จะส่งมอบให้ตนก่อนการชำระราคา เว้นแต่วิธีการส่งมอบสินค้าหรือวิธีการชำระราคาตามที่ตกลงกัน จะไม่เปิดโอกาสให้ผู้ซื้อตรวจสอบเช่นนั้นได้

[ที่มา: CISG Article ๕๗ (๑) Article ๕๘ (๑) (๓)]

มาตรา ๒๗ ในการตรวจสอบความถูกต้องของสินค้า หากผู้ซื้อได้พบความไม่ถูกต้องของสินค้าไม่ว่าในด้านปริมาณ คุณภาพ หนีบห่อ หรือลักษณะอื่นใด รวมทั้งกรณีชำรุดบกพร่องหรือรอนสิทธิด้วย ผู้ซื้อจะต้องแจ้งให้ผู้ขายได้ทราบถึงความไม่ถูกต้องนั้นภายในเวลาอันสมควรนับแต่วันที่ตรวจพบหรือควรจะได้พบ มิเช่นนั้นผู้ซื้อจะอ้างเอาความไม่ถูกต้องนั้นมาเป็นข้อเรียกร้องหรือข้อต่อสู้ผู้ขายมิได้ [ที่มา: CISG Article ๓๙ (๑)]

ระยะเวลาอันสมควรที่ผู้ซื้อจะต้องแจ้งความไม่ถูกต้องของสินค้าให้ผู้ขายทราบตามวรรคหนึ่งนั้น อย่างช้าที่สุดต้องไม่เกินสองปีนับแต่วันที่ผู้ขายได้ส่งมอบสินค้าให้แก่ผู้ซื้อ เว้นแต่จะมีข้อตกลงรับประกันความถูกต้องของสินค้าไว้เป็นเวลาสั้นหรือยาวกว่านั้น [ที่มา: CISG Article ๓๙ (๒)]

ผู้ขายไม่พ้นจากความรับผิดชอบตามวรรคหนึ่ง และวรรคสอง ในผลแห่งข้อความจริงอันผู้ขายได้รู้ หรือควรจะได้รู้และปกปิดเสีย [ที่มา : CISG Article ๔๐]

แต่ถึงกรณีจะเป็นอย่างไรก็ดี ผู้ซื้ออาจชำระราคาลดลงตามส่วน หรือเรียกค่าสินไหมทดแทนได้ หากมีเหตุอันสมควรที่มิได้แจ้งให้ผู้ขายทราบถึงความไม่ถูกต้องภายในเวลาตามวรรคหนึ่ง หรือวรรคสอง ทั้งนี้เว้นแต่ค่าเสียหายจากการขาดกำไร (Loss of Profit) [ที่มา : CISG Article ๔๔]

มาตรา ๒๘ ผู้ซื้อจะมีสิทธิที่จะไม่รับมอบสินค้าและไม่ชำระราคาให้แก่ผู้ขายได้ ถ้าตรวจพบว่าสินค้านั้นไม่ถูกต้องตามที่ได้ตกลงกันไว้ในสัญญาหรือตามกฎหมาย ไม่ว่าในด้านปริมาณ คุณภาพ หนีบห่อ หรือลักษณะอื่นใด รวมทั้งกรณีชำรุดบกพร่อง หรือรอนสิทธิด้วย

ในกรณีที่มีการรอนสิทธิเกิดโดยอาศัยสิทธิในทรัพย์สินทางปัญญาของบุคคลผู้มาก่อนการรบกวน สิทธิของบุคคลนั้นจะต้องเป็นสิทธิที่มีอยู่ตามกฎหมายของประเทศที่ผู้ซื้อ มีสถานประกอบการอยู่ หรือประเทศที่สินค้านั้นจะถูกส่งไปขายหรือใช้ประโยชน์ ทั้งผู้ขายก็ได้รู้หรือควรจะได้รู้ถึงสิทธิดังกล่าวนี้แล้วในขณะทำสัญญา

[ที่มา: CISG Article ๔๑ Article ๔๒]

ผู้ซื้อจะอ้างสิทธิตามวรรคหนึ่งมิได้ หากตนได้รู้หรือควรจะได้รู้ถึงความไม่ถูกต้องของสินค้านั้นอยู่แล้วในขณะทำสัญญา หรือความไม่ถูกต้องของสินค้านั้นเกิดจากการที่ผู้ขายปฏิบัติตามคำสั่ง กรรมวิธี สูตร การออกแบบหรือลักษณะเฉพาะอย่างอื่นที่ผู้ซื้อกำหนดให้ [ที่มา: CISG Article ๔๒ (๒)]

มาตรา ๒๙ ในกรณีที่ผู้ขายส่งมอบสินค้าก่อนกำหนดส่งมอบ ผู้ซื้อมีสิทธิที่จะรับมอบหรือไม่รับมอบสินค้านั้นจนกว่าจะถึงกำหนดส่งมอบก็ได้ [ที่มา: CISG Article ๕๒ (๑)] ถ้าผู้ซื้อยอมรับมอบสินค้าก็ให้ถือว่าเวลาที่รับมอบนั้น เป็นกำหนดเวลาส่งมอบสินค้าแทนกำหนดเวลาเดิม

มาตรา ๓๐ ในกรณีที่สินค้าที่ส่งมอบไม่ถูกต้องตามสัญญา ผู้ซื้อจะเรียกร้องให้ผู้ขายส่งมอบสินค้าอื่นที่ถูกต้องตามสัญญาแทน (Substitute goods) ได้ต่อเมื่อผู้ขายฝ่าฝืนข้อตกลงที่ทำให้ผู้ซื้อสูญเสียสิทธิประโยชน์ที่เป็นสาระสำคัญแห่งสัญญา (Fundamental Breach) และผู้ซื้อได้แสดงเจตนาเรียกร้องเช่นนั้นไปพร้อมกับการแจ้งให้ผู้ขายทราบถึงความไม่ถูกต้องของสินค้าตามมาตรา ๒๗ หรือภายในเวลาอันสมควรหลังจากการแจ้งนั้น [ที่มา: CISG Article ๔๖ (๒)]

ในกรณีที่มิได้มีการเรียกให้ผู้ขายส่งมอบสินค้าแทนตามวรรคหนึ่ง ผู้ซื้อจะเรียกร้องไปพร้อมกับการแจ้งให้ผู้ขายทราบถึงความไม่ถูกต้องของสินค้าตามมาตรา ๒๗ หรือภายในเวลาอันสมควรหลังการแจ้งนั้น ขอให้ผู้ขายซ่อมแซมหรือแก้ไขสินค้าที่ส่งมอบให้ถูกต้องตรงตามสัญญาก็ได้ เว้นแต่ตามพฤติการณ์แห่งกรณีจะไม่เป็นการสมควรที่จะเรียกร้องเช่นนั้น [ที่มา: CISG Article ๔๖ (๓)]

หมวด ๔

ภาระความเสี่ยงต่อการสูญหาย เสียหาย หรือทำลายของสินค้า

มาตรา ๓๑ ภาระความเสี่ยงต่อการสูญหาย หรือเสียหาย ของสินค้าจะตกแก่ผู้ซื้อหรือผู้ขาย และจะผ่านไปตกแก่อีกฝ่ายหนึ่งเมื่อใด ย่อมเป็นไปตามที่กำหนดไว้ในสัญญา หากสัญญามีได้กำหนดเรื่องนี้ไว้ ให้เป็นไปตามมาตรา ๓๒ มาตรา ๓๓ หรือมาตรา ๓๔ แล้วแต่กรณี

มาตรา ๓๒ ในกรณีที่เป็นการซื้อขายที่จะต้องมีการขนส่งสินค้าโดยผู้ขนส่ง และผู้ขายมิได้มีหน้าที่ส่งมอบสินค้า ณ สถานที่ใดโดยเฉพาะ ภาระความเสี่ยงย่อมตกแก่ผู้ซื้อเมื่อผู้ขายได้ส่งมอบสินค้านั้นให้แก่ผู้ขนส่งคนแรก แต่หากผู้ขายมีหน้าที่ต้องส่งมอบสินค้าให้แก่ผู้ขนส่ง ณ สถานที่ใดโดยเฉพาะ ภาระความเสี่ยงยังไม่ผ่านไปยังผู้ซื้อจนกว่าผู้ขายจะได้กระทำทุกประการ

เพื่อส่งมอบสินค้าให้แก่ผู้ขนส่ง ณ สถานที่นั้นแล้ว ความข้างต้นย่อมมีผลบังคับแม้ว่าผู้ขายจะ
ยัง

คงยึดถือเอกสารที่ควบคุมการจำหน่ายจ่ายโอนสินค้าไว้ก็ตาม [ที่มา: CISG Article ๖๗ (๑)]

ไม่ว่ากรณีจะเป็นเช่นไร หากยังมีได้มีการบ่งระบุตัวสินค้าที่ส่งให้ชัดเจนโดยการทำ
เครื่องหมายไว้ที่ตัวสินค้า หรือระบุไว้ในเอกสารกำกับการขนส่งหรือโดยการแจ้งให้ผู้ซื้อได้ทราบ
หรือโดยวิธีการอื่น ภาระความเสี่ยงยังไม่ผ่านไปตกแก่ผู้ซื้อ [ที่มา: CISG Article ๖๗(๒)]

มาตรา ๓๓ ในกรณีที่เป็นการซื้อขายสินค้าที่อยู่ในระหว่างขนส่ง ภาระความเสี่ยงย่อม
ผ่านไปตกแก่ผู้ซื้อตั้งแต่ขณะเมื่อได้ทำสัญญา แต่ถ้าผู้ขนส่งได้ออกเอกสารกำกับการขนส่งให้
และมีพฤติการณ์แสดงว่าคู่สัญญาประสงค์จะให้ภาระความเสี่ยงตกแก่ผู้ซื้อตั้งแต่เวลาที่ได้มีการ
ส่งมอบสินค้านั้นแก่ผู้ขนส่ง ก็ให้เป็นไปตามความประสงค์ของคู่สัญญา เว้นแต่ผู้ขายได้รู้หรือ
ควรจะรู้ถึงความสูญหาย เสียหาย หรือทำลายของสินค้านั้นอยู่แล้วในขณะที่ทำสัญญา และไม่ได้
แจ้งแก่ผู้ซื้อ [ที่มา: CISG Article ๖๘]

มาตรา ๓๔ ในกรณีอื่นนอกจากที่บัญญัติไว้ในมาตรา ๓๒ และมาตรา ๓๓ ภาระความ
เสี่ยง

ย่อมตกเป็นพับแก่ผู้ซื้อเมื่อผู้ซื้อได้รับมอบสินค้า หากผู้ซื้อเป็นฝ่ายผิดที่ไม่รับมอบสินค้าตาม
กำหนด ก็ให้ภาระความเสี่ยงตกแก่ผู้ซื้อทันทีที่ผู้ขายได้กระทำการอันตนจะพึงต้องทำเพื่อส่งมอบ
สินค้านั้นทุกประการแล้ว (When the goods are placed at the buyers disposal) แต่ถ้าผู้ซื้อ
จะต้องรับมอบสินค้า ณ สถานที่ที่มีใช้สถานประกอบการของผู้ขาย ภาระความเสี่ยงยังไม่ผ่านไป
ยัง

ผู้ซื้อจนกว่าจะถึงกำหนดส่งมอบและผู้ซื้อได้รู้ถึงการที่ผู้ขายได้กระทำเพื่อส่งมอบสินค้าให้แก่ตน
ณ สถานที่นั้นแล้ว [ที่มา: CISG Article ๖๙ (๑) (๒)]

หมวด ๕

การดูแลรักษาสินค้าระหว่างรอการส่งมอบหรือส่งคืน

มาตรา ๓๕ ในกรณีที่ผู้ซื้อรับมอบสินค้าหรือการชำระราคาล่าช้า หากสินค้างยังอยู่ใน
ความครอบครองหรืออำนาจจำหน่ายจ่ายโอนของผู้ขาย ผู้ขายจำต้องจัดการดูแลรักษาสินค้านั้น
ตามสมควรแก่พฤติการณ์ในระหว่างรอการส่งมอบ และย่อมมีสิทธิยึดหน่วงสินค้านั้น รวมทั้ง

เอกสารที่เกี่ยวข้องไว้ได้จนกว่าจะได้รับขีดใช้ค่าใช้จ่ายที่เกี่ยวข้องเนื่องกับการจัดการดูแลรักษา
สินค้า

ตามสมควรจากผู้ซื้อ [ที่มา: CISG Article ๘๕]

มาตรา ๓๖ ในกรณีที่ผู้ซื้อมีสิทธิที่จะส่งคืนสินค้าที่ได้รับมอบไว้ ผู้ซื้อจะต้องจัดการ
ดูแลรักษาสินค้านั้นตามสมควรแก่พฤติการณ์ในระหว่างรอการส่งคืน และยอมมีสิทธิยึดหน่วง
สินค้านั้นรวมทั้งเอกสารที่เกี่ยวข้องไว้ได้จนกว่าจะได้รับขีดใช้ค่าใช้จ่ายที่เกี่ยวข้องเนื่องกับการจัดการ
ดูแลรักษาสินค้าตามสมควรจากผู้ขาย [ที่มา: CISG Article ๘๖ (๑)]

ในกรณีที่ผู้ซื้อไม่มีสิทธิที่จะไม่รับมอบสินค้า แต่สินค้าได้ถูกส่งไปให้ผู้ซื้อยังสถานที่ส่งมอบ
ที่กำหนดไว้แล้ว ผู้ซื้อ มีหน้าที่ต้องเข้าครอบครองสินค้าและดูแลรักษาสินค้านั้นแทนผู้ขายโดยไม่
ต้อง

ชำระราคา ทั้งยังมีสิทธิยึดหน่วงสินค้าดังกล่าวรวมทั้งเอกสารที่เกี่ยวข้องไว้ได้จนกว่าจะได้รับขีดใช้
ค่าใช้จ่ายตามสมควรจากผู้ขาย เว้นแต่ผู้ขายหรือตัวแทนของผู้ขายจะอยู่ ณ สถานที่ที่สินค้าถูก
ส่งไป

นั้นด้วยแล้ว หรือการเข้าครอบครองและดูแลรักษาสินค้าแทนผู้ขายในกรณีนี้จะก่อให้เกิดภาวะ
หรือ

ค่าใช้จ่ายแก่ผู้ซื้อมากเกินไปสมควรแก่พฤติการณ์ [ที่มา: CISG Article ๘๖ (๒)]

มาตรา ๓๗ ผู้มีหน้าที่ดูแลรักษาสินค้าตามมาตรา ๓๕ หรือมาตรา ๓๖ มีสิทธิที่จะ

(๑) ฝากสินค้านั้นไว้ในคลังสินค้าของบุคคลภายนอก โดยให้คู่สัญญาอีกฝ่ายหนึ่งเป็น
ผู้รับผิดชอบค่าใช้จ่าย เว้นแต่ค่าใช้จ่ายเพื่อการนั้นจะสูงเกินสมควร [ที่มา: CISG Article ๘๗]

(๒) ขายสินค้านั้นโดยวิธีที่เหมาะสม ในกรณีที่คู่สัญญาอีกฝ่ายหนึ่งในการรับมอบ
หรือรับคืนสินค้านั้นดังกล่าวล่าช้าเกินสมควร หรือล่าช้าเกินสมควรในการชำระราคาหรือขีดใช้
ค่าใช้จ่าย

ที่เกี่ยวข้องเนื่องกับการจัดการดูแลรักษาสินค้านั้นล่าช้าเกินสมควร แต่จะต้องบอกกล่าวให้คู่สัญญา
อีกฝ่ายหนึ่งนั้นได้ทราบล่วงหน้าตามสมควรก่อนนำออกขาย [ที่มา: CISG Article ๘๘ (๑)]

ในกรณีที่สินค้าที่ดูแลรักษานั้นเป็นของที่เสื่อมสภาพได้อย่างรวดเร็ว หรือค่าใช้จ่ายที่เกี่ยวข้อง
เนื่องกับการจัดการดูแลรักษาสินค้านั้นจะสูงเกินสมควร ผู้มีหน้าที่ดูแลรักษาจะต้องกระทำการตาม
สมควรเพื่อจัดให้มีการขายสินค้านั้นโดยวิธีที่เหมาะสม โดยจะต้องบอกกล่าวให้คู่สัญญา
อีกฝ่ายหนึ่งได้ทราบล่วงหน้าเท่าที่พอจะกระทำได้ [ที่มา: CISG Article ๘๘ (๒)]

เมื่อได้ขายสินค้าไปตามความในวรรคหนึ่ง (๒) หรือวรรคสองแล้วผู้มีหน้าที่ดูแลรักษามีสิทธิหักเงินที่ขายได้ขาดใช้ค่าใช้จ่ายที่เกี่ยวข้องกับการจัดการดูแลรักษาสินค้าและค่าใช้จ่ายในการขายสินค้านั้นเท่าที่ตนได้เสียไป ส่วนที่เหลือให้ส่งคืนแก่คู่สัญญาอีกฝ่ายหนึ่งหรือผู้อื่นที่มีสิทธิดีกว่า [ที่มา: CISG Article ๘๘ (๓)]

บทเฉพาะกาล

มาตรา ๓๘ บทบัญญัติตามพระราชบัญญัตินี้มีให้บังคับแก่สัญญาที่ทำขึ้นก่อนวันที่พระราชบัญญัตินี้มีผลใช้บังคับ

ผู้รับสนองพระบรมราชโองการ

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นายกรัฐมนตรี

ประวัติผู้เขียนวิทยานิพนธ์

นางสาวอัญชัน ศรีพิทักษ์สกุล เกิดเมื่อวันที่ 19 มิถุนายน พ.ศ. 2526 จังหวัด กรุงเทพมหานคร สำเร็จการศึกษาชั้นประถมและมัธยมศึกษาจากโรงเรียนราชินี พ.ศ. 2543 จบ การศึกษาระดับปริญญาตรีนิติศาสตร์บัณฑิต จากจุฬาลงกรณ์มหาวิทยาลัย ปี พ.ศ. 2547 และ เข้าศึกษาหลักสูตรนิติศาสตร์มหาบัณฑิต คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย เมื่อปี การศึกษา 2549