

Authorised Version No. 111

Goods Act 1958

No. 6265 of 1958

Authorised Version incorporating amendments as at
23 August 2011

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Goods Act 1958

No. 6265 of 1958

Authorised Version incorporating amendments as at
23 August 2011

An Act to consolidate the Law relating to Dealings in Goods.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1 Short title and commencement

This Act may be cited as the **Goods Act 1958** and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

S. 1
amended by
Nos 6716
s. 2(Sch. 1),
7006 s. 2, 8276
s. 70(1), 9651
s. 2(1),
57/1989
s. 3(Sch.
item 86.1).

2 Repeals and savings

* * * * *

S. 2(1)
repealed by
No. 63/2010
s. 15.

(2) Except as in this Act expressly or by necessary implication provided—

(a) all persons things and circumstances appointed or created by or under the repealed Acts or existing or continuing under any of such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same

s. 2

status operation and effect as they respectively would have had if such Acts had not been so repealed;

- (b) in particular and without affecting the generality of the foregoing paragraph such repeal shall not disturb the continuity of status operation or effect of any proclamation regulation decision power agreement contract warrant condition warranty approval lien pledge assent authority proceeding notice defence liability or right made effected issued granted given passed fixed accrued incurred or acquired or existing or continuing by or under any of such Acts before the commencement of this Act.
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PART I—SALE OF GOODS

Division 1—Preliminary

3 Definitions

No. 3694 s. 3.

- (1) In this Part unless inconsistent with the context or subject-matter—

action includes counterclaim and set-off;

buyer means a person who buys or agrees to buy goods;

contract of sale includes an agreement to sell as well as a sale;

delivery means voluntary transfer of possession from one person to another;

document of title has the same meaning as it has in Part II of this Act;

fault means wrongful act or default;

future goods means goods to be manufactured or acquired by the seller after the making of the contract for sale;

S. 3(1) def. of
future goods
amended by
No. 6867 s. 2.

goods includes all chattels personal other than things in action and money. The term includes emblements and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

mercantile agent has the same meaning as it has in Part II of this Act;

plaintiff includes defendant counterclaiming;

property means the general property in goods and not merely a special property;

quality of goods includes their state or condition;

sale includes a bargain and sale as well as a sale and delivery;

seller means a person who sells or agrees to sell goods;

specific goods means goods identified and agreed upon at the time a contract of sale is made;

warranty means an agreement with reference to goods which are the subject of a contract of sale but collateral to the main purpose of such contract the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

- (2) A thing is deemed to be done in *good faith* within the meaning of this Part when it is in fact done honestly whether it be done negligently or not.
- (3) A person is deemed to be bankrupt within the meaning of this Part who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due whether he has committed an act of bankruptcy or not.
- (4) Goods are in a *deliverable state* within the meaning of this Part when they are in such a state that the buyer would under the contract be bound to take delivery of them.

No. 3694 s. 4.

4 Savings

- (1) The rules in bankruptcy relating to contracts of sale shall continue to apply thereto notwithstanding anything in this Part contained.
- (2) The rules of the common law including the law merchant save in so far as they are inconsistent with the express provisions of this Part and in particular the rules relating to the law of principal and agent and the effect of fraud

misrepresentation duress or coercion mistake or other invalidating cause shall continue to apply to contracts for the sale of goods.

5 Further savings

No. 3694 s. 5.

- (1) Nothing in this Part or in any repeal effected by this Act shall affect the enactments relating to bills of sale contracts of sale followed by contracts of letting and hiring liens on crops liens on wool stock mortgages or assignments of book debts or any enactment relating to the sale of goods which is not expressly repealed by this Act.
- (2) The provisions of this Part relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage pledge charge or other security.

Division 2—Formation of the contract

Contract of Sale

6 Sale and agreement to sell

No. 3694 s. 6.

- (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price. There may be a contract of sale between one part owner and another.
- (2) A contract of sale may be absolute or conditional.
- (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.

s. 7

- (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

No. 3694 s. 7.
S. 7
amended by
Nos 9075
s. 5(1), 9427
s. 5(Sch. 4
item 4).

7 Capacity to buy and sell

Capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property: Provided that where necessaries are sold and delivered to a minor or to a person who by reason of mental incapacity or drunkenness is incompetent to contract he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such minor or other person and to his actual requirements at the time of the sale and delivery.

Formalities of the Contract

No. 3694 s. 8.

8 Making of contract of sale

Subject to the provisions of this Part and of any Act in that behalf a contract of sale may be made in writing (either with or without seal) or by word of mouth or partly in writing and partly by word of mouth or may be implied from the conduct of the parties: Provided that nothing in this section shall affect the law relating to corporations.

S. 9
repealed by
No. 35/1987
s. 9.

* * * * *

Subject-matter of Contract

10 Existing or future goods

No. 3694 s. 10.

- (1) The goods which form the subject of a contract of sale may be either existing goods owned or possessed by the seller or future goods.
- (2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.
- (3) Where by a contract of sale the seller purports to effect a present sale of future goods the contract operates as an agreement to sell the goods.

11 Goods perished at time of contract

No. 3694 s. 11.

Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made the contract is void.

12 Goods perished after agreement to sell?

No. 3694 s. 12.

Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish before the risk passes to the buyer, the agreement is thereby avoided.

The Price

13 Ascertainment of price

No. 3694 s. 13.

- (1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.
- (2) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

No. 3694 s. 14. **14 Agreement to sell at valuation**

- (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided: Provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.
- (2) Where such third party is prevented from making the valuation by the fault of the seller or buyer the party not in fault may maintain an action for damages against the party in fault.

Conditions and Warranties

No. 3694 s. 15. **15 Stipulations as to time**

Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

No. 3694 s. 16. **16 Treatment of condition as warranty**

- (1) Where a contract of sale is subject to any condition to be fulfilled by the seller the buyer may waive the condition or may elect to treat the breach of such conditions as a breach of warranty and not as a ground for treating the contract as repudiated.
- (2) Whether a stipulation in a contract of sale is a condition the breach of which may give rise to a right to treat the contract as repudiated, or a warranty the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the

contract. A stipulation may be a condition though called a warranty in the contract.

- (3) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated unless there be a term of the contract express or implied to that effect.
- (4) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

17 Implied undertakings

No. 3694 s. 17.

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

- (a) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;
- (b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;
- (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

No. 3694 s. 18.

18 Sale by description

When there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description; and if the sale be by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Nos 3694
s. 19, 5602
s. 2.

19 Implied conditions as to quality or fitness

Subject to the provisions of this Part and of any Act in that behalf there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows—

S. 19(a)
amended by
No. 6716
s. 2(Sch. 1).

- (a) where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not) there is an implied condition that the goods shall be reasonably fit for such purpose: Provided that in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose;
- (b) where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not) there is an implied condition that the goods shall be of merchantable quality: Provided that if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed;

- (c) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
- (d) an express warranty or condition does not negative a warranty or condition implied by this Part unless inconsistent therewith.

Sale by Sample

20 Sale by sample

No. 3694 s. 20.

- (1) A contract of sale is a contract for sale by sample where there is a term in the contract express or implied to that effect.
- (2) In the case of a contract for sale by sample—
 - (a) there is an implied condition that the bulk shall correspond with the sample in quality;
 - (b) there is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
 - (c) there is an implied condition that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

Division 3—Effects of the contract

Transfer of Property as between Seller and Buyer

21 Sale of unascertained goods

No. 3694 s. 21.
S. 21
amended by
No. 2/2009
s. 27.

Subject to section 25A, where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

No. 3694 s. 22.

22 Property passes when intended to pass

- (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
- (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract the conduct of the parties and the circumstances of the case.

S. 22(2)
repealed by
No. 6886 s. 3,
new s. 22(2)
inserted by
No. 6961 s. 2.

No. 3694 s. 23.

23 Rules for ascertaining intention

Unless a different intention appears the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

Rule 1. Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both be postponed.

Rule 2. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state the property does not pass until such thing be done and the buyer has notice thereof.

Rule 3. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh measure test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done and the buyer has notice thereof.

Rule 4. When goods are delivered to the buyer on approval or on "sale or return" or other similar terms the property therein passes to the buyer—

- (a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- (b) if he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods on the expiration of such time and if no time has been fixed on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5. (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied and may be given either before or after the appropriation is made.

- (2) Where in pursuance of the contract the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer and does not reserve the right of disposal he is deemed to have

unconditionally appropriated the goods to the contract.

No. 3694 s. 24.

24 Reservation of right of disposal

- (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract the seller may by the terms of the contract or appropriation reserve the right of the disposal of the goods until certain conditions are fulfilled. In such case notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.
- (2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent the seller is prima facie deemed to reserve the right of disposal.
- (3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

No. 3694 s. 25.

25 Risk prima facie passes with property

Unless otherwise agreed the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not: Provided that where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred

but for such fault: Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

25A Contract of sale for goods forming part of bulk quantity

S. 25A
inserted by
No. 2/2009
s. 28.

- (1) This section applies to a contract of sale for a specified quantity of unascertained goods of which some or all form part of a single bulk quantity of goods of the same kind (*the bulk*) if—
 - (a) the bulk is identified, either in the contract or by subsequent agreement between the parties; and
 - (b) the buyer has paid for some or all of the goods that form part of the bulk.
- (2) Unless the parties agree otherwise, as soon as both of the conditions referred to in subsection (1) have been met—
 - (a) property in an undivided share in the bulk is transferred to the buyer; and
 - (b) the buyer becomes an owner in common of the bulk.
- (3) The buyer's undivided share in the bulk at any time is such share as, at that time, is equivalent to the quantity of goods paid for and due to the buyer out of the bulk divided by the quantity of goods in the bulk.
- (4) If at any time the aggregate of all buyers' undivided shares in the bulk exceeds the whole of the bulk, those shares are to be reduced proportionately so that their aggregate is equal to the bulk.

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- (5) If a buyer has paid for some only of the goods due to the buyer out of the bulk, any delivery to the buyer out of the bulk is to be attributed to the goods for which payment has been made.
- (6) Part payment for any goods is taken to be payment for a corresponding part of the goods.
- (7) A person who becomes an owner in common of the bulk is taken to consent to—
- (a) any delivery of goods out of the bulk to any other owner in common of the bulk, being goods that are due to that other owner under a contract to which this section applies; and
 - (b) any dealing with, or removal, delivery or disposal of, goods in the bulk by any other owner in common of the bulk, but only to the extent of that other owner's undivided share in the bulk.
- (8) No cause of action lies against any person by reason of that person having acted in accordance with subsection (7)(a) or (7)(b) in reliance on the consent that exists by virtue of that subsection.
- (9) Nothing in this section—
- (a) imposes an obligation on a buyer of goods out of the bulk to compensate any other buyer of goods out of the bulk for any shortfall in the quantity of goods received by that other buyer; or
 - (b) affects any contract or other arrangement between buyers of goods out of the bulk for adjustments between themselves; or
 - (c) affects the rights of any buyer under a contract to which this section applies.

- (10) This section does not apply to a contract of sale entered into before the commencement of section 28 of the **Fundraising Appeals and Consumer Acts Amendment Act 2009**.

Transfer of Title

26 Savings

No. 3694 s. 26.

Nothing in this Part unless specially so expressed shall affect—

- (a) the provisions of Part II of this Act or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;
- (b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

27 Sale by person not the owner

No. 3694 s. 27.

Subject to the provisions of this Part and of any express enactment where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

* * * * *

S. 28
repealed by
No. 54/1989
s. 34.

29 Sale under voidable title

No. 3694 s. 29.

When the seller of goods has a voidable title thereto but his title has not been avoided at the time of the sale the buyer acquires a good title to the goods provided he buys them in good faith and without notice of the seller's defect of title.

No. 3694 s. 30.

30 Seller in possession after sale

Where a person having sold goods continues or is in possession of the goods or of the documents of title to the goods the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer was expressly authorized by the owner of the goods to make the same. For the purposes of this and the next succeeding section the transfer of a document of title to goods may be by indorsement or where the document is by custom or by its express terms transferable by delivery or makes the goods deliverable to bearer then by delivery and a person shall be deemed to be in possession of goods or of the documents of title to goods where the goods or documents are in his actual custody or control or are held by any other person subject to his control or for him or on his behalf.

No. 3694 s. 31.

31 Buyer in possession after sale

Where a person having bought or agreed to buy goods obtains with the consent of the seller possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have the same effect as if the person making the delivery or transfer were a mercantile agent entrusted as such with the possession of the goods or documents of title.

Contracts for the Sale of Wool or Sheep Skins

32 Sale of wool

No. 4408 s. 2.

Any provision, express or implied, in any contract of sale of wool entered into after the commencement of the **Goods (Sale of Wool) Act 1936**, providing for any deduction (as, or in the nature of, a draft allowance) from the weight of the wool the subject of the contract of sale shall be void and of no effect.

33 Sale of sheep skins

No. 5689
s. 2(1).

Any provision express or implied in any contract of sale of sheep skins entered into after the commencement of this section providing for any deduction (as, or in the nature of, a draft allowance) from the weight of the sheep skins the subject of the contract of sale shall be void and of no effect.

Division 4—Performance of the contract

34 Duties of seller and buyer

No. 3694 s. 32.

It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them in accordance with the terms of the contract of sale.

35 Payment and delivery

No. 3694 s. 33.

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions (that is to say) the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

No. 3694 s. 34.

36 Rules as to delivery

- (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract express or implied between the parties. Apart from any such contract express or implied the place of delivery is the seller's place of business if he have one and if not his residence: Provided that if the contract be for the sale of specific goods which to the knowledge of the parties when the contract is made are in some other place then that place is the place of delivery.
- (2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
- (3) Where the goods at the time of sale are in the possession of a third person there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf: Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.
- (4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.
- (5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

No. 3694 s. 35.

37 Delivery of wrong quantity

- (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

- (2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.
- (3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.
- (4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

38 Instalment deliveries

No. 3694 s. 36.

- (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.
- (2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

39 Delivery to carrier

No. 3694 s. 37.

- (1) Where in pursuance of a contract of sale the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of

transmission to the buyer is prima facie deemed to be a delivery of the goods to the buyer.

- (2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages.
- (3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails to do so the goods shall be deemed to be at his risk during such sea transit.

No. 3694 s. 38.

40 Goods delivered at distant place

Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must nevertheless unless otherwise agreed take any risk of deterioration in the goods necessarily incident to the course of transit.

No. 3694 s. 39.

41 Buyer's right of examining goods

S. 41(1)
amended by
No. 57/1989
s. 3(Sch.
item 86.2).

- (1) Where goods are delivered to the buyer which he has not previously examined he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

- (2) Unless otherwise agreed when the seller tenders delivery of goods to the buyer he is bound on request to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

42 Acceptance

No. 3694 s. 40.
S. 42
amended by
No. 9651 s. 3.

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or, subject to section 41, when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them.

43 Buyer not bound to return rejected goods

No. 3694 s. 41.

Unless otherwise agreed where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

44 Failure to take delivery of goods

No. 3694 s. 42.

When the seller is ready and willing to deliver the goods and requests the buyer to take delivery and the buyer does not within a reasonable time after such request take delivery of the goods he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. Nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

Division 5—Rights of unpaid seller against the goods

No. 3694 s. 43.

45 Definition of unpaid seller

- (1) The seller of goods is deemed to be an *unpaid seller* within the meaning of this Part—
 - (a) when the whole of the price has not been paid or tendered;
 - (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.
- (2) In this Division the term *seller* includes any person who is in the position of a seller, as for instance an agent of the seller to whom the bill of lading has been indorsed or a consignor or agent who has himself paid or is directly responsible for the price.

No. 3694 s. 44.

46 Unpaid seller's rights

- (1) Subject to the provisions of this Part and of Part II and of any Act in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods as such has by implication of law—
 - (a) a lien on the goods for the price while he is in possession of them;
 - (b) in case of the bankruptcy of the buyer a right of stopping the goods in transitu after he has parted with the possession of them;
 - (c) a right of re-sale as limited by this Part.

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- (2) Where the property in goods has not passed to the buyer the unpaid seller has in addition to his other remedies a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transitu where the property has passed to the buyer.

Unpaid Seller's Lien

47 Unpaid seller's lien

No. 3694 s. 45.

- (1) Subject to the provisions of this Part the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely—
- (a) where the goods have been sold without any stipulation as to credit;
 - (b) where the goods have been sold on credit but the term of credit has expired;
 - (c) where the buyer becomes bankrupt.
- (2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

48 Part delivery

No. 3694 s. 46.

Where an unpaid seller has made part delivery of the goods he may exercise his right of lien on the remainder unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

No. 3694 s. 47.

49 Termination of lien

- (1) The unpaid seller of goods loses his lien thereon—
 - (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
 - (b) when the buyer or his agent lawfully obtains possession of the goods;
 - (c) by waiver thereof.
- (2) The unpaid seller of goods having a lien thereon does not lose his lien by reason only that he has obtained judgment for the price of the goods.

S. 49(2)
amended by
No. 6505 s. 2.

Stoppage in transitu

No. 3694 s. 48.

50 Right of stoppage in transitu¹

Subject to the provisions of this Part and of Part II of this Act when the buyer of goods becomes bankrupt the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu that is to say he may resume possession of the goods as long as they are in course of transit and may retain them until payment or tender of the price.

No. 3694 s. 49.

51 Duration of transit

- (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water or other bailee for the purpose of transmission to the buyer until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.
- (2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination the transit is at an end.

- (3) If after the arrival of the goods at the appointed destination the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.
- (4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them the transit is not deemed to be at an end even if the seller has refused to receive them back.
- (5) When goods are delivered to a ship chartered by the buyer it is a question depending on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent to the buyer.
- (6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf the transit is deemed to be at an end.
- (7) Where part delivery of the goods has been made to the buyer or his agent in that behalf the remainder of the goods may be stopped in transitu unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

52 Exercise of stoppage in transitu

No. 3694 s. 50.

- (1) The unpaid seller may exercise his right of stoppage in transitu either by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice to be effectual must be given at such time

and under such circumstances that the principal by the exercise of reasonable diligence may communicate it to his servant or agent in time to prevent a delivery to the buyer.

- (2) When notice of stoppage in transitu is given by the seller to the carrier or other bailee in possession of the goods he must re-deliver the goods to or according to the directions of the seller. The expenses of such re-delivery must be borne by the seller.

Re-sale by Buyer or Seller

No. 3694 s. 51. **53 Effect of sub-sale or pledge by buyer²**

Subject to the provisions of this Part and of Part II the unpaid seller's right of lien or stoppage in transitu is not affected by any sale or other disposition of the goods which the buyer may have made unless the seller has assented thereto.

No. 3694 s. 52. **54 Sale not generally rescinded by lien or stoppage in transitu**

- (1) Subject to the provisions of this section a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transitu.
- (2) Where an unpaid seller who has exercised his right of lien or stoppage in transitu re-sells the goods the buyer acquires a good title thereto as against the original buyer.
- (3) Where the goods are of a perishable nature or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

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- (4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer making default re-sells the goods, the original contract of sale is thereby rescinded but without prejudice to any claim the seller may have for damages.

Division 6—Actions for breach of the contract

Remedies of the Seller

55 Action for price

No. 3694 s. 53.

- (1) Where under a contract of sale the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.
- (2) Where under a contract of sale the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

56 Damages for non-acceptance

No. 3694 s. 54.

- (1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods the seller may maintain an action against him for damages for non-acceptance.
- (2) The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract.

- (3) Where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or if no time was fixed for acceptance then at the time of the refusal to accept.

Remedies of the Buyer

No. 3694 s. 55.

57 Damages for non-delivery

- (1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer the buyer may maintain an action against the seller for damages for non-delivery.
- (2) The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the seller's breach of contract.
- (3) Where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or if no time was fixed then at the time of the refusal to deliver.

No. 3694 s. 56.

58 Specific performance

In any action for breach of contract to deliver specific or ascertained goods the court may if it thinks fit on the application of the plaintiff by its judgment direct that the contract shall be performed specifically without giving the defendant the option of retaining the goods on payment of damages. The judgment may be unconditional or upon such terms and conditions as to damages payment of the price and otherwise as to the court may seem just, and the application

by the plaintiff may be made at any time before judgment.

59 Remedy for breach of warranty

No. 3694 s. 57.

- (1) Where there is a breach of warranty by the seller or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—
 - (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
 - (b) maintain an action against the seller for damages for the breach of warranty.
- (2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting in the ordinary course of events from the breach of warranty.
- (3) In the case of breach of warranty of quality such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.
- (4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

Interest and Special Damages

No. 3694 s. 58.

60 Interest and special damages

Nothing in this Part shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

Division 7—Supplementary

No. 3694 s. 59.

61 Exclusion of implied terms and conditions

Where any right duty or liability would arise under a contract of sale by implication of law it may be negatived or varied by express agreement or by the course of dealing between the parties or by usage if the usage be such as to bind both parties to the contract.

No. 3694 s. 60.

62 Reasonable time a question of fact

Where by this Part any reference is made to a reasonable time the question what is a reasonable time is a question of fact.

No. 3694 s. 61.

63 Rights etc. enforceable by action

Where any right duty or liability is declared by this Part it may unless otherwise by this Part provided be enforced by action.

No. 3694 s. 62.

64 Auction sales

In the case of a sale by auction—

- (a) where goods are put up for sale by auction in lots, each lot is prima facie deemed to be the subject of a separate contract of sale;

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- (b) a sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until such announcement is made any bidder may retract his bid;
 - (c) where a sale by auction is not notified to be subject to a right to bid on behalf of the seller it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale or for the auctioneer knowingly to take any bid from the seller or any such person. Any sale contravening this rule may be treated as fraudulent by the buyer;
 - (d) a sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller;
 - (e) where a right to bid is expressly reserved but not otherwise the seller or any one person on his behalf may bid at the auction.
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Pt 2 (Heading)
substituted by
No. 63/2010
s. 16(1) (as
amended by
No. 36/2011
s. 27).

**PART II—CONSIGNEES, MERCANTILE AGENTS,
DOCUMENTS OF TITLE TO GOODS**

No. 3694 s. 63.
S. 65
amended by
No. 24/1998
s. 13.

65 Definitions

In this Part unless inconsistent with the context or subject-matter—

advance includes a payment of money and the delivery of a bill of exchange or other negotiable security;

document of title includes bill of lading dock warrant warehousekeeper's certificate wharfinger's certificate and warrant or order for the delivery of goods or any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize either by indorsement or by delivery the possessor of such document to transfer or receive the goods thereby represented;

goods includes goods wares and merchandise;

mercantile agent means a mercantile agent having in the customary course of his business as such agent authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods or of documents of title;

pledge includes any contract pledging or giving a lien or security on goods whether in consideration of an original advance or of any further or continuing advance.

The provisions of this Part shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act.

66 Provisions as to consignees

No. 3694 s. 64.

- (1) Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale or has shipped the goods in the name of another person and the consignee of the goods has not had notice that such person is not the owner of the goods the consignee shall in respect of advances made to or for the use of such person have the same lien on the goods as if such person was the owner of the goods and may transfer any such lien to another person.
- (2) The person in whose name any goods have been shipped shall for the purposes of this section be taken to have been given possession of the goods for the purpose of consignment or sale unless the contrary is shown.
- (3) Nothing in this section shall limit or affect the validity of any sale pledge or disposition by a mercantile agent.

67 Powers of mercantile agents with respect to disposition of goods

No. 3694 s. 65.

- (1) Where a mercantile agent is entrusted as such with the possession of any goods or the documents of title to any goods any sale pledge or other disposition of the goods made by him in the ordinary course of business of a mercantile agent shall subject to the provisions of this Part be as valid as if he was expressly authorized by the owner of the goods to make the same: Provided that the person taking under such disposition acts in good faith and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

- (2) Where a mercantile agent so entrusted continues in possession of goods or of the documents of title to goods any sale pledge or other disposition which would have been valid if the entrusting had continued shall be valid notwithstanding the determination thereof: Provided that the person taking under the disposition has not at the time thereof notice of such determination.

No. 3694 s. 66.

68 Further provisions with respect to mercantile agents

For the purposes of this Part—

- (a) a mercantile agent in possession of goods or of the documents of title to goods shall be deemed to have been entrusted with such goods or documents as such agent until the contrary is shown;
- (b) a mercantile agent entrusted as such agent and possessed of the documents of title to goods whether derived immediately from the owner of such goods or obtained by reason of such agent's having been entrusted with the possession of the goods or of any other document of title thereto shall be deemed to be entrusted with the possession of the goods represented by such documents;
- (c) an agent shall be deemed to be possessed of goods or documents of title to goods whether the same are in his actual custody or control or are held by any other person subject to his control or for him or on his behalf;
- (d) any contract whether made directly with an agent or with any clerk or other person on his behalf shall be deemed to be a contract with the agent;

- (e) a pledge of the documents of title to goods shall be deemed to be a pledge of the goods represented by such documents;
- (f) where any loan or advance is bona fide made to a mercantile agent entrusted as aforesaid on the faith of any contract or agreement in writing to consign deposit transfer or deliver goods or documents of title to goods and such goods or documents are actually received by the person making such loan or advance without notice that such agent was not authorized to make such pledge every such loan or advance shall be deemed to be a loan or advance on the security of such goods or documents within the meaning of this Part although such goods or documents are not actually received by the person making such loan or advance till a period subsequent thereto;
- (g) the transfer of a document of title to goods may be made by indorsement or where the document is by custom or by its express terms transferable by delivery or makes the goods deliverable to bearer then by delivery.

69 Pledges by way of exchange protected

No. 3694 s. 67.

Where a mercantile agent pledges goods in consideration of the delivery or transfer of any other goods or documents of title to goods or negotiable securities upon which the person delivering or transferring the same had at the time a valid and available lien and security for or in respect of a previous advance by virtue of some contract or agreement made with such agent such pledge if the pledgee acts in good faith and without notice that such agent had not authority to make the same shall be deemed to be in consideration of an advance within the meaning of

s. 70

this Part as if there had been a present advance of money but the pledgee shall acquire no right or interest in excess of the value of the goods documents or negotiable securities when so delivered or transferred.

No. 3694 s. 68.

70 Pledge for antecedent debt

Where a mercantile agent pledges goods as security for a debt or demand due and owing by the pledgor to the pledgee before the time of the pledge the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

No. 3694 s. 69.

71 Transfer of document of title³

Where a document of title of goods has been lawfully transferred to any person as buyer or owner of the goods and that person transfers the document to a person who takes it in good faith and for valuable consideration then if such last-mentioned transfer is by way of sale the unpaid seller's right of lien or stoppage in transitu shall be defeated and if such last-mentioned transfer is by way of pledge or other disposition for value the unpaid seller's right of lien or stoppage in transitu may be exercised only subject to the rights of the transferee.

No. 3694 s. 70.

72 Delivery of warrant for goods

- (1) Without limiting the generality of the last preceding section the delivery of a warrant for goods indorsed by the person or persons to whom the same has been issued or by his or their agent or authorized employé to a purchaser of the goods mentioned in such warrant shall pass the possession as well as the property in the said goods and no unpaid vendor of the said goods shall have any right to resume the possession of or

to stop the same or any part thereof in transitu after the delivery of the said warrant.

- (2) Where a warrant for goods has been indorsed by the person to whom the same has been issued or given or by his agent duly authorized in that behalf and is delivered to any person such last-mentioned person and any subsequent holder of the warrant in good faith shall as against the person by or on whose behalf the warrant has been issued or given be entitled to the goods and the possession thereof to the same extent as if the contract contained in or evidenced by such warrant had been made with the person to whom the warrant has been indorsed and delivered as aforesaid or with the said holder thereof (as the case may be).
- (3) In this section the expression *warrant for goods* means a warehousekeeper's certificate wharfinger's certificate dock warrant or warrant or order for the delivery of goods.

*	*	*	*	*	Ss 73, 74 repealed by No. 24/1998 s. 4.
*	*	*	*	*	S. 75 amended by Nos 9576 s. 11(1), 7/2009 s. 435(5) (as amended by No. 68/2009 s. 54(u)), repealed by No. 63/2010 s. 16(2).
*	*	*	*	*	S. 76 amended by S.R. No. 374/1973 cl. 2(a)(b), repealed by No. 63/2010 s. 16(2).

Goods Act 1958
No. 6265 of 1958

Part II—Consignees, Mercantile Agents, Documents of Title to Goods

s. 81

S. 77 repealed by No. 63/2010 s. 16(2).	*	*	*	*	*
S. 78 amended by Nos 9576 s. 11(1), 7/2009 s. 435(5) (as amended by No. 68/2009 s. 54(u)), repealed by No. 63/2010 s. 16(2).	*	*	*	*	*
S. 79 repealed by No. 63/2010 s. 16(2).	*	*	*	*	*
S. 80 amended by Nos 9554 s. 2(2)(Sch. 2 item 95), 9576 s. 11(1), 9945 s. 3(3)(Sch. 2 item 20), repealed by No. 63/2010 s. 16(2).	*	*	*	*	*

No. 3694 s. 79.

81 Saving of rights

Nothing in this Part—

- (a) shall authorize an agent to exceed or depart from his authority as between himself and his principal or shall exempt him from liability civil or criminal for so doing;
- (b) shall prevent the owner of goods or documents from recovering the same from an agent or his assignee or trustee in bankruptcy at any time before the sale or pledge thereof;

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- (c) shall prevent the owner of any goods sold by an agent from recovering from the buyer the price or sum agreed to be paid subject to any rights of set off of such buyer against such agent;
- (d) shall prevent such owner from having the right to redeem goods or documents pledged at any time before sale thereof on satisfying the claim for which the goods were pledged and on paying to the agent if by him required any money in respect of which such agent would by law be entitled to retain such goods or documents or any of them by way of lien as against such owner; or shall prevent such owner from recovering from any person with whom any such goods have been pledged any balance or sum of money remaining in his hands as the produce of sale after deducting the amount of his lien.
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**PART III—EFFECT OF EXECUTION AND CONVICTION ON
TITLE TO GOODS**

82 Writs of execution

No. 3694 s. 80.

S. 82(1)
amended by
Nos 110/1986
s. 140(2),
57/1989
s. 3(Sch.
item 86.3(a)).

- (1) A warrant or writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the warrant or writ is delivered to the sheriff to be executed, and for the better manifestation of such time it shall be the duty of the sheriff without fee upon the receipt of any such warrant or writ to indorse upon the back thereof the hour day month and year when he received the same: Provided that no such warrant or writ and no writ of attachment against the goods of a debtor shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration unless such person had at the time when he acquired his title notice that such warrant or writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.

S. 82(2)
amended by
No. 57/1989
s. 3(Sch.
item 86.3(b)).

- (2) In this section the term *sheriff* includes any officer charged with the enforcement of a warrant or writ of execution.

83 Property obtained by wrongful means

S. 83
substituted by
No. 8425
s. 2(2)(Sch.).

Notwithstanding any enactment to the contrary where property has been stolen or obtained by fraud or other wrongful means the title to that or any other property shall not be affected by reason only of the conviction of the offender.

83A Goods sold in execution

- (1) The buyer of any goods sold in pursuance of any writ warrant or other process of execution issued out of any court shall acquire a good title to the goods if he buys them in good faith and without notice of any defect or want of title in the judgment debtor.
- (2) No person charged with the execution of any writ warrant or other process of execution issued out of any court shall be in any way liable in respect of the sale of any goods seized in satisfaction thereof or for paying over the proceeds of any such sale unless it is proved that such person had notice, or might by making reasonable inquiry have ascertained, that the goods were not the property of the judgment debtor.
- (3) Where goods are sold as aforesaid the provisions of this section shall not in any way limit or affect any right or remedy the previous owner of the goods may have or bring otherwise than against the goods or against any person charged with the execution of the writ warrant or other process under which the goods are sold.

S. 83A
inserted by
No. 7006 s. 3.

S. 83A(1)
amended by
No. 57/1989
s. 3(Sch.
item 86.4).

PART IV—VIENNA CONVENTION

Pt 4
(Heading and
ss 84–119)
repealed⁴,
new Pt 4
(Heading and
ss 84–88)
inserted by
No. 63/2010
s. 17.

New s. 84
inserted by
No. 63/2010
s. 17.

84 Part binds the Crown

This Part binds the Crown in right of Victoria and, in so far as the legislative power of the Parliament of Victoria permits, the Crown in all its other capacities.

New s. 85
inserted by
No. 63/2010
s. 17.

85 Convention

In this Part, *Convention* means the United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria, on 10 April 1980 and opened for signature and also for accession on 11 April 1980, a copy of which is set out in the Schedule.

New s. 86
inserted by
No. 63/2010
s. 17.

86 Convention to have the force of law

The provisions of the Convention have the force of law in Victoria.

New s. 87
inserted by
No. 63/2010
s. 17.

87 Convention to prevail in event of inconsistency

The provisions of the Convention prevail over any other law in force in Victoria to the extent of any inconsistency.

New s. 88
inserted by
No. 63/2010
s. 17.

88 Evidence of certain matters

A document purporting to be a notice issued by the Minister and published in the Government Gazette, or a document purporting to be a notice issued by a Minister of State for the Commonwealth and published in the Commonwealth of Australia Gazette, or a document certified by an Australian lawyer

(within the meaning of the **Legal Profession Act 2004**) to be a true copy of such a notice—

- (a) declaring that the Convention has entered or will enter into force, with effect from a specified date, in respect of a specified country; or
- (b) declaring that a specified country has made a declaration under Part IV of the Convention and specifying details of that declaration, including the date the declaration took or will take effect; or
- (c) declaring that a specified country has denounced the Convention or Part II or III of the Convention and specifying the date the denunciation took or will take effect—

is evidence of the matters contained in the document.

Pt 4A
(Headings
and ss 89–96)
inserted by
No. 63/2010
s. 17.

PART IVA—SEA-CARRIAGE DOCUMENTS

Division 1—Preliminary

89 Definitions

New s. 89
inserted by
No. 63/2010
s. 17.

In this Part—

bill of lading means a bill of lading (including a received for shipment bill of lading) that is capable of transfer—

- (a) by endorsement; or
- (b) as a bearer bill, by delivery without endorsement;

contract of carriage, in relation to a sea-carriage document, means—

- (a) in the case of a bill of lading or a sea waybill—the contract of carriage contained in, or evidenced by, the document; or
- (b) in the case of a ship's delivery order—the contract of carriage in association with which the order is given;

data message means information generated, stored or communicated by electronic, optical or analogous means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex and telecopy;

goods, in relation to a sea-carriage document, means the goods to which the document relates;

identification, in relation to the identification of a person in a sea-carriage document, includes the identification of the person by a description that allows for the person's identity to be varied, in accordance with the document, after its issue;

lawful holder, of a bill of lading, means a person who—

- (a) has come into possession of the bill, in good faith, as the consignee of the goods, by virtue of being identified in the bill; or
- (b) has come into possession of the bill, in good faith, as a result of the completion, by delivery of the bill—
 - (i) of any endorsement of the bill; or
 - (ii) in the case of a bearer bill, of any other transfer of the bill; or
- (c) would be the lawful holder of the bill under paragraph (a) or (b) had not the person come into possession of the bill as the result of a transaction effected at a time when possession of the bill no longer gave a right (as against the carrier) to possession of the goods;

sea waybill means a document other than a bill of lading which—

- (a) is issued by the carrier of the goods; and
- (b) is a receipt for the goods; and
- (c) contains or evidences a contract for the carriage of the goods by sea; and

- (d) identifies the person to whom delivery of the goods is to be made by the carrier in accordance with the contract;

sea-carriage document means a bill of lading, a sea waybill or a ship's delivery order;

ship's delivery order means a document other than a bill of lading or sea waybill which—

- (a) is given in association with the contract for the carriage of goods by sea including those to which the document relates; and
- (b) contains an undertaking by the carrier to deliver the goods to which the document relates to a person identified in the document.

New s. 90
inserted by
No. 63/2010
s. 17.

90 Electronic and computerised sea-carriage documents

- (1) Subject to this section, this Part applies—
- (a) in relation to a sea-carriage document in the form of a data message—in the same way as it applies to a written sea-carriage document;
- (b) in relation to the communication of a sea-carriage document by means of a data message—in the same way as it applies to the communication of a sea-carriage document by other means.
- (2) This Part applies under subsection (1) with necessary changes and in accordance with procedures agreed between the parties to the contract of carriage.
- (3) Without limiting the generality of subsection (2), in this Part, in the application of the following terms to a sea-carriage document in the form of a data message, or the communication of a sea-carriage document by means of a data message—

delivery includes any form of communication which constitutes delivery under the terms of the contract of carriage;

endorsement includes any form of authorisation which constitutes endorsement under the terms of the contract of carriage;

possession, in relation to the document, includes being in receipt of the document in any manner which constitutes possession under the terms of the contract of carriage;

signed includes authenticated in any manner which constitutes signing under the terms of the contract of carriage.

91 Application where goods have ceased to exist, or cannot be identified

News. 91
inserted by
No. 63/2010
s. 17.

Without prejudice to the operation of section 92(4) or 96, nothing in this Part precludes its operation in relation to a sea-carriage document where the goods—

- (a) cease to exist after the issue of the document;
or
- (b) cannot be identified (whether because they are mixed with other goods, or for any other reason).

Division 2—Rights under contracts of carriage

92 Transfer of rights

New s. 92
inserted by
No. 63/2010
s. 17.

- (1) All rights under the contract of carriage in relation to which a sea-carriage document is given are transferred to—
 - (a) in the case of a bill of lading—each successive lawful holder of the bill; or

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- (b) in the case of a sea waybill—the person (not being an original party to the contract) to whom delivery of the goods is to be made by the carrier in accordance with the contract; or
 - (c) in the case of a ship's delivery order—the person to whom delivery of the goods is to be made in accordance with the order.
- (2) Rights in a contract of carriage transferred to a person under subsection (1) vest in that person as if the person had been an original party to the contract.
 - (3) Rights in a contract of carriage in relation to which a ship's delivery order is given are transferred under subsection (1)—
 - (a) subject to the terms of the order; and
 - (b) only in respect of the goods to which the order relates.
 - (4) If a person becomes the lawful holder of a bill of lading when possession of the bill no longer gives a right (as against the carrier) to possession of the goods, no rights are transferred to that person under subsection (1) unless the person becomes the lawful holder of the bill—
 - (a) by virtue of a transaction effected under any contractual or other arrangement made before the possession of the bill ceased to give such a right to possession; or
 - (b) as a result of the re-endorsement of the bill following rejection to that person by another person of goods or documents delivered to the other person under any contractual or other arrangement made before the possession of the bill ceased to give such a right to possession.

- (5) If, in relation to a sea-carriage document—
- (a) a person with any interest or right in relation to the goods sustains loss or damage in consequence of a breach of the contract of carriage; and
 - (b) subsection (1) operates to transfer the rights in that contract to another person—

the person to whom the rights in the contract are transferred is entitled to exercise those rights for the benefit of the person who sustained the loss or damage to the same extent that they would be able to be exercised if they were vested in that person.

- (6) In this section, a reference to a contract of carriage, in relation to the transfer of rights under the contract, is to be taken to be a reference to the contract as varied by any variation of which the transferee has notice at the time of the transfer.

93 Extinguishment of previous rights

New s. 93
inserted by
No. 63/2010
s. 17.

- (1) If section 92 operates in relation to a bill of lading to transfer rights under the contract of carriage, the transfer extinguishes any entitlement to those rights which derives from—
- (a) a person having been an original party to the contract of carriage; or
 - (b) the previous operation of that section.
- (2) If section 92 operates in relation to a sea waybill or ship's delivery order to transfer rights under the relevant contract of carriage—
- (a) the transfer extinguishes any entitlement to those rights which derives from the previous operation of that section; and

- (b) in the case of a sea waybill—the transfer is without prejudice to any rights which derive from a person having been an original party to the contract; and
- (c) in the case of a ship's delivery order—the transfer is without prejudice to any rights under the contract other than rights derived from the previous operation of that section.

Division 3—Liabilities under contracts of carriage

94 Transfer of liabilities

New s. 94
inserted by
No. 63/2010
s. 17.

- (1) This section applies to a person where the rights in the contract of carriage in relation to a sea-carriage document are transferred to the person under section 93 and—
 - (a) before those rights are transferred, the person demands or takes delivery from the carrier of any of the goods; or
 - (b) after those rights are transferred, the person demands or takes delivery from the carrier of any of the goods; or
 - (c) the person makes a claim under the contract against the carrier in respect of any of the goods.
- (2) A person to whom this section applies is subject to the liabilities under the contract as if the person had been an original party to the contract.
- (3) A person to whom subsection (1)(a) applies becomes subject to the liabilities under the contract under subsection (2) at the time the rights in the contract are transferred to the person.
- (4) In this section, a reference to a contract of carriage, in relation to a person who becomes subject to a liability under the contract by virtue of this section, is to be taken to be a reference to the

contract of carriage as varied by any variation of which the person has notice at the time of becoming subject to the liability.

95 Liability of original parties

Section 94 does not operate so as to prejudice the liability under a contract of carriage of any original party to the contract.

New s. 95
inserted by
No. 63/2010
s. 17.

Division 4—Evidence

96 Shipment under bills of lading

- (1) This section applies in relation to a bill of lading which—
 - (a) represents goods to have been shipped, or received for shipment, on board a vessel; and
 - (b) is signed—
 - (i) by the master of the vessel; or
 - (ii) by another person with the express, implied or apparent authority of the carrier to sign bills of lading.
- (2) A bill of lading to which this section applies is prima facie evidence as against the carrier, in favour of the shipper, of the shipment of the goods or, in the case of a received for shipment bill of lading, of their receipt for shipment.
- (3) A bill of lading to which this section applies is conclusive evidence as against the carrier, in favour of a lawful holder of the bill, of the shipment of the goods or, in the case of a received for shipment bill of lading, of their receipt for shipment.

New s. 96
inserted by
No. 63/2010
s. 17.

s. 120

Pt 5
(Heading and
ss 87–98)
repealed by
No. 8276
s. 70(1),
new Pt 5
(Heading and
ss 120, 121)
inserted by
No. 74/1997
s. 5.

PART V—RIGHTS OF HIRERS UNDER HIRE-PURCHASE AGREEMENTS

S. 120
inserted by
No. 74/1997
s. 5.

120 Definitions

(1) In this Part—

S. 120(1)
def. of *hire
purchase
agreement*
amended by
No. 11/2010
s. 50.

hire purchase agreement includes—

- (a) an agreement for the hire or letting of goods with an option to purchase; and
- (b) an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent, hire or otherwise)—

but does not include an agreement—

- (c) to which the **Hire-Purchase Act 1959** applies; or
- (d) under which the property in the goods comprised in the agreement passes at the time of the agreement or any time before the delivery of goods; or
- (e) that is a regulated contract within the meaning of the **Credit Act 1984**; or
- (f) that is a credit contract within the meaning of the National Credit Code within the meaning of the National Consumer Credit Protection Act 2009 of the Commonwealth;

owner means a person who lets, hires or agrees to sell goods under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement have passed by assignment or by operation of law;

hirer means a person to whom goods are let, hired or agreed to be sold under a hire-purchase agreement and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law.

- (2) A reference in this Part to taking possession by an owner of goods comprised in a hire-purchase agreement does not include a reference to taking possession by the owner as a result of the voluntary return of the goods by the hirer.

121 Hirer's right to surplus if goods repossessed by owner

S. 121
inserted by
No. 74/1997
s. 5.

- (1) If an owner takes possession of goods comprised in a hire-purchase agreement and the agreement is neither reinstated nor finalised by the hirer, the hirer may recover from the owner—
- (a) if the owner sells or disposes of the goods, an amount equal to the proceeds of the sale of the goods; or
 - (b) if the owner does not sell or dispose of the goods or fails to sell or dispose of the goods as soon as reasonably practicable after taking possession of the goods (or such other time as the owner and the hirer agree), an amount equal to the value of the goods at the time that the owner took possession of the goods—

less any amounts which the owner is entitled to deduct from those proceeds under this section.

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- (2) An owner who sells or disposes of goods under subsection (1) is entitled to deduct from the proceeds of sale or the value of the goods, as the case requires, only the following amounts—
- (a) the total amount owed by the hirer under the hire-purchase agreement at the time the owner took possession of the goods, not being an amount greater than the amount required to discharge the agreement; and
 - (b) the reasonable expenses of the owner incurred in taking possession of the goods; and
 - (c) any amount reasonably incurred by the owner on the storage, repair or maintenance of the goods; and
 - (d) the reasonable expenses incurred in selling or disposing of the goods, whether or not the goods have subsequently been sold or disposed of by the owner.
- (3) In this section *value of the goods* means the best price reasonably obtainable by the owner at the time the owner took possession of the goods.
- (4) The onus is on the owner to prove that the price obtained for the goods was the best price reasonably obtainable at the time that the owner took possession of the goods.
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PART VI—TRANSITIONAL AND SAVING

Pt 6 (Heading
and s. 122)
inserted by
No. 30/2003
s. 76.

**122 Contracts to which Part IV of the Goods Act 1958
will still apply**

S. 122
inserted by
No. 30/2003
s. 76.

- (1) Despite the repeal of Part IV by section 75 of the **Fair Trading (Amendment) Act 2003**, that Part, as in force immediately before its repeal, continues to apply to a sale of goods or services or lease of goods entered into before the commencement of that section.
- (2) In this section *sale* and *lease* have the same meanings as they had in Part IV immediately before its repeal.

123 Transitional—Criminal Procedure Act 2009

S. 123
inserted by
No. 68/2009
s. 97(Sch.
item 64).

- (1) Sections 75 and 78 as amended by section 435(5) of the **Criminal Procedure Act 2009** apply to an offence alleged to have been committed on or after the commencement of section 435(5) of that Act.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one on or after the commencement of section 435(5) of the **Criminal Procedure Act 2009**, the offence is alleged to have been committed before that commencement.

124 Saving provision for repeal of Sale of Goods (Vienna Convention) Act 1987

S. 124
inserted by
No. 63/2010
s. 18.

Any reference to the **Sale of Goods (Vienna Convention) Act 1987** in any agreement or other document so far as it relates to any period after the commencement of section 20 of the **Consumer Affairs Legislation Amendment (Reform) Act**

2010 is to be treated as a reference to Part IV of this Act, unless the contrary intention appears.

S. 125
inserted by
No. 63/2010
s. 18.

125 Saving provision for repeal of Sea-Carriage Documents Act 1998

Any reference to the **Sea-Carriage Documents Act 1998** in any agreement or other document so far as it relates to any period after the commencement of section 21 of the **Consumer Affairs Legislation Amendment (Reform) Act 2010** is to be treated as a reference to Part IVA of this Act, unless the contrary intention appears.

SCHEDULE

Section 85

Sch.
substituted by
No. 63/2010
s. 19.

**UNITED NATIONS CONVENTION ON CONTRACTS FOR THE
INTERNATIONAL SALE OF GOODS**

THE STATES PARTIES TO THIS CONVENTION

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

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

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

HAVE AGREED as follows:

PART I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Chapter I

SPHERE OF APPLICATION

Article 1

- (1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States—
 - (a) when the States are Contracting States; or
 - (b) when the rules of private international law lead to the application of the law of a Contracting State.
- (2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

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

Article 2

This Convention does not apply to sales—

- (a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
- (b) by auction;
- (c) on execution or otherwise by authority of law;
- (d) of stocks, shares, investment securities, negotiable instruments or money;
- (e) of ships, vessels, hovercraft or aircraft;
- (f) of electricity.

Article 3

- (1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.
- (2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

Article 4

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

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

Article 5

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

Article 6

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

Chapter II

GENERAL PROVISIONS

Article 7

- (1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.
- (2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article 8

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

Article 9

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

Article 10

For the purposes of this Convention—

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

Article 11

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

Article 12

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

Article 13

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

PART II
FORMATION OF THE CONTRACT

Article 14

- (1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.
- (2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

Article 15

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

Article 16

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

Article 17

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

Article 18

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

Sch.

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

Article 19

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

Article 20

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

instantaneous communication, begins to run from the moment that the offer reaches the offeree.

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

Article 21

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

Article 22

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

Article 23

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

Article 24

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

PART III
SALE OF GOODS

Chapter I
GENERAL PROVISIONS

Article 25

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

Article 26

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

Article 27

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

Article 28

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

Article 29

- (1) A contract may be modified or terminated by the mere agreement of the parties.
- (2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his

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

Chapter II

OBLIGATIONS OF THE SELLER

Article 30

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

Section I—Delivery of Goods and Handing Over of Documents

Article 31

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

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

Article 32

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

Sch.

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

Article 33

The seller must deliver the goods—

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

Article 34

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

Section II—Conformity of the goods and third party claims

Article 35

- (1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.
- (2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they—
 - (a) are fit for the purposes for which goods of the same description would ordinarily be used;
 - (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that

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- it was unreasonable for him to rely, on the seller's skill and judgement;
- (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;
 - (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.
- (3) The seller is not liable under sub-paragraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

Article 36

- (1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.
- (2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

Article 37

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

Article 38

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

Article 39

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

Article 40

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

Article 41

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

Article 42

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

Article 43

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

Article 44

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

Section III—Remedies for breach of contract by the seller

Article 45

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

Article 46

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

Article 47

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

Article 48

- (1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.
- (2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.
- (3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.
- (4) A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

Article 49

- (1) The buyer may declare the contract avoided—
 - (a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
 - (b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.
- (2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so—
 - (a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;
 - (b) in respect of any breach other than late delivery, within a reasonable time—
 - (i) after he knew or ought to have known of the breach;

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- (ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or
- (iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance.

Article 50

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

Article 51

- (1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.
- (2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

Article 52

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

Chapter III

OBLIGATIONS OF THE BUYER

Article 53

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

Section I—Payment of the price

Article 54

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

Article 55

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

Article 56

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

Article 57

- (1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller—
 - (a) at the seller's place of business; or
 - (b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.
- (2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

Article 58

- (1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.
- (2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.
- (3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

Article 59

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

Section II—Taking delivery

Article 60

The buyer's obligation to take delivery consists—

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

Section III—Remedies for breach of contract by the buyer

Article 61

- (1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may—
 - (a) exercise the rights provided in articles 62 to 65;
 - (b) claim damages as provided in articles 74 to 77.

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- (2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.
 - (3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

Article 62

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

Article 63

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

Article 64

- (1) The seller may declare the contract avoided—
 - (a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
 - (b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.
- (2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so—
 - (a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or

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- (b) in respect of any breach other than late performance by the buyer, within a reasonable time—
- (i) after the seller knew or ought to have known of the breach; or
 - (ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

Article 65

- (1) If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.
- (2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

Chapter IV

PASSING OF RISK

Article 66

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

Article 67

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

to retain documents controlling the disposition of the goods does not affect the passage of the risk.

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

Article 68

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

Article 69

- (1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.
- (2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.
- (3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

Article 70

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

Chapter V

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

Section I—Anticipatory breach and instalment contracts

Article 71

- (1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of—
 - (a) a serious deficiency in his ability to perform or in his creditworthiness; or
 - (b) his conduct in preparing to perform or in performing the contract.
- (2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.
- (3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

Article 72

- (1) If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.
- (2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.
- (3) The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

Article 73

- (1) In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.
- (2) If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.
- (3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

Section II—Damages

Article 74

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

Article 75

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

Article 76

- (1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.
- (2) For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

Article 77

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

Section III—Interest

Article 78

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

Section IV—Exemptions

Article 79

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

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

Article 80

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

Section V—Effects of avoidance

Article 81

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

Article 82

- (1) The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.
- (2) The preceding paragraph does not apply—
 - (a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;
 - (b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; or
 - (c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

Article 83

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

Article 84

- (1) If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.
- (2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them—
 - (a) if he must make restitution of the goods or part of them; or
 - (b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

Section VI—Preservation of the goods

Article 85

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

Article 86

- (1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.
- (2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

Article 87

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

Article 88

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

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- (2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.
 - (3) A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

PART IV

FINAL PROVISIONS

Article 89

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

Article 90

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

Article 91

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

Article 92

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

Article 93

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

Article 94

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

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- (2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.
 - (3) If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 95

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

Article 96

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

Article 97

- (1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.
- (2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.
- (3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

Reciprocal unilateral declarations under article 94 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

- (4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.
- (5) A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

Article 98

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

Article 99

- (1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.
- (2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.
- (3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales

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Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

- (4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.
- (5) A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.
- (6) For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary co-ordination in this respect.

Article 100

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

Article 101

- (1) A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.
- (2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this day of 11 April 1980, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

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

ENDNOTES

1. General Information

The **Goods Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959: Government Gazette 18 March 1959 page 892.

2. Table of Amendments

This Version incorporates amendments made to the **Goods Act 1958** by Acts and subordinate instruments.

Statute Law Revision Act 1959 No. 6505/1959

Assent Date: 5.5.59
Commencement Date: 1.4.59: s. 1(2)
Current State: All of Act in operation

Statute Law Revision Act 1960 No. 6716/1960

Assent Date: 21.12.60
Commencement Date: 1.4.59: s. 3
Current State: All of Act in operation

Statute Law Revision Act 1962 No. 6867/1962

Assent Date: 16.4.62
Commencement Date: 16.4.62
Current State: All of Act in operation

Subordinate Legislation Act 1962 No. 6886/1962

Assent Date: 8.5.62
Commencement Date: 1.8.62: Government Gazette 4.7.62 p. 2314
Current State: All of Act in operation

Statute Law (Further Revision) Act 1962 No. 6961/1962

Assent Date: 18.12.62
Commencement Date: 8.5.62: s. 3
Current State: All of Act in operation

Goods (Title on Execution) Act 1963 No. 7006/1963

Assent Date: 21.5.63
Commencement Date: 21.5.63
Current State: All of Act in operation

Goods (Trading Stamps) Act 1964 No. 7131/1964

Assent Date: 5.5.64
Commencement Date: 5.5.64
Current State: All of Act in operation

Goods (Textile Products) Act 1968 No. 7771/1968

Assent Date: 18.12.68
Commencement Date: 1.1.69: Government Gazette 20.12.68 p. 4148
Current State: All of Act in operation

Goods (Trade Descriptions) Act 1969 No. 7862/1969

Assent Date: 21.10.69
Commencement Date: 1.1.70: Government Gazette 10.12.69 p. 4056
Current State: All of Act in operation

Endnotes

Statute Law Revision Act 1971 No. 8181/1971

Assent Date: 23.11.71
Commencement Date: 23.11.71
Current State: All of Act in operation

Consumer Protection Act 1972 No. 8276/1972

Assent Date: 13.5.72
Commencement Date: Ss 1–4, Pt 1 (ss 5–9), Pt 2 Divs 1 (ss 10–12),
4 (ss 21–32), Pt 3 Divs 1 (ss 33–41), 3 (ss 50–57),
Pts 4 (ss 58–61), 5 (ss 62–70) on 1.7.72: s. 2(2)(a)
of No. 8382/1972; Pt 2 Divs 2 (s. 13), 3 (ss 14–20),
Pt 3 Div. 2 (ss 42–49) on 13.7.72: s. 2(2)(b) of
No. 8382/1972
Current State: All of Act in operation

Crimes (Theft) Act 1973 No. 8425/1973

Assent Date: 17.4.73
Commencement Date: 1.10.74: Government Gazette 3.4.74 p. 790
Current State: All of Act in operation

Age of Majority Act 1977 No. 9075/1977

Assent Date: 6.12.77
Commencement Date: 1.2.78: Government Gazette 11.1.78 p. 97
Current State: All of Act in operation

Statute Law Revision Act 1980 No. 9427/1980

Assent Date: 27.5.80
Commencement Date: 27.5.80 subject to s. 6(2)
Current State: All of Act in operation

Penalties and Sentences Act 1981 No. 9554/1981

Assent Date: 19.5.81
Commencement Date: S. 44 on 26.9.80: s. 1(3); ss 36–46 on 3.6.81:
Government Gazette 3.6.81 p. 1778; rest of Act on
1.9.81: Government Gazette 26.8.81 p. 2799
Current State: All of Act in operation

Crimes (Classification of Offences) Act 1981 No. 9576/1981

Assent Date: 26.5.81
Commencement Date: 1.9.81: Government Gazette 26.8.81 p. 2799
Current State: All of Act in operation

Goods (Sales and Leases) Act 1981 No. 9651/1981

Assent Date: 15.12.81
Commencement Date: 1.6.82: Government Gazette 12.5.82 p. 1474
Current State: All of Act in operation

Companies (Consequential Amendments) Act 1982 No. 9761/1982

Assent Date: 13.7.82
Commencement Date: S. 2 on 30.3.82: s. 2(2); rest of Act on 1.7.82:
s. 1(2)
Current State: All of Act in operation

Penalties and Sentences (Amendment) Act 1983 No. 9945/1983

Assent Date: 20.9.83
Commencement Date: S. 2 on 1.9.81: s. 1(4); rest of Act on 20.12.83: Government Gazette 14.12.83 p. 4035; s. 8 not proclaimed, repealed by No. 10096
Current State: All of Act in operation

Credit Act 1984 No. 10097/1984

Assent Date: 22.5.84
Commencement Date: Ss 172, 173, on 13.7.84: Government Gazette 11.7.84 p. 2340; ss 3(1)(2), 4, 5, 6, 8, 9, 12, 15, 16, 19, Pt 2 (except ss 21, 23), ss 48, 157–161 on 1.11.84: Government Gazette 31.10.84 p. 3925; s. 153 on 6.12.84: Government Gazette 5.12.84 p. 4263; rest of Act on 28.2.85: Government Gazette 19.12.84 p. 4483
Current State: All of Act in operation

Supreme Court Act 1986 No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

Sale of Goods (Vienna Convention) Act 1987 No. 35/1987

Assent Date: 12.5.87
Commencement Date: Pts 1 (ss 1, 2), 3(ss 8, 9) on 12.5.87: s. 2(1); Pt 2 (ss 3–7) on 1.4.89: Government Gazette 22.3.89 p. 652
Current State: All of Act in operation

Second-Hand Dealers and Pawnbrokers Act 1989 No. 54/1989

Assent Date: 14.6.89
Commencement Date: S. 35(6)(7) on 1.9.90: s. 2(2); rest of Act on 10.9.90: Government Gazette 5.9.90 p. 2680
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989 No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e) (2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Hire-Purchase (Further Amendment) Act 1997, No. 74/1997

Assent Date: 25.11.97
Commencement Date: Ss 1, 2 on 25.11.97: s. 2(1); rest of Act on 1.4.98: Special Gazette (No. 23) 31.3.98 p. 1
Current State: All of Act in operation

Sea-Carriage Documents Act 1998, No. 24/1998

Assent Date: 5.5.98
Commencement Date: 1.7.98: s. 2
Current State: All of Act in operation

Endnotes

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 8(Sch. 6 item 2) on 28.6.01: Government Gazette 28.6.01 p. 1428
Current State: This information relates only to the provision/s amending the **Goods Act 1958**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 59) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Goods Act 1958**

Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002, No. 49/2002

Assent Date: 22.10.02
Commencement Date: Ss 14–17 on 1.5.03: Government Gazette 17.4.03 p. 779
Current State: This information relates only to the provision/s amending the **Goods Act 1958**

Fair Trading (Amendment) Act 2003, No. 30/2003

Assent Date: 27.5.03
Commencement Date: Ss 73, 74 on 28.5.03: s. 2(1); ss 75, 76 on 1.6.04: Government Gazette 6.5.04 p. 1068
Current State: This information relates only to the provision/s amending the **Goods Act 1958**

Fundraising Appeals and Consumer Acts Amendment Act 2009, No. 2/2009

Assent Date: 10.2.09
Commencement Date: Ss 27, 28 on 11.2.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Goods Act 1958**

Criminal Procedure Act 2009, No. 7/2009 (as amended by No. 68/2009)

Assent Date: 10.3.09
Commencement Date: S. 435(5) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Goods Act 1958**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 64) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Goods Act 1958**

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Endnotes

Credit (Commonwealth Powers) Act 2010, No. 11/2010

Assent Date: 30.3.10
Commencement Date: S. 50 on 1.7.10: Government Gazette 24.6.10 p. 1273
Current State: This information relates only to the provision/s amending the **Goods Act 1958**

Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010
(as amended by No. 36/2011)

Assent Date: 28.9.10
Commencement Date: Ss 15–19 on 1.11.10: Government Gazette 14.10.10 p. 2404
Current State: This information relates only to the provision/s amending the **Goods Act 1958**

Metric Conversion (Goods Act) Regulations 1973, S.R. No. 374/1973

Date of Making: 18.12.73
Date of Commencement: 1.2.74: reg. 1

Endnotes

3. Explanatory Details

¹ S. 50: See sections 71 and 72 of this Act.

² S. 53: See sections 71 and 72 of this Act.

³ S. 71: See sections 30 and 31 of this Act.

⁴ Pt 4 (Heading and ss 84–86) repealed by No. 8276 s. 70(1), new Pt 4 (Headings and ss 84–119) inserted by No. 9651 s. 2(2), amended by Nos 9761 s. 3, 10097 s. 174(1), 57/1989 s. 3(Sch. items 86.5, 86.6), 27/2001 s. 8(Sch. 6 items 2.1, 2.2), 44/2001 s. 3(Sch. item 59), 49/2002 ss 14–17, 30/2003 ss 73, 74, repealed by No. 30/2003 s. 75.