

Norwegian Sale of Goods Act 1988

Norway

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1 **Norwegian Sale of Goods Act 1988**

2 **Chapter I - Range of application**

3 **§1 - General range of application**

4 (1) This Act applies to sales except as otherwise provided by statute. It does not apply to the sale of real property.

5 (2) This Act applies also to the exchange of goods wherever appropriate.

6 **§2 - Manufacturing sales. Service contracts**

7 (1) This Act applies to contracts for the supply of goods to be manufactured unless the party who orders the goods undertakes to supply substantial parts of the materials. This Act does not apply to contracts for the construction of buildings or other facilities on real property.

8 (2) This Act does not apply to contracts which impose on the supplier of the goods an obligation also to perform work or other service, and this constitutes a preponderant part of his obligations.

9 **§3 - Contract and trade usage**

10 The provisions of this Act apply except as otherwise resulting from contract, established practice between the parties, or trade usage or other custom which must be regarded as binding between the parties.

11 **§4 - Consumer sales**

(1) In consumer sales, conditions may not be agreed or applied which would be less favourable to the buyer than those following from the provisions of this Act. 12

(2) "Consumer sales", are sales from a professional seller when the goods are mainly intended for the personal use of the buyer, his family, household or acquaintances, unless the seller at the conclusion of the contract neither knew nor ought to have known that the goods were bought for any such use. Sales of claims and rights are not regarded as consumer sales. 13

(3) Sales are made by a professional seller when the seller or his representative acts as a professional seller. 14

§5 - International sales 15

(1) International sales are subject to this Act with the special rules contained therein, especially Chapter XV below. 16

(2) The special rules concerning international sales are not applicable to sales where the seller has his place of business in Norway, Denmark, Finland, Iceland or Sweden and the buyer has his place of business in another of these countries (Nordic sales). 17

(3) Nor are the special rules applicable to: 18

(a) consumer sales or similar sales between consumers, 19

(b) sales by auction, 20

(c) sales on execution or otherwise by authority of law, 21

(d) sales of stocks, shares, investment securities, money, claims or rights, 22

(e) sales of ships, vessels, aircraft or hover craft. 23

24 **Chapter II - The delivery**

25 **§6 - Collection sales**

26 (1) The goods shall be kept ready for collection at the place where the seller had his place of business (in the case of residence see §83 below) at the time the contract was concluded. If the parties at the time of concluding the contract knew that the goods or the consignment or production place from which the goods were to be taken, was elsewhere, the goods shall be kept ready for collection there.

27 (2) The goods are delivered when taken over by the buyer.

28 **§7 - Local sales and shipment sales**

29 (1) If the goods are to be brought to the buyer in the same place or within the same area to which the seller normally undertakes to bring such goods (local sale), the delivery is made when the goods are received there.

30 (2) If the goods are to be shipped to the buyer (shipment sale) and if not otherwise provided by transport clause or other agreement, delivery will be made by the goods being handed over to the carrier who undertakes to transport them from the place of shipment. If the seller undertakes the transport himself, the delivery is effected only when the goods are received by the buyer.

31 (3) If the goods have been sold “free”, “delivered”, or “delivered free”, with the indication of a specific place, the goods are not regarded as delivered until they have arrived at that place.

32 (4) In consumer sales, the goods are delivered when they are received by the buyer. However, if the buyer is to collect the goods at the destination, delivery shall be regarded as effected when he is obliged to collect them at the destination.

§8 - Additional obligations in shipment sales

33

(1) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the destination in an appropriate manner and according to the usual terms for such transportation.

34

(2) 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.

35

(3) If the seller hands the goods over to a carrier and if they are not clearly identified by markings, in shipping documents or otherwise as being intended for the buyer, the seller must give the buyer notice of the consignment specifying the goods.

36

§9 - Delivery time

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(1) If the goods are not to be delivered on demand or without delay, and the delivery time is not otherwise specified by contract, the goods shall be delivered within a reasonable time after the conclusion of the contract.

38

(2) If a period for delivery has been agreed, the seller may choose the time unless circumstances indicate that the buyer has the choice.

39

(3) If in the case of a collection sale the seller has the right to choose the time of delivery, he shall give the buyer timely notice of the time at which the goods can be collected.

40

§10 - The seller's retention

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(1) If the seller has not granted credit or deferral of payment, he is

42

not obliged to hand over the goods or any document or otherwise transfer control over the goods without simultaneous payment of the price. 52

43 (2) If the seller is to ship the goods to another place, he may however not refrain from shipping them but he may prevent the buyer from obtaining control over them until the price has been paid.

44 **§11 - Costs**

45 (1) The seller pays the costs of the goods until they are delivered. The provisions of this section do not apply to costs arising from delayed delivery due to circumstances on the part of the buyer.

46 (2) When in consumer sales the goods are to be shipped to the buyer, the parties may agree, notwithstanding the provisions of §4 above, that the shipping costs shall be paid by the buyer in addition to the price.

47 **Chapter III - The risk in respect of the goods.**

48 **§12 - What the risk involves**

49 When the risk in respect of the goods has passed to the buyer, his obligation to pay the price does not cease by reason of the goods being subsequently lost, damaged or reduced as a consequence of any event which is not due to the seller.

50 **§13 - Passage of the risk**

51 (1) The risk passes to the buyer when the goods have been delivered as agreed or in accordance with §§6 or 7 above.

(2) If the goods are not collected or received in due time, and if this is due to the buyer or to circumstances on his part, the risk passes to him when the goods have been placed at his disposal and his failure to take delivery of the goods constitutes breach of contract. In consumer sales, however, the buyer does not carry the risk of an accidental event which occurs while the goods are in the possession of the seller and is not due to properties of the goods themselves.

(3) If the buyer is to collect the goods elsewhere than at the seller's place of business, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at the place of delivery. 53

§14 - Identification of the goods 54

The risk does not pass to the buyer until the goods have been identified by markings, in the transport document or otherwise as intended for the buyer. 55

§15 - Transit 56

(1) If the contract applies to goods in transit, the risk passes on conclusion of the contract unless the conditions indicate that the buyer has undertaken the risk already from the time the goods were handed over to the carrier who has issued the transport document. The seller carries in any case the risk of any loss or damage which he knew or ought to have known of at the time the contract was concluded, but failed to report to the buyer. 57

(2) This section does not apply to consumer sales. 58

§16 - Return of goods

60 If goods have been bought and delivered for trial or otherwise with a right of return, the buyer carries the risk under the rules of this chapter until the goods have been taken back by the seller. The foregoing provision notwithstanding, the buyer may return the goods under the Purchase Reconsideration Act of 24 March 1972 No. 11 or similar reconsideration under a consumer sales contract

61 **Chapter IV - Properties of the goods; non-conformity etc.**

62 **§17 - Properties of the goods**

63 (1) The objects shall be in conformity with the requirements of kind, quantity, quality, other properties and packaging which are provided by the contract.

64 (2) Except as otherwise provided by the contract, the goods shall:

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

66 (b) be fit for any particular purpose of which the seller knew or could not be unaware at the time the contract was concluded, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;

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

68 (d) be contained or packaged in the customary or other proper manner adequate to preserve and protect the goods.

69 (3) In consumer sales the goods shall likewise be in conformity with

59

public law requirements imposed by the legislation or official resolutions pursuant to statute at the time the contract is concluded, unless the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement.

(4) The goods lack conformity if they are not in accordance with the requirements of this section

§18 - Information on properties or use

(1) The rules of non-conformity apply also when the goods are not in accordance with information which the seller, in his marketing or otherwise, has furnished about the goods, their properties or use and which may presumably have influenced the sale.

(2) The rules of the preceding paragraph apply similarly when the goods are not in accordance with information which any person other than the seller has furnished on the packaging of the goods, in advertising or other marketing on behalf of the seller or prior sales stages. In sales other than consumer sales this does not apply if the seller neither knew nor ought to have known that the information had been given.

(3) The rules of the two preceding paragraphs do not apply when the information was clearly rectified in due time.

§19 - Goods sold "as they are". Auction sales

(1) Even where the goods are sold "as they are," or subject to a similar general reservation, they lack conformity when

(a) the goods are not in accordance with information which the seller has furnished about the goods, their properties or use and which may presumably have influenced the sale,

78 (b) the seller on concluding the contract failed to furnish information about fundamental conditions of the goods or their use of which he could not have been unaware and which the buyer could reasonably expect to obtain, if the failure presumably influenced the sale, or

79 (c) the goods are in substantially worse condition than the buyer had reason to expect in view of the price and other circumstances

80 (2) Where used goods are sold at auction, the rules of the preceding paragraph apply similarly wherever appropriate.

81 **§20 - The buyer's bad faith, prior examination etc.**

82 (1) The buyer cannot invoke any lack of conformity of which he knew or could not be unaware at the time the contract was concluded.

83 (2) If before the contract was concluded the buyer had examined the goods or without good reason failed to comply with the seller's invitation to examine them, the buyer cannot invoke anything which he ought to have discovered in the examination, unless the seller has acted with gross negligence or otherwise in conflict with honesty and good faith.

84 (3) The preceding rules apply similarly when the buyer, before the contract was concluded, had been given an opportunity to examine a sample and the lack of conformity refers to a property which would appear from the sample.

85 **§21 - Time of lack of conformity**

86 (1) In determining whether goods lack conformity, the time when

the risk passes to the buyer shall be applied, even if the lack of conformity becomes apparent only after that time.

(2) The seller is also liable for any lack of conformity which occurs later if due to his breach of contract. The seller is likewise liable if by guarantee or otherwise he has undertaken that the goods will have certain properties or remain fit for their ordinary purpose or for some particular purpose for a period after delivery. 87

Chapter V - The buyer's right following the seller's breach of contract 88

Subhead - Delay 89

§22 - Introductory provision 90

(1) If the goods are not delivered or are delivered too late, and this is not due to the buyer or circumstances on his part, he may under §§23 to 29 below demand performance, cancel the contract and claim damages, and keep back payment of the price under §42 below. He is not deprived of any right he may have to claim damages by exercising his rights to other remedies or by these rights not being exercisable. 91

(2) If the seller fails to perform his other obligations in due time under the contract, the provisions regarding delay apply similarly wherever appropriate, except §25 (2) and (3) below. Other provisions may be agreed also in consumer sales. 92

§23 - Right of performance 93

(1) The buyer may maintain the contract and demand performance. This rule does not apply if there is any impediment which the seller is unable to overcome, or if the performance would entail such 94

considerable inconvenience or cost to the seller as to be substantially disproportionate to the buyer's interest in the seller's performance. 103

95 (2) If the difficulties cease within a reasonable time, the buyer may demand performance unless after the time that has elapsed such performance would be substantially more burdensome or of a different nature than the seller could have foreseen or it would otherwise be unreasonable to demand performance.

96 (3) The buyer loses his right to demand performance if he postpones such demand for an unreasonable length of time.

97 **§24 - Inquiry**

98 If the seller asks the buyer whether he is willing to take delivery despite the delay, or notifies the buyer that he will deliver within a stated time, but the buyer fails to reply within a reasonable time after receiving the notice, he cannot cancel if performance is effected within the stated time

99 **§25 - Cancellation**

100 (1) The buyer may cancel the contract when the delay amounts to a fundamental breach of contract.

101 (2) The contract may moreover be cancelled if the seller fails to make delivery within an additional period of time of reasonable length which the buyer has fixed for performance.

102 (3) In the course of such additional period the buyer may not cancel, unless the seller has declared that he will not perform within the period so fixed.

§26 - Cancellation of manufacturing sale

If the contract concerns goods that are to be manufactured specifically for the buyer in accordance with his statements or requests, and if the seller for that reason cannot otherwise dispose of the goods without substantial loss, the buyer can only cancel if the delay substantially frustrates his purpose in concluding the contract. This provision does not apply to international sales. 104

§27 - Damages

(1) The buyer may claim damages for the loss he sustains as a consequence of the seller's delay. However, he may not do so as long as the seller shows that the delay was due to an impediment beyond his control which he could not reasonably be expected to take into account at the time the contract was concluded or to avoid or overcome the consequences of. 105 106

(2) If the delay is due to a third party whom the seller has assigned to perform all or part of the contract, the seller avoids liability only if also the third party would have been exempt under the rule of the preceding paragraph. 107

The same rule applies if the delay is due to a supplier whom the seller has employed, or to any other person in a prior sales stage. 108

(3) The exemption from liability is effective for the duration of the impediment. If the impediment ceases, the seller may be held liable if he is then obliged to perform but fails to do so. 109

(4) The above rules of this section do not comprise such indirect losses as mentioned in §67 (2) below. In international sales however, the rules comprise also indirect losses except as otherwise provided by §70 (3) below. 110

111 (5) The buyer may in any case claim damages if the delay or loss
is due to the fault or neglect of the seller.

of lack of conformity wherever appropriate. Other rules may be
agreed also in consumer sales.

112 **§28 - Notification of impediment**

§31 - The buyer's examination after delivery

120

113 If the seller is prevented from performing the contract in due time,
he shall notify the buyer of the impediment and of its effect on the
possibility of performing. If the buyer fails to receive such notifica-
tion within reasonable time after the seller was informed or ought to
have been informed of the impediment, the buyer may claim dam-
ages for the loss which could have been avoided if he had been
notified in time

(1) After delivery the buyer shall as soon as he has a reasonable
opportunity to do so, examine the goods as required by good prac-
tice.

121

(2) If it is apparent that the goods are to be transported from the
place of delivery, the buyer may defer the examination thereof until
the goods have arrived at their destination.

122

(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.

123

114 **§29 - Period allowed for cancellation**

(4) This section does not apply to consumer sales.

124

115 If the goods have been delivered too late, the buyer may not cancel
the contract unless he gives the seller notification of the claim with
in a reasonable time after he was informed of the delivery.

116 **Subhead - Lack of conformity**

§32 - Complaints

125

117 **§30 - Introductory provision**

(1) The buyer loses his right to invoke lack of conformity if he fails
within a reasonable time after he discovered or ought to have dis-
covered it, to complain to the seller of the lack of conformity in-
volved.

126

118 (1) In the event of lack of conformity which is not due to the buyer
or circumstances on his part, he may under §§31 to 40 below de-
mand rectification, delivery of substitute goods, reduction in the
price, cancellation and damages and retain payment of the price
under §42 below. The buyer is not deprived of any right he may
have to claim damages by exercising his rights to other remedies
or by these rights not being exercisable.

(2) If the buyer fails to complain within two years from the day he
took delivery of the goods, he may not subsequently invoke the lack
of conformity. This rule does not apply if the seller has undertaken
by guarantee or other agreement more prolonged liability for lack
of conformity.

127

119 (2) Other faults in the seller's performance come under the rules

(3) In consumer sales, the period provided in the preceding para-

128

graph is similarly applicable. When goods or parts of them are intended by ordinary use to last considerably longer, the period allowed for complaining is five years. Complaint of the lack of conformity can in consumer sales be given to the person who under agreement with the seller has undertaken to rectify any lack of conformity.

129 **§33 - Exception from the complaint rules**

130 Notwithstanding the provisions of §§31 and 32 above, the buyer may invoke the lack of conformity if the seller has been grossly negligent or otherwise acted in conflict with honesty and good faith.

131 **§34 - Demand for rectification and delivery of substitute goods (remedy)**

132 (1) The buyer may require the seller for his own account to rectify any lack of conformity if the seller can do so without incurring unreasonable cost or inconvenience. The seller may instead deliver substitute goods under §36 below.

133 (2) The buyer may demand the delivery of substitute goods when the lack of conformity is fundamental . This rule does not apply in the event of any impediment or disproportion as mentioned in §23 above. Nor may the buyer demand delivery of substitute goods when the contract applies to goods which exist at the time the contract was concluded and they have such properties that in view of the parties' assumptions they cannot reasonably be replaced by others.

134 (3) If the seller fails to perform his obligation to rectify or deliver substitute goods, the buyer may claim damages for the expenses he has reasonably incurred in rectifying the lack of conformity.

§35 - Notification of demand for rectification or delivery of substitute goods (remedy) 135

(1) The buyer loses his right to have the lack of conformity rectified or substitute goods delivered if he fails to notify the seller of such claim together with the complaint under §32 or within a reasonable time thereafter. The foregoing provision notwithstanding, the buyer does not lose the right if the seller has been grossly negligent or otherwise acted in conflict with honesty and good faith. 136

(2) In consumer sales the notification may instead be given to the person who under agreement with the seller has undertaken to rectify any lack of conformity. 137

§36 - The seller's right to rectify or deliver substitute goods (remedy) 138

(1) Whether or not required by the buyer, the seller may at his own expense rectify the lack of conformity or deliver substitute goods, when he can do so without major inconvenience to the buyer and without prejudice to the buyer's ability to recover his expenses from the seller. 139

(2) If the seller asks the buyer whether he will accept rectification or delivery of substitute goods, or notifies the buyer that he will rectify or deliver substitute goods within a stated period, but the buyer fails to reply within a reasonable time after having been notified, the seller may take the necessary steps within the stated period. 140

(3) The seller may not claim that he did not have an opportunity to rectify or deliver substitute goods, if the buyer has arranged to have the lack of conformity rectified and it would under the circumstances be unreasonable to require him to wait for the seller's rectification or delivery of substitute goods. 141

142 **§37 - Reduction in the price or cancellation following lack of remedy**

143 (1) If rectification or delivery of substitute goods is not accepted or is not performed within a reasonable time after the buyer complained of the lack of conformity, the buyer may demand a reduction in the price or cancel the contract under §§38 or 39 below. This rule does not apply if the buyer refuses a remedy which he is obliged to accept.

144 (2) The buyer may not demand a reduction in the price of used goods bought at auction.

145 **§38 - Price reduction**

146 If the goods lack conformity, the buyer may demand a reduction in the price so that the ratio of the reduced to the agreed price is equivalent to the ratio of the value of the non-conforming goods to their value in a contractual condition at the time of delivery.

147 **§39 - Cancellation**

148 (1) The buyer may cancel the contract if the lack of conformity amounts to a fundamental breach of contract.

149 (2) The buyer may not cancel the contract unless he gives the seller notice of the cancellation within reasonable time after he was informed or ought to have been informed of the lack of conformity, or after the expiry of the period which may follow from a claim or notification under §§34 or 36 above. This rule does not apply however if the seller has been grossly negligent or otherwise acted in conflict with honesty and good faith.

150 **§40 - Damages**

(1) The buyer may claim damages for the loss he sustains as a consequence of the lack of conformity of the goods, unless the seller proves that the lack of conformity of the delivery is due to an impediment as mentioned in §27 above. The other rules of §§27 and 28 will similarly apply. 151

(2) The rules of the preceding paragraph do not comprise such indirect losses as mentioned in §67(2) below. In international sales however, the rules comprise also indirect losses except as otherwise provided by §70 (3) below. 152

(3) The buyer may in any case claim damages if 153

(a) the lack of conformity or loss is due to the fault or neglect of the seller or 154

(b) the goods differed already at the time of conclusion of the contract from what the seller had undertaken. 155

Subhead - Legal defects etc. 156

§41 - Legal defects. Other third party claims 157

(1) If a third party has ownership of, a lien on or other right in the goods (legal defect), the rules of non-conformity apply unless it appears from the contract that the buyer shall take delivery of the goods with the restriction entailed by the third party right. The two year period for complaining under §32 (2) above is however not applicable. 158

(2) The buyer may in any case claim damages for loss resulting from the legal defect which existed at the time of contract conclusion and of which he neither knew nor ought to have known. 159

(3) If a third party claims a right in the goods and this right is con- 160

tested, the rules of the two preceding paragraphs apply similarly when the claim is not evidently groundless.

161 (4) Third party claims based on intangible rights (see §96 below) are subject to the rules of (1) above. Other rules may be agreed also in consumer purchases.

162 **Subhead - Other provisions**

163 **§42 - The buyer's right of retention**

164 If the buyer has a claim arising from the seller's breach of contract, the buyer may retain such part of the price as will ensure him recovery of his claim.

165 **§43 - Breach of contract for part of the goods**

166 (1) If the seller's breach of contract applies to only part of the sold goods, the rules of this chapter will apply to such part. The buyer may cancel the contract in its entirety when the breach is fundamental to the whole contract.

167 (2) If the seller under the circumstances must be regarded as having completed his delivery although not all the goods have been delivered, the rules of non-conformity will be applicable.

168 **§44 - Delivery by instalments**

169 (1) If the seller is to deliver by instalments and one of the instalment deliveries is in breach of the contract, the buyer may cancel this instalment delivery under the cancellation rules.

170 (2) If the breach of contract gives the buyer good grounds to conclude that a breach of contract will occur which will give a right

of cancellation with respect to future instalments, he may on such grounds cancel for such deliveries provided he does so within a reasonable time

(3) A buyer who cancels in respect of a single delivery may at the same time cancel the contract in respect of deliveries 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. 171

Chapter VI - Obligations of the buyer 172

Subhead - Amount of the price 173

§45 174

(1) If a contract has been concluded without making provision for the price, the buyer shall pay the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned, provided the price is not unreasonable. If there is no such generally charged price, the buyer must pay the price which is reasonable with due regard to the nature and quality of the objects and the circumstances in general. 175

(2) In consumer sales the seller may not in addition to the price demand any payment for issuing and dispatching the bill. This rule does not apply when it appears clearly that the price is the seller's price for cash payment, but he nevertheless grants a respite. 176

§46 177

(1) if the price is fixed according to number, measurement or 178

weight, the applicable figure will be the quantity at the time the risk for the goods passes to the buyer.

179 (2) If the price is fixed by weight, the weight of the packaging will first be deducted.

180 **§47**

181 If the buyer has received a bill or invoice, he is bound by the price which is entered, unless he declares within a reasonable time that he does not accept it. This rule does not apply when a lower price follows from agreement or the entered price is unreasonable.

182 **Subhead - Payment of the price**

183 **§48**

184 (1) The price is payable at the seller's place of business (or residence if appropriate, see §83 below). If the payment is to be made against the handing over of the goods or of documents, it shall be made at the place where the handing over takes place.

185 (2) The obligation to pay the purchase price comprises also any obligation under the contract to accept a bill, issue a letter of credit, bank guarantee or other security and to take other measures to pay the price.

186 (3) 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.

187 **§49**

188 (1) If the buyer is not bound to pay the price at any other specific

time, he must pay it when the seller so demands, but not before the goods are handed over to the buyer or placed at his disposal in accordance with the contract and the law.

(2) The foregoing provision notwithstanding, before the buyer pays he has the right to have the goods examined in the customary manner, provided this is not inconsistent with the agreed procedure for delivery and payment of the price. 189

(3) If a bill of lading is used for transport of the goods to the destination, or the transport to the buyer takes place on such other conditions that the seller can not control the disposition of the goods after they were paid, payment may be demanded against bill of lading, freight note or other evidence of the goods being transported on such conditions. This rule applies whether or not the goods have failed to arrive or the buyer has not had an opportunity to examine them. 190

Subhead - The buyer's participation in performance of the contract 191

§50 192

The buyer shall 193

(a) furnish such assistance as may reasonably be expected of him in order for the seller to perform the contract, and 194

(b) take delivery of the goods by collecting or receiving them. 195

Chapter VII - The seller's rights in the event of the buyer's breach of contract 196

§51 - Introductory provision 197

(1) If the buyer fails to pay or to perform his other obligations under 198

the contract or the law, and this is not due to the seller or circumstances on his part, the seller may demand performance, cancellation and damages under the provisions of this chapter. He may also retain payment under §10 above and charge interest under §71 below.

199 (2) If the buyer fails in his obligation to take delivery of the goods, and this failure is not due to the seller or circumstances on his part, the rules of §§55, 57 (2) and 58 below will apply instead.

200 (3) The seller is not deprived of any right he may have to claim damages and interest by exercising his right to other remedies or by these rights not being exercisable.

201 **§52 - Right to perform by demanding payment. Cancellation of order**

202 (1) The seller may maintain the contract and require the buyer to pay the price. This rule does not however apply as long as the payment is impeded by interruption of communications or payment transfers or other circumstances beyond the buyer's control and which he cannot overcome.

203 (2) If the buyer cancels the order for goods which are to be manufactured specifically for him, the seller may not maintain the contract by continuing the manufacture, making other preparations for the delivery and demand payment, unless an interruption would entail considerable inconvenience for him or prejudice his ability to recover any loss resulting from the cancellation. If the seller cannot maintain the contract, damages will be awarded for any loss resulting from the cancellation in accordance with the rules of Chapter X below.

204 (3) If the goods have not yet been delivered, the seller loses his right to demand performance if he delays unreasonably the presentation of his claim

§53 - Right to perform by demanding participation in carrying out the contract 205

The seller's right to demand performance of the buyer's obligation to participate in carrying out the contract is subject to the rules of §23 above. 206

§54 - Cancellation when the buyer fails to pay 207

(1) The seller may cancel the contract on grounds of delayed payment if the buyer's breach of contract is fundamental. 208

(2) The contract may also be cancelled if the buyer fails to pay the price within an additional period of time of reasonable length which the seller has fixed for performance. 209

(3) In the course of the additional period the seller may not cancel, unless the buyer has declared that he will not perform within the period so fixed. 210

(4) If the goods have already been taken over by the buyer, the seller may only cancel if he has made a reservation to that effect or the buyer rejects the goods. The foregoing provision notwithstanding, an international sale may be cancelled without such reservation unless the cancellation affects the right which a third party may have in the goods, including any right of creditors in the buyer's bankruptcy. 211

§55 - Cancellation when the buyer fails to participate 212

(1) The seller may cancel the contract when the buyer fails to participate in its performance if such failure amounts to a fundamental breach of contract. The seller may on the same conditions cancel the contract when the buyer fails to take delivery of the goods un-

der §50 (b) above and the seller has a special interest in having them delivered.

214 (2) The contract may also be cancelled when the buyer, within an additional period of time of reasonable length which the seller has fixed for performance,

215 (a) fails to participate in carrying out the contract, or

216 (b) fails to take delivery of the object in cases where the seller has a special interest in having them delivered.

217 (3) In the course of the additional period the seller may not cancel, unless the buyer has declared that he will not perform within the period so fixed.

218 **§56 - Delivery by instalments**

219 (1) If the seller is to deliver by instalments and the buyer is to pay or participate correspondingly, and the buyer has committed a breach of contract in respect of one of the instalment deliveries, the seller may cancel this instalment delivery under the rules of §§54 and 55 above.

220 (2) If the breach of contract gives the seller good grounds to conclude that a breach of contract will occur which will give a right of cancellation with respect to future instalments, he may on such grounds cancel for such deliveries provided he does so within a reasonable time.

221 **§57 - Damages**

222 (1) The seller may claim damages for the loss he sustains as a consequence of delay in the payment by the buyer. This rule does not apply however where the buyer proves that the delay is due to

interruption of communications or payment transfers or other impediment beyond the buyer's control and which he could not reasonably be expected to take into account at the time the contract was concluded or to avoid or overcome the consequences of. The rules of §27 (2) and (3) above will similarly apply.

(2) The seller may claim damages under the rules of §27 above for the loss he sustains as a consequence of 223

(a) the buyer not participating in the performance of the contract, or 224

(b) the buyer not taking delivery of the goods in due time as provided in §50 (b) above, and the seller has a special interest in having the goods delivered. 225

§58 - Notice of impediment 226

If the buyer is prevented from performing the contract in due time, he shall give the seller notice of the impediment and its effect on the possibility of performing. If the seller fails to receive such notice within a reasonable time after the buyer was informed or ought to have been informed of the impediment, the seller may claim damages for the loss which could have been avoided if he had been notified in time. 227

§59 - Period for the seller's right to cancel 228

If the purchase price has been paid, the seller may not cancel the contract unless he gives the buyer notice to that effect: 229

(a) in the event of delay, before he was informed of the performance by the buyer. Or 230

(b) in the event of other breach of contract, within a reasonable time after he was or ought to have been informed of the breach of 231

contract, or after an additional period of time of reasonable length as provided in §55 (2) above has expired.

232 **§60 - Specification**

233 (1) If the buyer is to determine the form, measurement or other properties of the goods and he fails to do so by the agreed time or within a reasonable time after having been requested to do so by the seller, the seller may do it himself in accordance with what he must presume is the buyer's interest. This does not prevent the seller from exercising any other claims he may have.

234 (2) The seller must notify the buyer of the specifications he will use and allow the buyer a reasonable period in which to alter the specifications. If the buyer fails to do so in time after having received the seller's notification, the seller's specifications are binding.

235 **Chapter VIII - Common provisions regarding anticipatory breach, insolvency etc.**

236 **§61 - Anticipatory breach of contract**

237 (1) If after the conclusion of the contract it becomes apparent from a party's conduct or from a serious deficiency in his creditworthiness or in his ability to perform that he will not perform a substantial part of his obligations, the other party may suspend the performance of his obligations.

238 (2) if the seller has already dispatched the goods and the circumstances on the part of the buyer as mentioned in the preceding paragraph become apparent the seller may prevent the goods from being handed over to the buyer or his creditors. This is so whether or not the buyer or his creditors have received the transport document.

(3) The party which suspends performance or prevents the goods from being handed over must promptly notify the other party. Failing such notification, the other party may claim damages for the loss which could have been avoided if he had been notified. 239

(4) A party suspending performance or preventing the goods from being handed over must continue with performance if the other party provides adequate security for his performance. 240

§62 - Cancellation for anticipatory breach of contract 241

(1) If prior to the date for performance of the contract it is clear that a breach of contract will occur which will give a party a right of cancellation, he may cancel the contract already before the time for performance. The cancellation may be prevented if the other party promptly provides adequate security for performance of the contract. 242

(2) If time allows, the party intending to cancel shall notify the other party to enable him to provide security so as to avoid cancellation. 243

§63 - Insolvency proceedings -the trustees' right to enter into the contract etc. 244

(1) If one of the parties is subjected to insolvency proceedings, the trustees for his creditors may enter into the contract. The other party may require the trustees to announce without undue delay whether they will do so. 245

(2) If the trustees enter into the contract and the time for full or partial performance by the other party has arrived, this party may require the trustees to perform a corresponding part of the contract or, if deferment has been granted, provide without undue delay adequate security for the performance. He may require the security to 246

be provided before the time for his performance has arrived, if necessary to protect him from loss. Any dispute regarding the security will be decided by the bankruptcy court.

247 (3) If the trustees do not without undue delay enter into the contract and provide security according to the preceding rules, the other party may cancel the contract. Contract terms which give the party a further opportunity to cancel on grounds of insolvency are not binding on the trustees.

248 (4) The provisions of Chapter 7 of the Creditors Recovery Act are applicable wherever appropriate.

249 **Chapter IX - Common rules for cancellation or substitute delivery**

250 **§64 - Effects**

251 (1) Cancellation of the contract releases both parties from the obligation to perform it.

252 (2) If all or part of the contract has been performed by either party, he may claim restitution of whatever he has supplied or paid under the contract. However, a party may keep back what he has received until the other party makes restitution of whatever he has obtained. The same rule applies when a party can claim damages or interest and adequate security is not provided.

253 (3) If the seller is to deliver substitute goods, the buyer can retain whatever he has received until the substitute goods have been delivered.

254 (4) Cancellation has no effect on contract terms regarding commercial secrets, the settlement of disputes or the parties' rights and obligations as a consequence of the cancellation .

§65 - Yield and interest on restitution

255

(1) If the contract is cancelled, the buyer shall credit the seller for the yield he has obtained from the goods and pay reasonable compensation for any substantial benefits he may otherwise have gained from them.

256

(2) If the seller is to repay the price, he is obliged to pay interest in accordance with §71 below from the date on which he received Payment.

257

§66 - Loss of right to cancel and deliver substitute goods

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(1) The buyer may cancel the contract or require delivery of substitute goods only if he returns the goods in substantially the same condition and quantity as he received them. However, he does not lose the right to cancel or obtain delivery of substitute goods if

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(a) the impossibility of returning the goods in substantially the same condition and quantity is due to the intrinsic quality of the goods or other circumstances which do not depend on the buyer;

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(b) all or part of the goods have perished or deteriorated as a consequence of an act which was necessary for the examination of whether the goods were in conformity with the contract; or

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(c) all or part of the goods have been resold 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 which is the reason for rejecting the goods.

262

(2) Nor does the buyer lose the right to cancel the contract or obtain delivery of substitute goods if on returning the goods he pays

263

for the reduction in their value. This provision does not apply to international sales. 274

(a) customary measures to compensate for the fact that the goods are delayed or lack conformity with the contract, or

(b) measures which mitigate other losses than those comprised under the preceding paragraph. 275

(4) It can be agreed also in consumer sales that damages are not payable for indirect losses coming under (2) above. 276

264 **Chapter X - Amount of damages. Interest.**

265 **Amount of damages**

266 **§67 - General rule**

267 (1) Damages which are payable by a party for breach of contract shall be equivalent to the loss, including expenses, difference in price and loss of profit, which the other party has sustained as a consequence of the breach. However, only losses are included which could reasonably have been foreseen as a possible consequence of the breach of contract.

§68 - Difference in price on substitution 277

278 If the contract is cancelled and if, in a reasonable manner and within a reasonable time after cancellation, the buyer has bought goods in replacement or the seller has resold the goods, the purchase price and the price of the substitute goods will be applied for the purpose of computing the price difference.

268 (2) Indirect losses include:

269 (a) loss as a consequence of reduced or discontinued production or trade,

§69 - Price difference in the absence of substitute goods 279

270 (b) loss as a consequence of the goods not being utilizable as contemplated,

271 (c) loss of profit as a consequence of a contract with a third party becoming inoperative or not being duly performed, but only to the extent that the buyer fails without good grounds to purchase substitute goods or take other measures to avoid or mitigate the loss,

280 (1) If the contract has been cancelled without substitute goods being provided as mentioned in §68 above, and if there is a current price for the goods, the purchase price and the current price at the time of cancellation will be applied for the purpose of computing the price difference. If the contract is cancelled after the goods were taken over, the current price at the time of such taking over shall be applied instead.

272 (d) loss as a consequence of damage to other property than the sold goods themselves and objects for whose manufacture the goods are used or which have a close and direct connection with their contemplated use.

281 (2) The current price is the price at the place of delivery for goods of the same kind or, if there is no current price at that place, the price at such other place as may reasonably be regarded as equivalent, making due allowance for differences in the cost of transporting the goods.

273 (3) The rules of the preceding paragraph do not apply to costs of

**§70 - Obligation to mitigate losses. Relief from liability.
International sales**

283 (1) A party who invokes a breach of contract by the other party must take such measures as are reasonable to mitigate the loss. If he fails to do so, he must sustain the corresponding part of the loss.

284 (2) The amount of the damages may be reduced if it would have an unreasonable effect on the party in breach considering the amount of the loss compared with such loss as would normally arise in similar cases, and other circumstances.

285 (3) In international sales the damages comprise only losses which could reasonably have been foreseen as a possible consequence of the breach, in the light of circumstances which the party knew or ought to have known at the time of concluding the contract. Damages in such sales may not be reduced according to the preceding paragraph.

286 **§71 - Interest**

287 If the price or other outstanding amount is not paid in time, the debtor shall pay interest under the Overdue Payments Interest Act of 17 December 1976 No. 100.

288 **Chapter XI - Preservation of the goods**

289 **§72 - The seller's obligation to preserve the goods**

290 If the buyer fails to collect or receive the goods in due time or other circumstances on his part have caused them not to be handed over to him, the seller shall for account of the buyer arrange for

282 such preservation of the goods as is reasonable under the circumstances, provided he has the goods in his custody or is otherwise able to preserve them .

§73 - The buyer's obligation to preserve the goods

291

(1) If the buyer rejects goods which he has taken over, he shall for account of the seller take such steps to preserve them as are reasonable under the circumstances.

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(2) If the buyer rejects goods that have been dispatched to him and placed at his disposal at the destination, he shall take steps to preserve them for account of the seller if he can do so without paying the purchase price or incurring unreasonable cost or unreasonable inconvenience. This rule does not apply however if the seller or anybody acting on his behalf can take charge of the goods at the destination.

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§74 - Third party custody

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A party who is obliged to preserve the goods can authorise a third party to preserve them for account of the other party, provided the costs thereof are not unreasonable. The party is exempt from liability when such third party has been properly chosen and has received the goods.

295

§75 - Damages and security for expenses

296

A party who preserves the goods for account of the other party has a right to recover reasonable expenses thereof. He may retain the goods until the expenses have been paid or adequate security provided.

297

298 **§76 - Sale**

299 (1) A party who is bound to preserve the goods may sell them if he cannot preserve them without major expense, or if there has been an unreasonable delay by the other party in taking possession of the goods or in paying the purchase price or the cost of preservation.

300 (2) If the goods are subject to rapid perishing or deterioration or their preservation would involve unreasonable expense, they shall if possible be sold.

301 (3) The measures taken to sell the goods shall be reasonable. Wherever possible, the other party shall be notified in reasonable time of the intention to sell the goods.

302 **§77 - Other disposal than sale**

303 If a party has the right to sell the goods under §76 above but the goods cannot be sold or it is evident that the proceeds will be insufficient to meet the sales expenses, the party may take reasonable measures to dispose of the goods. The other party shall be notified if possible.

304 **§78 - Accounts and crediting of proceeds**

305 The party preserving the goods shall credit the other party for the sales and other proceeds and give him an account of his expenses. The profit accrues to the other party.

306 **Chapter XII - Dividends and other yield**

307 **§79 - Benefits yielded by the goods**

Benefits yielded by the goods before the agreed delivery time accrue to the seller, unless it was reasonable to expect the benefits to be yielded later. Benefits which the goods yield thereafter accrue to the buyer, unless it was reasonable to expect them to be yielded earlier. These provisions may be set aside by agreement also in consumer sales. 308

§80 - Shares of stock 309

The purchase of a share comprises the dividends that have not fallen due before the purchase date. It also comprises the right to subscribe new shares when the right could not be exercised before the purchase date. 310

§81 - Interest-bearing claim 311

The purchase of an interest-bearing claim comprises the interest that has accrued but not fallen due on the agreed delivery date. An amount equivalent to such interest is payable as an addition to the price unless the claim has been sold as doubtful. 312

Chapter XIII - Certain general provisions 313

§82 - The risk of sending notices 314

If a party gives notice in accordance with this Act and sends it in a manner which is reasonable under the circumstances and not contrary to other indications, the sender may claim that the notice 315

was given in time even if a delay or error occurs in the transmission or the notice fails to reach the other party

than could have been agreed between the consumer buyer and the seller

316 **§83 - Place of business**

317 (1) When a party's place of business is of significance and he has more than one place of business, the relevant place of business is that which has the closest relationship to the contract, having regard to the circumstances known to or contemplated by the parties at the conclusion of the contract.

318 (2) If a party does not have a place of business which is related to the contract, reference is to be made to his habitual residence.

319 **Chapter XIV - Claims against prior sales stages**

320 **§84 - Conditions for claiming against prior sales stages**

321 (1) Except as otherwise provided by agreement outside consumer sales, the buyer may as a consequence of non-conformity of the goods bring claims against a prior sales stage if a corresponding claim on account of the non-conformity can be brought against the seller.

322 (2) In consumer sales the buyer may in any case bring his non-conformity claim on the seller against a prior professional sales stage, provided a similar claim on account of the non-conformity could be brought by the seller or another party who acquired the goods from the prior stage. Consumer sales include for this purpose sales between consumers.

323 (3) Any agreement at prior sales stages which restricts the right of the seller or other acquirer cannot be invoked against the consumer buyer's claims under the preceding paragraph to a greater extent

§85 - Complaint

324

(1) The buyer must bring his claim against the prior sales stage within a reasonable time after he discovered or ought to have discovered the non-conformity and at the latest within the periods allowed for complaint in the contract between the predecessor and the prior sales stage.

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(2) Claims against prior sales stages under §84 (2) are subject to the rules of complaint contained in §32 above. If used goods have also previously been sold to a consumer, the period under §32 (2) runs for each sales stage from the date on which the next successive consumer received the goods.

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(3) The buyer must as soon as reasonably possible inform the sales stage of his claim.

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§86 - Responsibility for notification under §18

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When a manufacturer or other person in a prior sales stage has given information as mentioned in §18 (2) above, he is liable for any loss sustained by the buyer on account of the information, if appropriate jointly and severally with the seller. The rules of §40 above will similarly apply.

329

Chapter XV - Special rules for international sales

330

§87 - International sales

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"International sales", are contracts of sale concluded between parties who have their places of business in different States, provided

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this is apparent from the contract, previous business relations between the parties or from information they have given before or at the time the contract was concluded.

333 **§88 - Interpretation of this Act. Unsettled matters. Direct performance**

334 (1) In international sales, the interpretation of the rules of this Act shall take into account the need to promote uniform application of rules based on the UN Convention on Contracts for the International Sale of Goods 1980, their international character and the observance of honesty and good faith in international trade.

335 (2) Questions concerning matters governed by the UN 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 laws of the country which are applicable by virtue of the rules of international private law, see Act of 3 April 1964 No. 1 concerning international private law rules for sales contracts.

336 (3) Requirements of direct performance which are to be decided in Norway or in accordance with Norwegian law are always subject to the rules of this Act, see Article 28 of the UN Convention.

337 **§89 - Interpretation of a party's statement**

338 (1) 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. In other cases, 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.

(2) In determining the intent or understanding according to the preceding paragraph, 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.

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§90 - Trade usage

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Except as otherwise provided by the contract, the parties are regarded as bound by trade usage which they knew or ought to have known of, and which is well known in international commerce and generally observed by parties in similar trade relations. The trade usage is in such cases regarded as part of the contract.

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§91 - Oral or written contract

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

343

(2) A contract may be modified or terminated by the mere agreement of the parties.

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(3) 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.

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§92 - Foreign law requiring written contract

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The provisions of §91 above do not apply to international sales where a party has his place of business in a Contracting State whose legislation requires contracts of sale to be concluded in or

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evidenced by writing and which makes a declaration in accordance with Article 96 of the UN Convention on Contracts for the International Sale of Goods 1980.

348 **§93 - Telegram and telex**

349 Telegram or telex may be used notwithstanding the provisions of 65.91 and 92 above

350 **§94 - Fundamental breach of contract**

351 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

352 **§95 - Handing over and correcting documents**

353 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.

354 **§96 - Third party industrial property rights etc.**

355 (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 or intangible 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:

(a) on 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 356

(b) in any other case, under the law of the State where the buyer has his place of business at the time of the conclusion of the contract. 357

(2) The obligation of the seller under the preceding paragraph does not extend to cases where: 358

(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 359

(b) the right or claim results from the seller's compliance with technical drawings, descriptions, formulae, models or other such specifications furnished by the buyer. 360

§97 - Exception from the rules of complaint 361

(1) The seller may not invoke the buyer's neglect of his obligation to examine the goods under §31 or present a complaint under §32, 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. 362

(2) In the event of any legal defect or other third party claim under §§41 or 96 above, the seller may not invoke the buyer's neglect as mentioned in the preceding paragraph, if the seller was aware of the right or claim and its content. The two year period for complaint 363

set forth in §32 (2) above does not apply with respect to any such claim.

364 (3) Even where the buyer has not made a complaint under §32 (1) above, he may demand a reduction in the price or damages for losses other than loss of profit, provided he had good reason for not making the complaint.

365 **§98 - Premature delivery or excessive delivery**

366 (1) If the goods are delivered too early, the buyer may accept or reject the goods, with due regard to his obligation to preserve them.

367 (2) If the quantity delivered exceeds the contract quantity, the buyer may accept the delivery or reject the excess quantity. If he accepts all or part of the excess quantity, the price thereof will be calculated in proportion to the price appearing from the contract.

368 **Chapter XVI - Entry into force. Repeal of former Act.**

369 **§99**

370 (1) This Act enters into force on the date provided by the King (1 January 1989 by Royal Decree).

371 (2) From the same date, the Sale of Goods Act of 24 May 1907 no. 2 is repealed.

372 (3) The King may decide that the special rules concerning international sales, see §5 and Chapter XV, shall enter into force at another date than the other provisions of this Act.

373 (4) This new Act will be applicable only to contracts that are concluded after it has entered into force.

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