

2. Revised text of the Convention on the International Sale of Goods as approved or deferred for further consideration by the Working Group on the International Sale of Goods at its first six sessions (A/CN.9/100, annex I)*

CONTENTS

DRAFT CONVENTION ON THE INTERNATIONAL SALE OF GOODS		Chapter	Articles
<i>Chapter</i>	<i>Articles</i>		
I. SPHERE OF APPLICATION	1-7	A. Fixing the price	36-37
II. GENERAL PROVISIONS	8-13	B. Place and date of payment	38-40
III. OBLIGATIONS OF THE SELLER	14-33	Section II. Taking delivery	41
Section I. Delivery of the goods and documents	15-25	[Section III. Remedies for breach of contract by the buyer]	42-46
Subsection 1. Obligations of the seller as regards the date and place of delivery	15-18	V. PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER	47-65
Subsection 2. Obligations of the seller as regards the conformity of the goods	19-25	Section I. Anticipatory breach	47-49
Section II. [Remedies for breach of contract by the seller]	26-33	Section II. Exemptions	50
IV. OBLIGATIONS OF THE BUYER	34-46	Section III. Effects of avoidance	51-54
Section I. Payment of the price	35-40	Section IV. Supplementary rules concerning damages	55-60
		Section V. Preservation of the goods	61-65
		VI. PASSING OF THE RISK	66-69

Draft Convention on the International Sale of Goods¹

CHAPTER I. SPHERE OF APPLICATION

Article 1 (Article 1)

1. The present Convention shall apply to contracts of sales of goods entered into by parties whose places of business are in different States:

- (a) When the States are both 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 shall 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.

Article 2 (Article 2)

The present Convention shall not apply to sales:

- (a) Of goods bought for personal, family or household use, unless the seller, at the time of the conclusion of the contract, did not realize and had no reason to realize that the goods were bought for any such use;

* 18 February 1975.

¹ At its sixth session the Working Group decided that the rules on the international sale of goods should appear in the form of an integrated convention rather than as a uniform law annexed to a convention. In conformity with this decision the Working Group requested the Secretariat to prepare the text as it had been approved by the Working Group during its first six sessions in the form of a convention. The articles have been renumbered with the corresponding articles of revised ULIS (A/CN.9/87, annex I; UNCITRAL Yearbook, vol. V: 1974, part two, I, 2), in parentheses. Those matters which are still unresolved by the Working Group are in square brackets, including those headings which were not in the 1964 ULIS and which have been proposed by the Secretariat.

- (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 or aircraft;
- (f) Of electricity.

Article 3 (Article 3)

1. This Convention shall not apply to contracts in which the preponderant part of the obligations of the seller consists in the supply of labour or other services.

2. Contracts for the supply of goods to be manufactured or produced shall be considered to be sales within the meaning of the present Convention unless the party who orders the goods undertakes to supply an essential and substantial part of the materials necessary for such manufacture or production.

Article 4 (Article 1, paragraph 3)

The present Convention shall also apply where it has been chosen as the law of the contract by the parties.

Article 5 (Article 5)

The parties may exclude the application of the present Convention or derogate from or vary the effect of any of its provisions.

Article 6 (Article 4)

For the purpose of the present Convention:

(a) Where a party to a contract of sale of goods has places of business in more than one State, the place of business shall be 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 the time of the conclusion of the contract;

(b) Where a party does not have a place of business, reference shall be made to his habitual residence;

(c) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract shall be taken into consideration.

Article 7 (Article 8)

The present Convention shall govern only the obligations of the seller and the buyer arising from a contract of sale. In particular, the present Convention shall not, except as otherwise expressly provided therein, be concerned with the formation of the contract, nor with the effect which the contract may have on the property in the goods sold, nor with the validity of the contract or of any of its provisions or of any usage.

CHAPTER II. GENERAL PROVISIONS

Article 8 (Article 9)

1. The parties shall be bound by any usage to which they have agreed and by any practices which they have established between themselves.

2. The parties shall be considered, unless otherwise agreed, to have impliedly made applicable to their contract a usage of which the parties knew or had reason to know 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 9 (Article 10)

A breach committed by one of the parties to the contract shall be regarded as fundamental if it results in substantial detriment to the other party and the party in breach had reason to foresee such a result.

Article 10 (Article 14)

Communications provided for by the present Convention shall be made by the means usual in the circumstances.

Article 11 (Article 15)

[A contract of sale need not be evidenced by writing and shall not be subject to any other requirements as to form. In particular, it may be proved by means of witnesses.]

Article 12 (Article 16)

Where, in accordance with article 27, paragraph (1), or article 43, paragraph (2), one party to a contract of sale is entitled to require performance of any obligation by the other party, a court shall not be bound to enter a judgement providing for specific performance unless this could be required by the court under its own law in respect of similar contracts of sale not governed by this Convention.

Article 13 (Article 17)

In interpreting and applying the provisions of this Convention, regard shall be had to its international character and to the need to promote uniformity.

CHAPTER III. OBLIGATIONS OF THE SELLER

Article 14 (Article 18)

The seller shall deliver the goods, hand over any documents relating thereto and transfer the property in the goods, as required by the contract and the present Convention.

SECTION I. DELIVERY OF THE GOODS AND DOCUMENTS

SUBSECTION 1. OBLIGATIONS OF THE SELLER AS REGARDS THE DATE AND PLACE OF DELIVERY

Article 15 (Article 20)

Delivery of the goods is effected:

(a) Where the contract of sale involves the carriage of goods, by handing the goods over to the first carrier for transmission to the buyer;

(b) Where, in cases not within the preceding paragraph, the contract relates to specific goods or to unidentified goods to be drawn from a specific stock or to be manufactured or produced and the parties knew that the goods were at or were to be manufactured or produced at a particular place at the time of the conclusion of the contract, by placing the goods at the buyer's disposal at that place;

(c) In other cases by placing the goods at the buyer's disposal at the place where the seller carried on business at the time of the conclusion of the contract.

Article 16 (Article 21)

1. If the seller is bound to deliver the goods to a carrier, he shall make, in the usual way and on the usual terms, such contracts as are necessary for the carriage of the goods to the place fixed. Where the goods are not clearly marked with an address or otherwise identified to the contract, the seller shall send the buyer notice of the consignment and, if necessary, some document specifying the goods.

2. If the seller is not bound by the contract to effect insurance in respect of the carriage of the goods, he shall provide the buyer, at his request, with all information necessary to enable him to effect such insurance.

Article 17 (Article 22)

The seller shall deliver the goods:

(a) If a date is fixed or determinable by agreement or usage, on that date; or

(b) If a period (such as a stated month or season) is fixed or determinable by agreement or usage, within that period on a date chosen by the seller unless the circumstances indicate that the buyer is to choose the date; or

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

Article 18 (Article 23)

Where the contract or usage requires the seller to deliver documents relating to the goods, he shall tender such documents at the time and place required by the contract or by usage.

SUBSECTION 2. OBLIGATIONS OF THE SELLER AS REGARDS THE CONFORMITY OF THE GOODS

Article 19 (Article 33)

1. The seller shall deliver goods which are of the quantity and quality and description required by the contract and contained or packaged in the manner required by the contract. Where not inconsistent with the contract the goods shall:

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

(b) Be fit for any particular purpose expressly or impliedly made known to the seller at the time of contracting, 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) Be contained or packaged in the manner usual for such goods.

2. The seller shall not be liable under subparagraphs (a) to (d) of the preceding paragraph for any defect if at the time of contracting the buyer knew, or could not have been unaware of, such defect.

Article 20 (Article 35)

1. The seller shall be liable in accordance with the contract and the present Convention for any lack of conformity which exists at the time when the risk passes, even though such lack of conformity becomes apparent only after that time. [However, if risk does not pass because of a declaration of avoidance of the contract or of a demand for other goods in replacement, the conformity of the goods with the contract shall be determined by their condition at the time when risk would have passed had they been in conformity with the contract.]

2. The seller shall also be liable for any lack of conformity which occurs after the time indicated in paragraph (1) of this article and is due to a breach of any of the obligations of the seller, including a breach of an express guarantee that the goods will remain fit for their ordinary purpose or for some particular purpose, or that they will retain specified qualities or characteristics for a specified period.

Article 21 (Article 37)

If the seller has delivered goods before the date for delivery he may, up to that date, deliver any missing part or quantity of the goods or deliver other goods which are in conformity with the contract or remedy any defects in the goods delivered, provided that the exercise of this right does not cause the buyer either unreasonable inconvenience or unreasonable expense. The buyer shall, however, retain the right to claim damages as provided in article 55.

Article 22 (Article 38)

1. The buyer shall examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

2. In the case of carriage of the goods, examination may be deferred until the goods arrive at the place of destination.

3. If the goods are redispached by the buyer without a reasonable opportunity for examination by him and the seller knew or ought to have known at the time, when the contract was concluded, of the possibility of such redispach, examination of the goods may be deferred until they arrive at the new destination.

Article 23 (Article 39)

1. The buyer shall lose the right to rely on a lack of conformity of the goods if he has not given the seller notice thereof within a reasonable time after he has

discovered the lack of conformity or ought to have discovered it. If a defect which could not have been revealed by the examination of the goods provided for in article 22 is found later, the buyer may none the less rely on that defect, provided that he gives the seller notice thereof within a reasonable time after its discovery. However, the buyer shall lose the right to rely on a lack of conformity of the goods if he has not given notice thereof to the seller at the latest within a period of two years from the date on which the goods were actually handed over.

2. The parties may, in accordance with article 5, derogate from the provisions of the preceding paragraph by providing for a period of guarantee.

3. In giving notice to the seller of any lack of conformity the buyer shall specify its nature.

4. Where any notice referred to in paragraph (1) of this article has been sent by letter, telegram or other appropriate means, the fact that such notice is delayed or fails to arrive at its destination shall not deprive the buyer of the right to rely thereon.

Article 24 (Article 40)

The seller shall not be entitled to rely on the provisions of articles 22 and 23 if the lack of conformity relates to facts of which he knew, or of which he could not have been unaware, and which he did not disclose.

Article 25 (Article 52)

1. The seller shall deliver goods which are free from the right or claim of a third person, unless the buyer agreed to take the goods subject to such right or claim.

2. Unless the seller already knows of the right or claim of the third person, the buyer may notify the seller of such right or claim and request that within a reasonable time the goods shall be freed therefrom or other goods free from all rights or claims of third persons shall be delivered to him by the seller. Failure by the seller within such period to take appropriate action in response to the request shall amount to a fundamental breach of contract.

SECTION II. [REMEDIES FOR BREACH OF CONTRACT BY THE SELLER]

Article 26 (Article 41)

1. Where the seller fails to perform any of his obligations under the contract of sale and the present Convention, the buyer may:

- (a) Exercise the rights provided in articles 27 to 32;
- (b) Claim damages as provided in articles 55 to 60.

2. In no case shall the seller be entitled to apply to a court or arbitral tribunal to grant him a period of grace.

Article 27 (Article 42)

1. Subject to article 12, the buyer has the right to require the seller to perform the contract, unless the buyer has acted inconsistently with that right, in particular by avoiding the contract under article 44 or by reducing the price under article 31.

2. However, where the goods do not conform with the contract, the buyer may require the seller to deliver

substitute goods only when the lack of conformity constitutes a fundamental breach and after request made within a reasonable time.

Article 28 (Article 43)

Where the buyer requests the seller to perform, the buyer may fix an additional period of time of reasonable length for delivery or for curing of the defect or other breach. If the seller does not comply with the request within the additional period, or where the buyer has not fixed such a period, within a period of reasonable time, or if the seller already before the expiration of the relevant period of time declares that he will not comply with the request, the buyer may resort to any remedy available to him under the present Convention.

Article 29 (Article 43 bis)

1. The seller may, even after the date for delivery, cure any failure to perform his obligations, if he can do so without such delay as will amount to a fundamental breach of contract and without causing the buyer unreasonable inconvenience or unreasonable expense, unless the buyer has declared the contract avoided in accordance with article 30 or has declared the price to be reduced in accordance with article 31.

2. If the seller requests the buyer to make known his decision under the preceding paragraph, and the buyer does not comply within a reasonable time, the seller may perform provided that he does so before the expiration of any time indicated in the request, or if no time is indicated, within a reasonable time. Notice by the seller that he will perform within a specified period of time shall be presumed to include a request under the present paragraph that the buyer make known his decision.

Article 30 (Article 44)

The buyer may declare the contract avoided:

(a) Where the failure by the seller to perform any of his obligations under the contract of sale and the present Convention amounts to a fundamental breach of contract, or

(b) Where the seller has not delivered the goods within an additional period of time fixed by the buyer in accordance with article 29.

Article 31 (Article 45)

Where the goods do not conform with the contract, the buyer may declare the price to be reduced in the same proportion as the value of the goods at the time of contracting has been diminished because of such non-conformity.

Article 32 (Article 46)

1. Where the seller has handed over part only of the goods or an insufficient quantity or where part only of the goods handed over is in conformity with the contract, the provisions of articles 28 to 31 shall apply in respect of the part or quantity which is missing or which does not conform with the contract.

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

Article 33 (Article 47)

1. Where the seller tenders delivery of the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

2. Where the seller has proffered to the buyer a quantity of goods greater than that provided for in the contract, the buyer may reject or accept the excess quantity. If the buyer rejects the excess quantity, the seller shall be liable only for damages in accordance with article 55. If the buyer accepts the whole or part of the excess quantity, he shall pay for it at the contract rate.

CHAPTER IV. OBLIGATIONS OF THE BUYER

Article 34 (Article 56)

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

SECTION I. PAYMENT OF THE PRICE

Article 35 (Article 56 bis)

The buyer shall take steps which are necessary in accordance with the contract, with the laws and regulations in force or with usage, to enable the price to be paid or to procure the issuance of documents assuring payment, such as a letter of credit or a banker's guarantee.

A. FIXING THE PRICE

Article 36 (Article 57)

When a contract has been concluded but does not state a price or expressly or impliedly make provision for the determination of the price of the goods, the buyer shall be bound to pay the price generally charged by the seller at the time of contracting; if no such price is ascertainable, the buyer shall be bound to pay the price generally prevailing for such goods sold under comparable circumstances at that time.

Article 37 (Article 58)

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

B. PLACE AND DATE OF PAYMENT

Article 38 (Article 59)

1. The buyer shall pay the price to the seller at the seller's place of business or, where the payment is to be made against the handing over of the goods or of documents, at the place where such handing over takes place.

2. Where, in consequence of a change in the place of business or habitual residence of the seller subsequent to the conclusion of the contract, the expenses incidental to payment are increased, such increase shall be borne by the seller.

Article 39 (Article 59 bis)

1. The buyer shall pay the price when the seller, in accordance with the contract and the present Convention places at the buyer's disposal either the goods or a document controlling their disposition. The seller

may make such payment a condition for handing over the goods or the document.

2. Where the contract involves the carriage of goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will be handed over to the buyer at the place of destination against payment of the price.

3. The buyer shall not be bound to pay the price until he has had an opportunity to inspect the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with such opportunity.

Article 40 (Article 60)

Where the parties have agreed upon a date for the payment of the price or where such date is fixed by usage, the buyer shall, without the need for any other formality, pay the price at that date.

SECTION II. TAKING DELIVERY

Article 41 (Article 65)

The buyer's obligation to take delivery consists in doing all such acts which could reasonably be expected of him in order to enable the seller to effect delivery, and also taking over the goods.

[SECTION III. REMEDIES FOR BREACH OF CONTRACT BY THE BUYER]

Article 42 (Article 70)

1. Where the buyer fails to perform any of his obligations under the contract of sale and the present Convention, the seller may:

- (a) Exercise the rights provided in articles 43 to 46;
- (b) Claim damages as provided in articles 55 to 60.

2. In no case shall the buyer be entitled to apply to a court or arbitral tribunal to grant him a period of grace.

Article 43 (Article 71)

1. If the buyer fails to pay the price, the seller may require the buyer to perform his obligation.

2. Subject to the provisions of article 12, if the buyer fails to take delivery or to perform any other obligation in accordance with the contract and this Convention, the seller may require the buyer to perform his obligation.

3. The seller cannot require performance of the buyer's obligations where he has acted inconsistently with such right by avoiding the contract under article 45.

Article 44 (Article 72)

Where the seller requests the buyer to perform, the seller may fix an additional period of time of reasonable length for such performance. If the buyer does not comply with the request within the additional period, or where the seller has not fixed such a period within a period of reasonable time, or if the buyer already before the expiration of the relevant period of time declares that he will not comply with the request, the seller may resort to any remedy available to him under the present Convention.

Article 45 (Article 72 bis)

The seller may declare the contract avoided:

(a) Where the failure by the buyer to perform any of his obligations under the contract of sale and the present Convention amounts to a fundamental breach of contract, or

(b) Where the buyer has not performed the contract within an additional period of time fixed by the seller in accordance with article 44.

Article 46 (Article 67)

1. If the contract envisages that the buyer will subsequently determine the form, measurement or other features of the goods (sale by specification) and he fails to make such specification either on the date expressly or impliedly agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have under the contract and this Convention, make the specification himself in accordance with any requirement of the buyer that may be known to him.

2. If the seller makes the specification himself, he shall inform the buyer of the details thereof and shall fix a reasonable period of time within which the buyer may submit a different specification. If the buyer fails to do so the specification made by the seller shall be binding.

CHAPTER V. PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

SECTION I. ANTICIPATORY BREACH

Article 47 (Article 73)

1. A party may suspend the performance of his obligation when, after the conclusion of the contract, a serious deterioration in the capacity to perform or creditworthiness of the other party or his conduct in preparing to perform or in actually performing the contract, gives reasonable grounds to conclude that the other party will not perform a substantial part of his obligations.

2. If the seller has already dispatched the goods before the grounds described in paragraph 1 become evident, he may prevent the handing over of the goods to the buyer even if the latter holds a document which entitles him to obtain them. The provision of 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, shall immediately notify the other party thereof, and shall continue with performance if the other party provides adequate assurance of his performance. On the failure by the other party, within a reasonable time after notice, to provide such assurance, the party who suspended performance may avoid the contract.

Article 48 (Article 74)

1. Where, in the case of contracts for delivery of goods by instalments, by reason of any failure by one party to perform any of his obligations under the contract in respect of any instalment, the other party has good reason to fear a fundamental breach in respect of future instalments, he may declare the con-

tract avoided for the future, provided that he does so within a reasonable time.

2. A buyer, avoiding the contract in respect of future deliveries, may also, provided that he does so at the same time, declare the contract avoided in respect of deliveries already made if, by reason of their interdependence, deliveries already made could not be used for the purpose contemplated by the parties in entering the contract.

Article 49 (Article 75)

Where prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of the contract, the other party shall have the right to declare the contract avoided.

SECTION II. EXEMPTIONS

Article 50 (Article 76)

1. Where a party has not performed one of his obligations, he shall not be liable in damages for such non-performance if he proves that it was due to an impediment which has occurred without fault on his part. For this purpose there shall be deemed to be fault unless the non-performing party proves that he could not reasonably have been expected to take into account or to avoid or to overcome the impediment.

2. Where the non-performance of the seller is due to non-performance by a subcontractor, the seller shall be exempt from liability only if he is exempt under the provisions of the preceding paragraph and if the subcontractor would be so exempt if the provisions of that paragraph were applied to him.

3. The exemption provided by this article shall have effect only for the period before the impediment is removed.

4. The non-performing party shall notify the other party of the impediment and its effect on his ability to perform. If he fails to do so within a reasonable time after he knows or ought to have known of the impediment, he shall be liable for the damage resulting from his failure.

SECTION III. EFFECTS OF AVOIDANCE

Article 51 (Article 78)

1. Avoidance of the contract releases both parties from their obligations thereunder, subject to any damages which may be due. The avoidance shall not affect provisions for the settlement of disputes.

2. If one party has performed the contract either wholly or in part, he may claim the return of whatever he has supplied or paid under the contract. If both parties are required to make restitution, they shall do so concurrently.

Article 52 (Article 79)

1. The buyer shall lose his right to declare the contract avoided or to require the seller to deliver substitute goods where it is impossible for him to return the goods substantially in the condition in which he received them.

2. Nevertheless the preceding paragraph shall not apply:

(a) If the impossibility of returning the goods is not due to the act of the buyer;

(b) If the goods or part of the goods have perished or deteriorated as a result of the examination prescribed in article 22;

(c) If part of the goods have been sold in the normal course of business or have been consumed or transferred by the buyer in the course of normal use before the lack of conformity with the contract was discovered or ought to have been discovered.

Article 53 (Article 80)

The buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods by virtue of article 52 shall retain all the other rights conferred on him by the present Convention.

Article 54 (Article 81)

1. Where the seller is under an obligation to refund the price, he shall also be liable for the interest thereon at the rate fixed by article 56, as from the date of payment.

2. The buyer shall be liable to account to the seller for all benefits which he has derived from the goods or part of them, as the case may be:

(a) Where he is under an obligation to return the goods or part of them, or

(b) Where it is impossible for him to return the goods or part of them, but he has nevertheless exercised his right to declare the contract avoided or to require the seller to deliver substitute goods.

SECTION IV. SUPPLEMENTARY RULES CONCERNING DAMAGES

Article 55 (Article 82)

Damages for breach of contract by one party shall 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 shall not exceed the loss which the party in breach had foreseen or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters which then were known or ought to have been known to him, as a possible consequence of the breach of contract.

Article 56 (Article 83)

Where the breach of contract consists of delay in the payment of the price, the seller shall in any event be entitled to interest on such sum as is in arrears at a rate equal to the official discount rate in the country where he has his place of business plus one per cent but his entitlement shall not be lower than the rate applied to unsecured short-term commercial credits in the seller's country.

Article 57 (Article 84)

1. In case of avoidance of the contract, the party claiming damages may rely upon the provisions of article 55 or, where there is a current price for the goods, recover the difference between the price fixed by the contract and the current price on the date [on which delivery was or should have been effected] [on which the contract is avoided].

2. In calculating the amount of damages under paragraph 1 of this article, the current price to be

taken into account shall be that prevailing at the place where delivery of the goods is to be effected or, if there is no such current price, the price at another place which serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

Article 58 (Article 85)

If the contract is avoided and, 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, he may, instead of claiming damages under articles 55 or 57, recover the difference between the contract price and the price paid for the goods bought in replacement or that obtained by the resale.

Article 59 (Article 88)

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

Article 60 (Article 89)

In case of fraud, damages shall be determined by the rules applicable in respect of contracts of sale not governed by the present Convention.

SECTION V. PRESERVATION OF THE GOODS

Article 61 (Article 91)

Where the buyer is in delay in taking delivery of the goods or in paying the price the seller shall take reasonable steps to preserve the goods; he shall have the right to retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 62 (Article 92)

1. Where the goods have been received by the buyer, he shall take reasonable steps to preserve them if he intends to reject them; he shall have the right to retain them until he has been reimbursed his reasonable expenses by the seller.

2. Where goods dispatched to the buyer have been put at his disposal at their place of destination and he exercises the right to reject them, he shall be bound to take possession of them on behalf of the seller, provided that this may be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision shall not apply where the seller or a person authorized to take charge of the goods on his behalf is present at such destination.

Article 63 (Article 93)

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

Article 64 (Article 94)

1. The party who, in the cases to which articles 61 and 62 apply, is under an obligation to take steps to preserve the goods may sell them by any appropriate means, provided that there has been unreasonable delay by the other party in accepting them or taking them back or in paying the cost of preservation and provided that due notice has been given to the other party of the intention to sell.

2. The party selling the goods shall have the right to retain out of the proceeds of sale an amount equal to the reasonable costs of preserving the goods and of selling them and shall transmit the balance to the other party.

Article 65 (Article 95)

Where, in the cases to which articles 61 and 62 apply, the goods are subject to loss or rapid deterioration or their preservation would involve unreasonable expense, the party under the duty to preserve them is bound to sell them in accordance with article 64.

CHAPTER VI. PASSING OF THE RISK

Article 66 (Article 96)

Where the risk has passed to the buyer, he shall pay the price notwithstanding the loss or deterioration of the goods, unless this is due to the act of the seller.

Article 67 (Article 97)

1. Where the contract of sale involves carriage of the goods, the risk shall pass to the buyer when the goods are handed over to the carrier for transmission to the buyer.

2. The first paragraph shall also apply if at the time of the conclusion of the contract the goods are already in transit. However, if the seller at that time knew or ought to have known that the goods had been lost or had deteriorated, the risk of this loss or deterioration shall remain with him, unless he discloses such fact to the buyer.

Article 68 (Article 98)

1. In cases not covered by article 67 the risk shall pass to the buyer as from the time when the goods were placed at his disposal and taken over by him.

2. When the goods have been placed at the disposal of the buyer but have not been taken over or have been taken over belatedly by him and this fact constitutes a breach of the contract, the risk shall pass to the buyer as from the last moment when he could have taken the goods over without committing a breach of the contract. [However, where the contract relates to the sale of goods not then identified, the goods shall not be deemed to be placed at the disposal of the buyer until they have been clearly identified to the contract and the buyer has been informed of such identification.]

[*Article 69 (Article 98 bis)*]

1. Where the goods do not conform to the contract and such non-conformity constitutes a fundamental breach, the risk does not pass to the buyer so long as he has the right to avoid the contract.

2. In the case of a fundamental breach of contract other than for non-conformity of the goods, the risk does not pass to the buyer with respect to loss or deterioration resulting from such breach.]