

International Commercial Sale of Goods

Introduction

This Model Contract contains the substantive rules for an international sales contract, i.e. the main rights and obligations of the Parties, the remedies for breach of contract by the Buyer; the remedies for breach of contract by the Seller; the general rules that apply equally to both parties. It also contains the boilerplate clauses broadly accepted in international commercial contracts.

The Model Contract is greatly influenced by the United Nations Convention on Contracts for the International Sale of Goods (CISG), widely accepted by lawyers of different traditions and backgrounds. It articulates practical requirements arising from commercial practice with the general rules of the CISG.

The Model Contract can be viewed as a general framework for the numerous types of sales contracts in international trade. In implementing it, the Parties should adapt it to the nature of each particular sales contract as well as to the specific requirements of the applicable law, where such requirements exist.

Attention is drawn on the following points:

1. The Model Contract for the International Sale of Goods is presented in *two versions* – the “standard” and the “short” one. The standard version contains definitions of relevant notions (i.e. on the concept of lack of conformity), special comments (i.e. on the notice of non-conformity), explanations and/or warnings to the Parties (i.e. on the limitation of the Seller’s liability, on the validity of the agreed interest clause). The short version is more practice-oriented, covering the main rights and obligations of the Parties with no special explanations. In addition, the short version contains only selected boilerplate clauses, whereas the standard version provides for all the boilerplate clauses inserted in other Model Contracts of this handbook.
2. The Model Contract can be divided into four parts. The first part lays down *rules on the Goods*: Delivery, price, payment conditions and documents to be provided. The second part governs the remedies of the Seller in case of non-payment at the agreed time; the remedies of the Buyer in case of non-delivery of goods at the agreed time, lack of conformity of goods, transfer of property and legal defects. The third part contains the *rules on avoidance of contract and damages* – grounds for avoidance of contract, avoidance procedure, effects of avoidance in general, as well as rules on restitution, damages and mitigation of harm. The fourth part contains the *standard provisions*.
3. The Model Contract adopts the CISG concept of lack of conformity. This concept is wider than the concept of material defects (traditionally adopted in civil law countries) and includes differences in quality, as well as differences in quantity, delivery of goods of different kinds and defects

in packing. Nevertheless, specific cases of non-conformity defined under the CISG largely correspond to how material defects are defined in civil law countries. Such cases include unsuitability of the Goods for ordinary purpose or for particular purpose, as well as non-conformity with a sample or model.

Liability of the Seller for non-conformity is dealt with almost identically under the CISG and most national rules dealing with liability of the Seller for material defects. Furthermore, in the system of the CISG, “non-delivery” and “lack of conformity” are strictly separate forms of breach of contract. The same system is adopted in this Model Contract, specifying: a) special rules on remedies of the Buyer in case of non-delivery at the agreed time; b) special rules on remedies of the Buyer in case of non-conformity of goods; c) general rules on contract avoidance due to non-performance of contractual obligations.

4. *On contract avoidance (the term “avoidance” of contract, also taken from the CISG, means termination of contract), the Model Contract uses the CISG concept of fundamental breach of contract, but with significant modifications. The Model Contract first of all defines cases that constitute a breach of contract (where a party fails to perform any of its obligations under the contract, including defective, partial or late performance). On that basis, the Model Contract establishes the rules for two different situations.*

First is the case where the breach of contract amounts to a fundamental breach. That would be the case where strict compliance of the obligation which has not been performed is of the essence under the contract; or where non-performance substantially deprives the aggrieved party of what it was reasonably entitled to expect. The Model Contract also leaves the possibility for the Parties to specify cases which are to be considered as a fundamental breach, i.e. late payment, late delivery, non-conformity, etc. In the case of a fundamental breach, the Model Contract allows the aggrieved party to declare the contract void, without fixing an additional period of time to perform what is specified in the contract.

In the second situation, the breach of contract does not amount to a fundamental breach. The aggrieved party is obliged to fix an additional period of time for performance. Only when the other party fails to perform the obligation within that period, may the aggrieved party declare the contract void. The Model Contract adopts the CISG rule: A declaration of avoidance is effective only if made by notice to the other party.

5. The clause on *applicable law* of the Model Contract is specific to the international sale of goods. It specifies that questions that are not regulated by the contract itself are governed by the CISG. Questions not covered by the CISG are governed by the UNIDROIT Principles; and to the extent that such questions are not covered by the UNIDROIT Principles, they are governed by reference to the national law chosen by the Parties. Concerning the application of the CISG, one should note that the Parties may exclude the CISG in whole or only in part. The Parties may also agree on rules that modify, replace, or supplement those of the CISG.
6. The main sources of uniform contract law used in drafting the present Model Contract are the following: United Nations Convention on

Contracts for the International Sale of Goods (CISG); Uniform Law on the International Sale of Goods (ULIS); UNIDROIT Principles of International Commercial Contracts; Principles of European Contract Law (PECL); ITC Model Contract for the International Commercial Sale of Perishable Goods; ICC Model International Sale Contract – Manufactured Goods Intended for Resale.

ITC MODEL CONTRACT FOR THE INTERNATIONAL COMMERCIAL SALE OF GOODS (SHORT VERSION)

PARTIES:

Seller

Name (name of company)

.....

Legal form (e.g. limited liability company)

.....

Country of incorporation and (if appropriate) trade register number

.....

Address (address of place of business of the seller, phone, fax, e-mail)

.....

.....

Represented by (surname and first name, address, position, legal title of representation)

.....

.....

Buyer

Name (name of company)

.....

Legal form (e.g. limited liability company)

.....

Country of incorporation and (if appropriate) trade register number

.....

Address (address of place of business of the buyer, phone, fax, e-mail)

.....

Represented by (surname and first name, address, position, legal title of representation)

.....

.....

Hereinafter: "the Parties"

1. Goods

1.1 Subject to the terms agreed in this contract, the Seller shall deliver the following good(s) (hereinafter: “the Goods”) to the Buyer.

1.2 Description of the Goods (details necessary to define/specify the Goods which are the object of the sale, including required quality, description, certificates, country of origin, other details).

1.3 Quantity of the Goods (including unit of measurement).

1.3.1 Total quantity.....

1.3.2 Per delivery instalment (if appropriate)

1.3.3 Tolerance percentage: Plus or minus % (if appropriate)

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

1.5 Packaging.....

1.6 Other specification

2. Delivery

2.1 Applicable International Chamber of Commerce (hereinafter: ICC) Incoterms (by reference to most recent version of the Incoterms at date of conclusion of the contract).

2.2 Place of delivery.....

2.3 Date or period of delivery

2.4 Carrier (name and address, where applicable)

2.5 Other delivery terms (if any)

3. Price

3.1 Total price.....

3.2 Price per unit of measurement (if appropriate)

3.3 Amount in numbers

3.4 Amount in letters

3.5 Currency

3.6 Method for determining the price (if appropriate).....

4. Payment conditions

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

4.2 Details of Seller’s bank account (if appropriate)

4.3 Time for payment.....

The Parties may choose a payment arrangement among the possibilities set out below, in which case they should specify the arrangement chosen and provide the corresponding details:

- Payment in advance *[specify details]*
- Payment by documentary collection *[specify details]*
- Payment by irrevocable documentary credit *[specify details]*
- Payment backed by bank guarantee *[specify details]*
- Other payment arrangements *[specify details]*

5. Documents

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

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

5.2 In addition, the Seller shall make available to the Buyer the documents indicated in the ICC Incoterms the Parties have selected under Article 2 of this contract.

6. Non-performance of the Buyer's obligation to pay the price at the agreed time

6.1 If the Buyer fails to pay the price at the agreed time, the Seller shall fix to the Buyer an additional period of time of (specify the length) for performance of payment. If the Buyer fails to pay the price at the expiration of the additional period, the Seller may declare this contract avoided in accordance with Article 10 of this contract.

6.2 If the Buyer fails to pay the price at the agreed time, the Seller shall in any event be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of *[specify]* % per annum. *[Alternatively: Specify other rate of interest agreed by the Parties.]*

[Comment: The Parties should take into consideration that in some legal systems payment of interest is unlawful, or is subject to a legal maximum rate, or there is provision for statutory interest on late payments.]

7. Non-performance of the Seller's obligation to deliver the Goods at the agreed time

7.1 If the Seller fails to deliver the Goods at the agreed time, the Buyer shall fix to the Seller an additional period of time of (specify the length) for performance of delivery. If the Seller fails to deliver the Goods at the expiration of the additional period, the Buyer may declare this contract avoided in accordance with Article 10 of this contract.

[Option: "7.2 If the Seller is in delay in delivery of any goods as provided in this contract, the Buyer is entitled to claim liquidated damages equal to 0.5% (parties may agree some other percentage: %) of the price of those goods for each complete day of delay as from the agreed date of delivery or the last day of the agreed delivery period, as specified in Article 2 of this contract, provided the Buyer notifies the Seller of the delay.

Where the Buyer so notifies the Seller within days from the agreed date of delivery or the last day of the agreed delivery period, damages will run from the agreed date of delivery or from the last day of the agreed delivery period. Where the Buyer so notifies the Seller more than days after the agreed date of delivery or the last day of the agreed delivery period, damages will run from the date of notice. Liquidated damages for delay shall not exceed% of the price of the delayed goods. Liquidated damages for delay do not preclude avoidance of this contract in accordance with Article 10."

8. Lack of conformity

8.1 The Buyer shall examine the Goods, or cause them to be examined within as short period as is practicable in the circumstances. The Buyer shall notify the Seller of any lack of conformity of the Goods, specifying the nature of the lack of conformity, within days after the Buyer has discovered or ought to have discovered the lack of conformity. In any event, the Buyer loses the right to rely on a lack of conformity if he fails to notify the Seller thereof at the latest within a period of two years (other period of time) from the date on which the Goods were actually handed over to the Buyer.

8.2 Where the Buyer has given due notice of non-conformity to the Seller, the Buyer may at his option:

- 8.2.1 Require the Seller to deliver any missing quantity of the Goods, without any additional expense to the Buyer;
- 8.2.2 Require the Seller to replace the Goods with conforming goods, without any additional expense to the Buyer;
- 8.2.3 Require the Seller to repair the Goods, without any additional expense to the Buyer;
- 8.2.4 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. The Buyer may not reduce the price if the Seller replaces the Goods with conforming goods or repairs the Goods in accordance with paragraph 8.2.2 and 8.2.3 of this Article or if the Buyer refuses to accept such performance by the Seller;
- 8.2.5 Declare this contract avoided in accordance with Article 10 of this contract.

The Buyer shall in any event be entitled to claim damages.

[Option: “8.3 The Seller’s liability under this Article for lack of conformity of the Goods is limited to [specify the limitation(s)].”]

9. Transfer of property

The Seller must deliver to the Buyer the Goods specified in Article 1 of this contract free from any right or claim of a third person.

[Option: “Retention of title. The Seller must deliver to the Buyer the Goods specified in Article 1 of this contract free from any right or claim of a third person. The property in the Goods shall not pass to the Buyer until the Seller has received payment in full of the price of the Goods. Until property in the Goods passes to the Buyer, the Buyer shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller’s property”.]

10. Avoidance* of contract

10.1 There is a breach of contract where a party fails to perform any of its obligations under this contract, including defective, partial or late performance.

10.2 There is a fundamental breach of contract where:

10.2.1 Strict compliance with the obligation which has not been performed is of the essence under this contract; or

10.2.2 The non-performance substantially deprives the aggrieved party of what it was reasonably entitled to expect under this contract.

[Option: “The Parties additionally agree that the following is to be considered as a fundamental breach of contract:

(Specify the cases that constitute a fundamental breach of contract e.g. late payment, late delivery, non-conformity, etc.)”.]

10.3 In a case of a breach of contract according to paragraph 10.1 of this Article, the aggrieved party shall, by notice to the other party, fix an additional period of time of (specify the length) for performance. During the additional period of time the aggrieved party may withhold performance of its own reciprocal obligations and may claim damages, but may not declare this contract avoided. If the other party fails to perform its obligation within the additional period of time, the aggrieved party may declare this contract avoided.

10.4 In case of a fundamental breach of contract according to paragraph 10.2 of this Article, the aggrieved party may declare this contract avoided without fixing an additional period of time for performance to the other party.

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

* Note: For the purposes of this Model Contract, the term “Avoidance” is taken from the CISG and means termination of contract.

11. **Force majeure – excuse for non-performance**

11.1 “*Force majeure*” means war, emergency, accident, fire, earthquake, flood, storm, industrial strike or other impediment which the affected party proves was beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this contract or to have avoided or overcome it or its consequences.

11.2 A party affected by *force majeure* shall not be deemed to be in breach of this contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this contract to the extent that the delay or non-performance is due to any *force majeure* of which it has notified the other party in accordance with Article 11.3. The time for performance of that obligation shall be extended accordingly, subject to Article 11.4.

11.3 If any *force majeure* occurs in relation to either party which affects or is likely to affect the performance of any of its obligations under this contract, it shall notify the other party within a reasonable time as to the nature and extent of the circumstances in question and their effect on its ability to perform.

11.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by *force majeure* for a continuous period in excess of three [*specify any other figure*] months, the other party shall be entitled to terminate this contract by giving written notice to the Party affected by the *force majeure*.

[If preferred, replace 11.4 with the following alternative:

*“11.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by force majeure for a continuous period in excess of three [*specify any other figure*] months, the Parties shall negotiate in good faith, and use their best endeavours to agree upon such amendments to this contract or alternative arrangements as may be fair and reasonable with a view to alleviating its effects, but if they do not agree upon such amendments or arrangements within a further period of 30 [*specify any other figure*] days, the other party shall be entitled to terminate this contract by giving written notice to the Party affected by the force majeure”.*]

12. **Entire agreement**

12.1 This contract sets out the entire agreement between the Parties. Neither party has entered into this contract in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in this contract. This Article shall not exclude any liability for fraudulent misrepresentation. [*Add where relevant: “This contract supersedes any previous agreement or understanding relating its subject matter”*].

12.2 This contract may not be varied except by an agreement of the Parties in writing (which may include e-mail).

13. **Notices**

13.1 Any notice under this contract shall be in writing (which may include e-mail) and may be served by leaving it or sending it to the address of the other party as specified in Article 13.2 below, in a manner that ensures receipt of the notice can be proved.

13.2 For the purposes of Article 13.1, notification details are the following, unless other details have been duly notified in accordance with this Article:

-
-

14. Dispute resolution procedure

Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of [specify the arbitration institution] by [specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators] appointed in accordance with the said rules. The place of arbitration shall be [specify]. The language of the arbitration shall be [specify].

[The following are alternatives to a specified arbitral institution under Article 14.]

Alternative 1: Ad hoc arbitration

“Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of UNCITRAL [specify other rules] by [specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators] appointed by [specify name of appointing institution or person]. The place of arbitration shall be [specify]. The language of the arbitration shall be [specify].”

Alternative 2: State courts

“Any dispute, controversy or claim arising out of or relating to this contract, in particular its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled by the courts of (specify place and country) which will have exclusive jurisdiction.”

15. Applicable law and guiding principles

15.1 Questions relating to this contract that are not settled by the provisions contained in the contract itself shall be governed by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention of 1980, hereafter referred to as CISG).

Questions not covered by the CISG shall be governed by the UNIDROIT Principles of International Commercial Contracts (hereafter referred to as UNIDROIT Principles), and to the extent that such questions are not covered by the UNIDROIT Principles, by reference to [specify the relevant national law by choosing one of the following options:

The applicable national law of the country where the Seller has his place of business,
or

The applicable national law of the country where the Buyer has his place of business,
or

The applicable national law of a third country (specify the country).]

15.2 This contract shall be performed in a spirit of good faith and fair dealing.

DATE AND SIGNATURE OF The Parties

Seller

Buyer

Date

.....

Name

.....

Signature

Signature

ITC MODEL CONTRACT FOR THE INTERNATIONAL COMMERCIAL SALE OF GOODS (STANDARD VERSION)

PARTIES:

Seller

Name (name of company)

.....

Legal form (e.g. limited liability company)

.....

Country of incorporation and (if appropriate) trade register number

.....

Address (address of place of business of the Seller, phone, fax, e-mail)

.....

.....

Represented by (surname and first name, address, position, legal title of representation)

.....

.....

Buyer

Name (name of company)

.....

Legal form (e.g. limited liability company)

.....

Country of incorporation and (if appropriate) trade register number

.....

Address (address of place of business of the Buyer, phone, fax, e-mail)

.....

.....

Represented by (surname and first name, address, position, legal title of representation)

.....

.....

Hereinafter: "the Parties"

1. Goods

1.1 Subject to the terms agreed in this contract, the Seller shall deliver the following good(s) (hereinafter: “the Goods”) to the Buyer.

1.2 Description of the Goods (details necessary to define/specify the Goods which are the object of the sale, including required quality, description, certificates, country of origin, other details).

1.3 Quantity of the Goods (including unit of measurement).

1.3.1 Total quantity

1.3.2 Per delivery instalment (in the case of a contract for delivery of the Goods by instalments)

1.3.3 Tolerance percentage: Plus or minus % (if appropriate).

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

1.5 Packaging.....

1.6 Other specification (e.g. the intended use of the Goods could be specified).

2. Delivery

2.1 Applicable International Chamber of Commerce (hereinafter: ICC) Incoterms (by reference to most recent version of the Incoterms at date of conclusion of the contract)

2.2 Place of delivery

2.3 Date or period of delivery

[Comment: Where there is a delivery by instalments the Parties should indicate every date of delivery for each instalment.]

2.4 Carrier (where applicable) (name and address of carrier, contact person)

2.5 Other delivery terms (if any)

3. Price

3.1 Total price

3.2 Price per unit of measurement (if appropriate)

3.3 Amount in numbers

3.4 Amount in letters

3.5 Currency

3.6 Method for determining the price (if appropriate)

4. Payment conditions

- 4.1 Means of payment (e.g. cash, cheque, bank draft, transfer).....
- 4.2 Details of Seller's bank account *[if appropriate]*.....
- 4.3 Time for payment *[specify the time]*.....

The Parties may choose a payment arrangement among the possibilities set out below, in which case they should specify the arrangement chosen and provide the corresponding details:

Payment in advance

Amount to be paid (total price or part of the price and/or percentage of the total price)

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

Special conditions applying to this payment *[if any]*

Payment by documentary collection

Amount to be paid *[total price or price per delivery instalment]*

Latest date for payment.....

Means of payment: (i.e. documents against payment – D/P, documents against acceptance – D/A) hereafter:.....

The documents to be presented are specified at Article 5 of this contract.

Payment by documentary collection shall be the subject to the Uniform Rules for Collections published by the International Chamber of Commerce (ICC).

Payment by irrevocable documentary credit

The Buyer must arrange for an irrevocable documentary credit in favour of the Seller to be issued by a reputable bank, subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce (ICC). The issue must be notified at least 14 days before the agreed date for delivery, or before the beginning of the agreed delivery period specified at Article 2 of this contract, as appropriate, unless the Parties agree otherwise as specified hereafter:

[Date on which the documentary credit must be notified to the Seller, other].

.....
The credit shall expire 14 days after the end of the period or date of delivery specified in Article 2 of this contract, unless otherwise agreed hereafter:.....

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

All costs incurred in relation to confirmation shall be borne by the Seller, unless the Parties agree otherwise, as specified hereafter:

The documentary credit shall be payable at sight and allow partial shipments and trans-shipments, unless the Parties agree otherwise, as specified hereafter:.....

- Payment backed by bank guarantee

The Buyer shall provide, at least 30 days before the agreed date of delivery or the beginning of the agreed delivery period specified at Article 2 of this contract, unless the Parties specify hereafter some other date: , either a first demand bank guarantee subject to the Uniform Rules for Demand Guarantees published by the ICC, or a standby letter of credit subject either to such rules or to the Uniform Customs and Practice for Documentary Credits published by the ICC, in either case issued by a reputable bank.

- Other payment arrangements

.....

5. Documents

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

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

5.2 In addition, the Seller shall make available to the Buyer the documents indicated in the ICC Incoterms the Parties have selected under Article 2 of this contract.

6. Non-performance of the Buyer's obligation to pay the price at the agreed time

6.1 If the Buyer fails to pay the price at the agreed time, the Seller shall fix to the Buyer an additional period of time of (specify the length, e.g. 7 days, 14 days, 30 days, etc. or opt for a "period of time of reasonable length") for performance of payment. If the Buyer fails to pay the price at the expiration of the additional period, the Seller may declare this contract avoided in accordance with Article 11 of this contract.

6.2 If the Buyer fails to pay the price at the agreed time, the Seller shall in any event be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of *[specify]* % per annum. *[alternatively: Specify other rate of interest agreed by the Parties.]*

[Comment: The Parties should take into consideration that in some legal systems payment of interest is unlawful, or is subject to a legal maximum rate, or there is provision for statutory interest on late payments.]

7. Non-performance of the Seller's obligation to deliver the Goods at the agreed time

7.1 If the Seller fails to deliver the Goods at the agreed time, the Buyer shall fix to the Seller an additional period of time (specify the length, e.g. 7 days, 14 days, 30 days, etc. or opt for a "period of time of reasonable length") for performance of delivery. If the Seller fails to deliver the Goods at the expiration of the additional period, the Buyer may declare this contract avoided in accordance with Article 11 of this contract.

[Option: The Parties may provide liquidated damages for late delivery. If they decide so, they could use the following model clause on liquidated damages unless otherwise agreed.

"7.2 If the Seller is in delay in delivery of any goods as provided in this contract, the Buyer is entitled to claim liquidated damages equal to 0.5% (parties may agree some other percentage: %) of the price of those goods for each complete day of delay as from the agreed date of delivery or the last day of the agreed delivery period, as specified in Article 2 of this contract, provided the Buyer notifies the Seller of the delay.

Where the Buyer so notifies the Seller within days from the agreed date of delivery or the last day of the agreed delivery period, damages will run from the agreed date of delivery or from the last day of the agreed delivery period. Where the Buyer so notifies the Seller more than days after the agreed date of delivery or the last day of the agreed delivery period, damages will run from the date of notice. Liquidated damages for delay shall not exceed % of the price of the delayed goods. Liquidated damages for delay do not preclude avoidance of contract in accordance with Article 11."

8. Lack of conformity

8.1 There is a lack of conformity where the Seller has delivered:

- 8.1.1 Part only or a larger or a smaller quantity of the Goods than specified in Article 1 of this contract;
- 8.1.2 The Goods which are not those to which this contract relates or goods of a different kind;
- 8.1.3 The Goods which lack the qualities and/or characteristics specified in Article 1 of this contract and/or which lack the qualities of a sample or model which the Seller has held out to the Buyer;
- 8.1.4 The Goods which do not possess the qualities and/or characteristics necessary for their ordinary or commercial use;
- 8.1.5 The Goods which do not possess the qualities and/or characteristics for any particular purpose expressly or impliedly made known to the Seller at the time of the conclusion of this contract;
- 8.1.6 The Goods which are not contained or packaged in the manner specified in Article 1 of this contract. *[Comment: In the absence of such a contract clause, it shall be the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the Goods.]*

8.2 The Seller shall be liable under paragraph 8.1 of this Article for any lack of conformity that exists at the time when the risk passes to the Buyer, even though the lack of conformity becomes apparent only after that time.

[Comment: The Parties may limit the Seller's liability for lack of conformity of the Goods. However, such a contract clause shall be null and void if a lack of conformity was known to the Seller and he failed to notify the Buyer thereof. If the Parties decide to limit the Seller's liability for lack of conformity, they could use the following clause:

The Seller's liability under paragraph 8.1 of this Article for lack of conformity of the Goods is limited to [specify the limitation(s)].]

8.3 The Seller shall not be liable under paragraph 8.1 of this Article for any lack of conformity if, at time of the conclusion of this contract, the Buyer knew or could not have been unaware of such lack of conformity.

8.4 The Buyer shall examine the Goods, or cause them to be examined, within as short period as is practicable in the circumstances. The Buyer shall notify the Seller of any lack of conformity of the Goods, specifying the nature of the lack of conformity, within days after the Buyer has discovered or ought to have discovered the lack of conformity. In any event, the Buyer loses the right to rely on a lack of conformity if he fails to notify the Seller thereof at the latest within a period of two years (other period of time) from the date on which the Goods were actually handed over to the Buyer.

Comment: The Parties may specify that the notice of non-conformity shall be in writing. The Parties may also specify that, where the notice of non-conformity has been sent by letter or other appropriate means, the fact that such notice is delayed or fails to arrive at its destination shall not deprive the Buyer of the right to rely thereon.]

8.5 Where the Buyer has given due notice of non-conformity to the Seller, the Buyer may at his option:

- 8.5.1 Require the Seller to deliver any missing quantity of the Goods, without any additional expense to the Buyer;
- 8.5.2 Require the Seller to replace the Goods with conforming goods, without any additional expense to the Buyer;
- 8.5.3 Require the Seller to repair the Goods, without any additional expense to the Buyer;
- 8.5.4 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. The Buyer may not reduce the price if the Seller replaces the Goods with conforming goods or repairs the Goods in accordance with paragraph 8.5.3 and 8.5.3 of this Article or if the Buyer refuses to accept such performance by the Seller;
- 8.5.5 Declare this contract avoided in accordance with Article 11 of this contract.

The Buyer may also claim damages as provided for in Article 14 of this contract.

[9. Expertise procedure [Optional]

9.1 In the event that the Buyer is not satisfied with the quality of the Goods delivered or to be delivered, it must inform the Seller of such dissatisfaction as soon as possible and in any event within days of delivery of the Goods.

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

9.3 The expert shall consider and report to the Parties on the alleged non-conformity of the Goods.

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

9.5 The expert shall submit his report to both parties by (specify the means, e.g. registered post). The report shall be final and binding upon the Parties unless, within days after it has been received, it is challenged by one of the Parties by the commencement of proceedings in accordance with the dispute resolution procedure provided under this contract.

9.6 The expert's fees and expenses shall be borne by the Buyer pending completion of the expertise procedure, but shall be reimbursed to the Buyer by the Seller if the non-conformity of the Goods is established.]

10. Transfer of property

10.1 The Seller must deliver to the Buyer the Goods specified in Article 1 of this contract free from any right or claim of a third person.

[Option: The Parties may provide for the retention of title clause if such a clause is valid under the law applicable to the contract. According to that clause, the Goods shall remain the property of the Seller until the full payment of the price. If the Parties decide so, they can use the following clause:

“10.1 Retention of title. The property in the Goods specified in Article 1 of this contract shall not pass to the Buyer until the Seller has received payment in full of the price of the Goods. Until property in the Goods passes to the Buyer, the Buyer shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.”]

10.2 If the Goods specified in Article 1 of this contract are subject to a right or claim of a third person, the Buyer shall notify the Seller of such right or claim and request that the other goods free from all rights and claims of third persons be delivered to it by the Seller without any additional expense to the Buyer. [alternatively, the Buyer may request the Seller to free the Goods from all rights and claims of third persons within (specify the period of time e.g. reasonable time, immediately, 30 days, etc.) without any additional expense to the Buyer.]

10.3 If the Seller complies with a request made under paragraph 10.2 of this Article, and the Buyer nevertheless suffers a loss, the Buyer may claim damages in accordance with Article 14 of this contract.

10.4 If the Seller fails to comply with a request made under paragraph 10.2 of this Article, the Buyer may declare this contract avoided in accordance with Article 11 of this contract and claim damages in accordance with Article 14.3 of this contract. If the Buyer does not declare this contract avoided he shall have the right to claim damages in accordance with Article 14.3 of this contract.

10.5 The Buyer shall lose his right to declare this contract avoided if he fails to notify the Seller as provided in paragraph 10.2 of this Article within days [*Alternative: Reasonable time, immediately, etc. from the moment when he became aware or ought to have become aware of the right or claim of the third person in respect of the Goods.*]

10.6 The Seller shall not be liable under this Article if the existence of right or claim of a third person on the Goods was notified to the Buyer at the time of the conclusion of this contract and the Buyer agreed to take the Goods subject to such right or claim.

[10.7 *Optional: "No action for legal defects can be taken by the Buyer after one year (specify other period of time) from the date when the Buyer became aware of the existence of right or claim of a third person on the Goods."*]

11. Avoidance* of contract

11.1 There is a breach of contract where a party fails to perform any of its obligations under this contract, including defective, partial or late performance.

11.2 There is a fundamental breach of contract where:

11.2.1 Strict compliance with the obligation which has not been performed is of the essence under this contract; or

11.2.2 The non-performance substantially deprives the aggrieved party of what it was reasonably entitled to expect under this contract.

[*Option: The Parties additionally agree that the following is to be considered as a fundamental breach of contract:*

[*Specify the cases that constitute a fundamental breach of contract e.g. late payment, late delivery, non-conformity, etc.*].]

11.3 In a case of a breach of contract according to paragraph 11.1 of this Article, the aggrieved party shall, by notice to the other party, fix an additional period of time of reasonable length [*alternatively, the Parties may specify the length, e.g. 15 days, 30 days*] for performance. During the additional period of time the aggrieved party may withhold performance of its own reciprocal obligations and may claim damages but may not declare this contract avoided. If the other party fails to perform its obligation within the additional period of time, the aggrieved party may declare this contract avoided.

11.4 In case of a fundamental breach of contract according to paragraph 11.2 of this Article, the aggrieved party may declare this contract avoided without fixing an additional period of time for performance to the other party.

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

* *Note: For the purposes of this Model Contract, the term "Avoidance" is taken from the CISG and means termination of contract.*

12. Effects of avoidance in general

12.1 Avoidance of this contract releases both parties from their obligation to effect and to receive future performance, subject to any damages that may be due.

12.2 Avoidance of this contract does not preclude a claim for damages for non-performance.

12.3 Avoidance of this contract does not affect any provision in this contract for the settlement of disputes or any other term of this contract that is to operate even after avoidance.

13. Restitution

13.1 On avoidance of this contract either party may claim restitution of whatever it has supplied, provided that such party concurrently makes restitution of whatever it has received.

13.2 If both parties are required to make restitution, they shall do so concurrently.

13.3 Where the Seller is under an obligation to refund the price, he shall also be liable for the interest thereon at the rate fixed by Article 6.2 of this contract, as of the date of payment.

13.4 The Buyer shall be liable to account to the Seller for all the benefits which he has derived from the Goods or part of them, as the case may be:

13.4.1 Where he is under an obligation to return the Goods or part of them; or

13.4.2 Where it is impossible for him to return the Goods or part of them, but the contract is nevertheless avoided.

14. Damages

14.1 Any non-performance gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies except where the non-performance is excused under *force majeure* as provided for in Article 17 of this contract.

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

14.3 *[To be adapted to a particular contract]* In case of avoidance of this contract, where there is a current price for the Goods, damages shall be equal to the difference between the price fixed by the contract and the current price on the date on which the contract is avoided. In calculating the amount of damages, the current price to be taken into account shall be that prevailing at the place where delivery of the Goods should have been made. If there is no such current price or if its application is inappropriate, it shall be the price in a market which serves as a reasonable substitute, making due allowance for differences in the

cost of transporting the Goods. If there is no current price for the Goods, damages shall be calculated on the same basis as that provided in paragraph 14.2 of this Article.

14.4 If this contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance [*the Parties may specify the concrete terms*], the Buyer has bought goods in replacement or the Seller has resold goods, the Party claiming damages shall recover the difference between the contract price and the price paid for the Goods bought in replacement or that obtained by the resale.

14.5 The damages referred to in paragraphs 14.5 and 14.6 of this Article may be increased by the amount of any reasonable expenses incurred as a result of the breach or up to the amount of any loss, including loss of profit, which should have been foreseen by the Party in breach, at the time of the conclusion of this contract, in the light of the facts and matters which were known or ought to have been known to it, as a possible consequence of the breach of this contract.

14.6 Damages are to be paid in a lump sum [*the Parties may specify the other solution. Comment: Damages may be payable in instalments where the nature of the harm makes this appropriate. Damages to be paid in instalments may be indexed*].

14.7. Damages are to be assessed in the currency in which the monetary obligation was expressed [*the Parties may specify the other solution, e.g. in the currency in which the harm was suffered*].

15. Mitigation of harm

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

16. Change of circumstances (hardship)

[Comment: The Parties should be free to consult each other in the event of a major change in circumstances – particularly one creating hardship for a particular party. However, an SME should only include the option at the end of Article 16.3 (right to refer to the courts/arbitral tribunal to make a revision or to terminate the contract) if (i) the SME considers that it is not likely to be used against that party's interests by a party in a stronger tactical position or (ii) the right to refer to a court/tribunal is already an existing right under the applicable governing law in the event of hardship.]

16.1 Where the performance of this contract becomes more onerous for one of the Parties, that party is nevertheless bound to perform its obligations subject to the following provisions on change of circumstances (hardship).

16.2 If, however, after the time of conclusion of this contract, events occur which have not been contemplated by the Parties and which fundamentally alter the equilibrium of the present contract, thereby placing an excessive burden on one of the Parties in the performance of its contractual obligations (hardship), that party shall be entitled to request revision of this contract provided that:

- 16.2.1 The events could not reasonably have been taken into account by the affected party at the time of conclusion of this contract;
- 16.2.2 The events are beyond the control of the affected party;
- 16.2.3 The risk of the events is not one which, according to this contract, the Party affected should be required to bear;
- 16.2.4 Each party shall in good faith consider any proposed revision seriously put forward by the other party in the interests of the relationship between the Parties.

[Option [add if wished: Otherwise delete if not applicable or not enforceable under the law governing the contract.]

“16.3 If the Parties fail to reach agreement on the requested revision within [specify time limit if appropriate], a party may resort to the dispute resolution procedure provided in Article 22. The [court/arbitral tribunal] shall have the power to make any revision to this contract that it finds just and equitable in the circumstances, or to terminate this contract at a date and on terms to be fixed.”.]

17. Force majeure – excuse for non-performance

17.1 “*Force majeure*” means war, emergency, accident, fire, earthquake, flood, storm, industrial strike or other impediment which the affected party proves was beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this contract or to have avoided or overcome it or its consequences.

17.2 A party affected by *force majeure* shall not be deemed to be in breach of this contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this contract to the extent that the delay or non-performance is due to any *force majeure* of which it has notified the other party in accordance with Article 17.3. The time for performance of that obligation shall be extended accordingly, subject to Article 17.4.

17.3 If any *force majeure* occurs in relation to either party which affects or is likely to affect the performance of any of its obligations under this contract, it shall notify the other party within a reasonable time as to the nature and extent of the circumstances in question and their effect on its ability to perform.

17.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by *force majeure* for a continuous period in excess of three *[specify any other figure]* months, the other party shall be entitled to terminate this contract by giving written notice to the Party affected by the *force majeure*.

[Alternative: If preferred, replace 17.4 with the following alternative:

“17.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by force majeure for a continuous period in excess of three [specify any other figure] months, the Parties shall negotiate in good faith, and use their best endeavours to agree upon such amendments to this contract or alternative arrangements as may be fair and reasonable with a view to alleviating its effects, but if they do not agree upon such amendments or arrangements within a further period of 30 [specify any other figure] days, the other party shall be entitled to terminate this contract by giving written notice to the Party affected by the force majeure”.]

18. Entire agreement

18.1 This contract sets out the entire agreement between the Parties. Neither party has entered into this contract in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in this contract. This Article shall not exclude any liability for fraudulent misrepresentation. *[Add where relevant: “This contract supersedes any previous agreement or understanding relating its subject matter”].*

18.2 This contract may not be varied except by an agreement of the Parties in writing, (which may include e-mail). *[Add where Article 16.3 or equivalent is included: “Or in accordance with Article 16.3”].*

19. Notices

19.1 Any notice under this contract shall be in writing (which may include e-mail) and may be served by leaving it or sending it to the address of the other party as specified in Article 19.2 below, in a manner that ensures receipt of the notice can be proved.

19.2 For the purposes of Article 19.1, notification details are the following, unless other details have been duly notified in accordance with this Article:

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20. Effect of invalid or unenforceable provisions

If any provision of this contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this contract shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that, in the absence of the provision found to be null and void, the Parties would not have concluded this contract. The Parties shall use all reasonable efforts to replace all provisions found to be null and void by provisions that are valid under the applicable law and come closest to their original intention.

21. Authorizations [add where relevant]

21.1 This contract is conditional upon the following authorizations first being obtained *[specify the authorization(s) or other conditions required e.g. of governmental or regulatory authority].*

21.2 The relevant party shall use all reasonable efforts on its part to obtain such authorizations and shall notify the other party promptly of any difficulty encountered.

22. Dispute resolution

Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of *[specify the arbitration institution]* by *[specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators]* appointed in accordance with the said rules. The place of arbitration shall be *[specify]*. The language of the arbitration shall be *[specify]*.

[The following are alternatives to a specified arbitral institution under Article 22.

Alternative 1: Ad hoc arbitration

*“Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of UNCITRAL *[specify other rules]* by *[specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators]* appointed by *[specify name of appointing institution or person]*. The place of arbitration shall be *[specify]*. The language of the arbitration shall be *[specify]*.”*

[Alternative 2: State courts

“Any dispute, controversy or claim arising out of or relating to this contract, in particular its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled by the courts of (specify place and country) which will have exclusive jurisdiction”.]

23. Applicable law and guiding principles

23.1 Questions relating to this contract that are not settled by the provisions contained in the contract itself shall be governed by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention of 1980, hereafter referred to as CISG).

Questions not covered by the CISG shall be governed by the UNIDROIT Principles of International Commercial Contracts (hereafter referred to as UNIDROIT Principles), and to the extent that such questions are not covered by the UNIDROIT Principles, by reference to *[specify the relevant national law by choosing one of the following options:*

*The applicable national law of the country where the Seller has his place of business,
or*

*The applicable national law of the country where the Buyer has his place of business,
or*

The applicable national law of a third country (specify the country)].

23.2 This contract shall be performed in a spirit of good faith and fair dealing.

DATE AND SIGNATURE OF THE PARTIES

Seller

Buyer

Date.....

Name.....

Signature

Signature