

# Principles of International Commercial Contracts, 1994 - UNIDROIT

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# UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2004

## Preamble - (Purpose of the Principles)

These Principles set forth general rules for international commercial contracts. They shall be applied when the parties have agreed that their contract be governed by them.<sup>1</sup>

They may be applied when the parties have agreed that their contract be governed by general principles of law, the *lex mercatoria* or the like. They may be applied when the parties have not chosen any law to govern their contract.

They may be used to interpret or supplement international uniform law instruments.

They may be used to interpret or supplement domestic law.

They may serve as a model for national and international legislators.

## Chapter 1 - General Provisions

### Article 1.1 - Freedom of contract

The parties are free to enter into a contract and to determine its content.

<sup>1</sup>Parties wishing to provide that their agreement be governed by the Principles might use the following words, adding any desired exceptions or modifications: "This contract shall be governed by the UNIDROIT Principles (2004) [except as to Articles ...]."

Parties wishing to provide in addition for the application of the law of a particular jurisdiction might use the following words:

"This contract shall be governed by the UNIDROIT Principles (2004) [except as to Articles...], supplemented when necessary by the law of [jurisdiction X]."

### Article 1.2 - No form required

Nothing in these Principles requires a contract, statement or any other act to be made in or evidenced by a particular form. It may be proved by any means, including witnesses.

### Article 1.3 - Binding character of contract

A contract validly entered into is binding upon the parties. It can only be modified or terminated in accordance with its terms or by agreement or as otherwise provided in these Principles.

### Article 1.4 - Mandatory rules

Nothing in these Principles shall restrict the application of mandatory rules, whether of national, international or supranational origin, which are applicable in accordance with the relevant rules of private international law.

### Article 1.5 - Exclusion or modification by the parties

The parties may exclude the application of these Principles or derogate from or vary the effect of any of their provisions, except as otherwise provided in the Principles.

### Article 1.6 - Interpretation and supplementation of the Principles

(1) In the interpretation of these Principles, regard is to be had to their international character and to their purposes including the need to promote uniformity in their application.

(2) Issues within the scope of these Principles but not expressly

settled by them are as far as possible to be settled in accordance with their underlying general principles.

### Article 1.7 - Good faith and fair dealing

(1) Each party must act in accordance with good faith and fair dealing in international trade.

(2) The parties may not exclude or limit this duty.

### Article 1.8 - Inconsistent Behaviour

A party cannot act inconsistently with an understanding it has caused the other party to have and upon which that other party reasonably has acted in reliance to its detriment.

### Article 1.9 - Usages and practices

(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 bound by a usage that is widely known to and regularly observed in international trade by parties in the particular trade concerned except where the application of such a usage would be unreasonable.

### Article 1.10 - Notice

(1) Where notice is required it may be given by any means appropriate to the circumstances.

(2) A notice is effective when it reaches the person to whom it is given.

(3) For the purpose of paragraph (2) a notice “reaches” a person when given to that person orally or delivered at that person's place of business or mailing address.

(4) For the purpose of this article “notice” includes a declaration, demand, request or any other communication of intention.

### Article 1.11 - Definitions

In these Principles

-- “court” includes an arbitral tribunal;

-- where a party has more than one place of business the relevant “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;

-- “obligor” refers to the party who is to perform an obligation and “obligee” refers to the party who is entitled to performance of that obligation.

-- “writing” means any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form.

### Article 1.12 - Computation of time set by parties

(1) Official holidays or non-business days occurring during a period set by parties for an act to be performed are included in calculating the period.

(2) However, if the last day of the period is an official holiday or a non-business day at the place of business of the party to perform



the act, the period is extended until the first business day which follows, unless the circumstances indicate otherwise.

44 (3) The relevant time zone is that of the place of business of the party setting the time, unless the circumstances indicate otherwise.

## 45 Chapter 2 - Formation and Authority of Agents

### 46 Section 1 - Formation

#### 47 Article 2.1.1 - Manner of formation

48 A contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.

#### 49 Article 2.1.2 - Definition of offer

50 A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance.

#### 51 Article 2.1.3 - Withdrawal of offer

52 (1) An offer becomes effective when it reaches the offeree.  
 53 (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.

#### 54 Article 2.1.4 - Revocation of offer

55 (1) Until a contract is concluded an offer may be revoked if the

revocation reaches the offeree before it has dispatched an acceptance.

(2) However, an offer cannot be revoked 56

(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or 57

(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. 58

#### Article 2.1.5 - Rejection of offer 59

An offer is terminated when a rejection reaches the offeror. 60

#### Article 2.1.6 - Mode of acceptance 61

(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. 62

(2) An acceptance of an offer becomes effective when the indication of assent reaches the offeror. 63

(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 without notice to the offeror, the acceptance is effective when the act is performed. 64

#### Article 2.1.7 - Time of acceptance 65

An offer must be accepted within the time the offeror has fixed or, if no time is fixed, within a reasonable time having regard to the circumstances, including the rapidity of the means of communication 66

employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

#### 67 **Article 2.1.8 - Acceptance within a fixed period of time**

68 A period of acceptance fixed by the offeror begins to run from the time that the offer is dispatched. A time indicated in the offer is deemed to be the time of dispatch unless the circumstances indicate otherwise.

#### 69 **Article 2.1.9 - Late acceptance. Delay in transmission**

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

71 (2) If a communication 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 undue delay, the offeror informs the offeree that it considers the offer as having lapsed.

#### 72 **Article 2.1.10 - Withdrawal of acceptance**

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

#### 74 **Article 2.1.11 - Modified acceptance**

75 (1) A reply to an offer which purports to be an acceptance but con-

tains 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 to the discrepancy. If the offeror does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance. 76

#### **Article 2.1.12 - Writings in confirmation** 77

If a writing which is sent within a reasonable time after the conclusion of the contract and which purports to be a confirmation of the contract contains additional or different terms, such terms become part of the contract, unless they materially alter the contract or the recipient, without undue delay, objects to the discrepancy. 78

#### **Article 2.1.13 - Conclusion of contract dependent on agreement on specific matters or in a particular form** 79

Where in the course of negotiations one of the parties insists that the contract is not concluded until there is agreement on specific matters or in a particular form, no contract is concluded before agreement is reached on those matters or in that form. 80

#### **Article 2.1.14 - Contract with terms deliberately left open** 81

(1) If the parties intend to conclude a contract, the fact that they intentionally leave a term to be agreed upon in further negotiations or to be determined by a third person does not prevent a contract from coming into existence. 82

(2) The existence of the contract is not affected by the fact that 83

subsequently

- 84 (a) the parties reach no agreement on the term; or
- 85 (b) the third person does not determine the term, provided that there is an alternative means of rendering the term definite that is reasonable in the circumstances, having regard to the intention of the parties.

86 **Article 2.1.15 - Negotiations in bad faith**

- 87 (1) A party is free to negotiate and is not liable for failure to reach an agreement.
- 88 (2) However, a party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party.
- 89 (3) It is bad faith, in particular, for a party to enter into or continue negotiations when intending not to reach an agreement with the other party.

90 **Article 2.1.16 - Duty of confidentiality**

91 Where information is given as confidential by one party in the course of negotiations, the other party is under a duty not to disclose that information or to use it improperly for its own purposes, whether or not a contract is subsequently concluded. Where appropriate, the remedy for breach of that duty may include compensation based on the benefit received by the other party.

92 **Article 2.1.17 - Merger clauses**

93 A contract in writing which contains a clause indicating that the writing completely embodies the terms on which the parties have

agreed cannot be contradicted or supplemented by evidence of prior statements or agreements. However, such statements or agreements may be used to interpret the writing.

**Article 2.1.18 - Modification in a particular form**

94

A contract in writing which contains a clause requiring any modification or termination by agreement to be in a particular form may not be otherwise modified or terminated. However, a party may be precluded by its conduct from asserting such a clause to the extent that the other party has reasonably acted in reliance on that conduct.

95

**Article 2.1.19 - Contracting under standard terms**

96

(1) Where one party or both parties use standard terms in concluding a contract, the general rules on formation apply, subject to Articles 2.1.20 - 2.1.22.

97

(2) Standard terms are provisions which are prepared in advance for general and repeated use by one party and which are actually used without negotiation with the other party.

98

**Article 2.1.20 - Surprising terms**

99

(1) No term contained in standard terms which is of such a character that the other party could not reasonably have expected it, is effective unless it has been expressly accepted by that party.

100

(2) In determining whether a term is of such a character regard shall be had to its content, language and presentation.

101

**Article 2.1.21 - Conflict between standard terms and non-standard terms**

103 In case of conflict between a standard term and a term which is not a standard term the latter prevails.

**Article 2.1.22 - Battle of forms**

105 Where both parties use standard terms and reach agreement except on those terms, a contract is concluded on the basis of the agreed terms and of any standard terms which are common in substance unless one party clearly indicates in advance, or later and without undue delay informs the other party, that it does not intend to be bound by such a contract.

**Section 2 - Authority of Agents**

**Article 2.2.1 - Scope of the Section**

108 (1) This Section governs the authority of a person ("the agent"), to affect the legal relations of another person ("the principal"), by or with respect to a contract with a third party, whether the agent acts in its own name or in that of the principal.

109 (2) It governs only the relations between the principal or the agent on the one hand, and the third party on the other.

110 (3) It does not govern an agent's authority conferred by law or the authority of an agent appointed by a public or judicial authority.

11102

**Article 2.2.2 - Establishment and scope of the authority of the agent**

(1) The principal's grant of authority to an agent may be express or implied. 112

(2) The agent has authority to perform all acts necessary in the circumstances to achieve the purposes for which the authority was granted. 113

**Article 2.2.3 - Agency disclosed**

(1) Where an agent acts within the scope of its authority and the third party knew or ought to have known that the agent was acting as an agent, the acts of the agent shall directly affect the legal relations between the principal and the third party and no legal relation is created between the agent and the third party. 115

(2) However, the acts of the agent shall affect only the relations between the agent and the third party, where the agent with the consent of the principal undertakes to become the party to the contract. 116

**Article 2.2.4 - Agency undisclosed**

(1) Where an agent acts within the scope of its authority and the third party neither knew nor ought to have known that the agent was acting as an agent, the acts of the agent shall affect only the relations between the agent and the third party. 118

(2) However, where such an agent, when contracting with the third party on behalf of a business, represents itself to be the owner of that business, the third party, upon discovery of the real owner of the business, may exercise also against the latter the rights it has against the agent. 119

120 **Article 2.2.5 - Agent acting without or exceeding its authority**

121 (1) Where an agent acts without authority or exceeds its authority, its acts do not affect the legal relations between the principal and the third party.

122 (2) However, where the principal causes the third party reasonably to believe that the agent has authority to act on behalf of the principal and that the agent is acting within the scope of that authority, the principal may not invoke against the third party the lack of authority of the agent.

123 **Article 2.2.6 - Liability of agent acting without or exceeding its authority**

124 (1) An agent that acts without authority or exceeds its authority is, failing ratification by the principal, liable for damages that will place the third party in the same position as if the agent had acted with authority and not exceeded its authority.

125 (2) However, the agent is not liable if the third party knew or ought to have known that the agent had no authority or was exceeding its authority.

126 **Article 2.2.7 - Conflict of interests**

127 (1) If a contract concluded by an agent involves the agent in a conflict of interests with the principal of which the third party knew or ought to have known, the principal may avoid the contract. The right to avoid is subject to Articles 3.12 and 3.14 to 3.17.

128 (2) However, the principal may not avoid the contract

129 (a) if the principal had consented to, or knew or ought to have

known of, the agent's involvement in the conflict of interests; or

(b) if the agent had disclosed the conflict of interests to the principal and the latter had not objected within a reasonable time. 130

**Article 2.2.8 - Sub-agency** 131

An agent has implied authority to appoint a sub-agent to perform acts which it is not reasonable to expect the agent to perform itself. The rules of this Section apply to the sub-agency. 132

**Article 2.2.9 - Ratification** 133

(1) An act by an agent that acts without authority or exceeds its authority may be ratified by the principal. On ratification the act produces the same effects as if it had initially been carried out with authority. 134

(2) The third party may by notice to the principal specify a reasonable period of time for ratification. If the principal does not ratify within that period of time it can no longer do so. 135

(3) If, at the time of the agent's act, the third party neither knew nor ought to have known of the lack of authority, it may, at any time before ratification, by notice to the principal indicate its refusal to become bound by a ratification. 136

**Article 2.2.10 - Termination of authority** 137

(1) Termination of authority is not effective in relation to the third party unless the third party knew or ought to have known of it. 138

(2) Notwithstanding the termination of its authority, an agent re- 139

mains authorised to perform the acts that are necessary to prevent 152  
harm to the principal's interests.

## 140 Chapter 3 - Validity

### 141 Article 3.1 - Matters not covered

142 These Principles do not deal with invalidity arising from

- 143 (a) lack of capacity;
- 144 (b) immorality or illegality.

### 145 Article 3.2 - Validity of mere agreement

146 A contract is concluded, modified or terminated by the mere agree-  
ment of the parties, without any further requirement.

### 147 Article 3.3 - Initial impossibility

148 (1) The mere fact that at the time of the conclusion of the contract  
the performance of the obligation assumed was impossible does  
not affect the validity of the contract.

149 (2) The mere fact that at the time of the conclusion of the contract a  
party was not entitled to dispose of the assets to which the contract  
relates does not affect the validity of the contract.

### 150 Article 3.4 - Definition of mistake

151 Mistake is an erroneous assumption relating to facts or to law ex-  
isting when the contract was concluded.

### Article 3.5 - Relevant mistake

(1) A party may only avoid the contract for mistake if, when the 153  
contract was concluded, the mistake was of such importance that a  
reasonable person in the same situation as the party in error would  
only have concluded the contract on materially different terms or  
would not have concluded it at all if the true state of affairs had  
been known, and

(a) the other party made the same mistake, or caused the mistake, 154  
or knew or ought to have known of the mistake and it was contrary  
to reasonable commercial standards of fair dealing to leave the  
mistaken party in error; or

(b) the other party had not at the time of avoidance reasonably 155  
acted in reliance on the contract.

(2) However, a party may not avoid the contract if 156

(a) it was grossly negligent in committing the mistake; or 157

(b) the mistake relates to a matter in regard to which the risk of mis- 158  
take was assumed or, having regard to the circumstances, should  
be borne by the mistaken party.

### Article 3.6 - Error in expression or transmission 159

An error occurring in the expression or transmission of a declara- 160  
tion is considered to be a mistake of the person from whom the  
declaration emanated.

### Article 3.7 - Remedies for non-performance 161

A party is not entitled to avoid the contract on the ground of mistake 162  
if the circumstances on which that party relies afford, or could have  
afforded, a remedy for non-performance.

**Article 3.8 - Fraud**

A party may avoid the contract when it has been led to conclude the contract by the other party's fraudulent representation, including language or practices, or fraudulent non-disclosure of circumstances which, according to reasonable commercial standards of fair dealing, the latter party should have disclosed.

**Article 3.9 - Threat**

A party may avoid the contract when it has been led to conclude the contract by the other party's unjustified threat which, having regard to the circumstances, is so imminent and serious as to leave the first party no reasonable alternative. In particular, a threat is unjustified if the act or omission with which a party has been threatened is wrongful in itself, or it is wrongful to use it as a means to obtain the conclusion of the contract.

**Article 3.10 - Gross disparity**

(1) A party may avoid the contract or an individual term of it if, at the time of the conclusion of the contract, the contract or term unjustifiably gave the other party an excessive advantage. Regard is to be had, among other factors, to

(a) the fact that the other party has taken unfair advantage of the first party's dependence, economic distress or urgent needs, or of its improvidence, ignorance, inexperience or lack of bargaining skill, and

(b) the nature and purpose of the contract.

(2) Upon the request of the party entitled to avoidance, a court may adapt the contract or term in order to make it accord with reasonable commercial standards of fair dealing.

(3) A court may also adapt the contract or term upon the request of the party receiving notice of avoidance, provided that that party informs the other party of its request promptly after receiving such notice and before the other party has reasonably acted in reliance on it. The provisions of Article 3.13(2) apply accordingly.

**Article 3.11 - Third persons**

(1) Where fraud, threat, gross disparity or a party's mistake is imputable to, or is known or ought to be known by, a third person for whose acts the other party is responsible, the contract may be avoided under the same conditions as if the behaviour or knowledge had been that of the party itself.

(2) Where fraud, threat or gross disparity is imputable to a third person for whose acts the other party is not responsible, the contract may be avoided if that party knew or ought to have known of the fraud, threat or disparity, or has not at the time of avoidance reasonably acted in reliance on the contract.

**Article 3.12 - Confirmation**

If the party entitled to avoid the contract expressly or impliedly confirms the contract after the period of time for giving notice of avoidance has begun to run, avoidance of the contract is excluded.

**Article 3.13 - Loss of right to avoid**

(1) If a party is entitled to avoid the contract for mistake but the other party declares itself willing to perform or performs the contract as it was understood by the party entitled to avoidance, the contract is considered to have been concluded as the latter party understood it. The other party must make such a declaration or render such

performance promptly after having been informed of the manner in which the party entitled to avoidance had understood the contract and before that party has reasonably acted in reliance on a notice of avoidance.

(2) After such a declaration or performance the right to avoidance is lost and any earlier notice of avoidance is ineffective.

### Article 3.14 - Notice of avoidance

The right of a party to avoid the contract is exercised by notice to the other party.

### Article 3.15 - Time limits

(1) Notice of avoidance shall be given within a reasonable time, having regard to the circumstances, after the avoiding party knew or could not have been unaware of the relevant facts or became capable of acting freely.

(2) Where an individual term of the contract may be avoided by a party under Article 3.10, the period of time for giving notice of avoidance begins to run when that term is asserted by the other party.

### Article 3.16 - Partial avoidance

Where a ground of avoidance affects only individual terms of the contract, the effect of avoidance is limited to those terms unless, having regard to the circumstances, it is unreasonable to uphold the remaining contract.

### Article 3.17 - Retroactive effect of avoidance

(1) Avoidance takes effect retroactively.

(2) On avoidance either party may claim restitution of whatever it has supplied under the contract or the part of it avoided, provided that it concurrently makes restitution of whatever it has received under the contract or the part of it avoided or, if it cannot make restitution in kind, it makes an allowance for what it has received.

### Article 3.18 - Damages

Irrespective of whether or not the contract has been avoided, the party who knew or ought to have known of the ground for avoidance is liable for damages so as to put the other party in the same position in which it would have been if it had not concluded the contract.

### Article 3.19 - Mandatory character of the provisions

The provisions of this Chapter are mandatory, except insofar as they relate to the binding force of mere agreement, initial impossibility or mistake.

### Article 3.20 - Unilateral declarations

The provisions of this Chapter apply with appropriate adaptations to any communication of intention addressed by one party to the other.



<b>Chapter 4 - Interpretation</b>	197	(d) the nature and purpose of the contract;	209
<b>Article 4.1 - Intention of the parties</b>	198	(e) the meaning commonly given to terms and expressions in the trade concerned;	210
199 (1) A contract shall be interpreted according to the common intention of the parties.		(f) usages.	211
200 (2) If such an intention cannot be established, the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.		<b>Article 4.4 - Reference to contract or statement as a whole</b>	212
		Terms and expressions shall be interpreted in the light of the whole contract or statement in which they appear.	213
201 <b>Article 4.2 - Interpretation of statements and other conduct</b>		<b>Article 4.5 - All terms to be given effect</b>	214
202 (1) The statements and other conduct of a party shall be interpreted according to that party's intention if the other party knew or could not have been unaware of that intention.		Contract terms shall be interpreted so as to give effect to all the terms rather than to deprive some of them of effect.	215
203 (2) If the preceding paragraph is not applicable, such statements and other conduct shall be interpreted according to the meaning that a reasonable person of the same kind as the other party would give to it in the same circumstances.		<b>Article 4.6 - Contra proferentem rule</b>	216
		If contract terms supplied by one party are unclear, an interpretation against that party is preferred.	217
204 <b>Article 4.3 - Relevant circumstances</b>		<b>Article 4.7 - Linguistic discrepancies</b>	218
205 In applying Articles 4.1 and 4.2, regard shall be had to all the circumstances, including		Where a contract is drawn up in two or more language versions which are equally authoritative there is, in case of discrepancy between the versions, a preference for the interpretation according to a version in which the contract was originally drawn up.	219
206 (a) preliminary negotiations between the parties;		<b>Article 4.8 - Supplying an omitted term</b>	220
207 (b) practices which the parties have established between themselves;		(1) Where the parties to a contract have not agreed with respect	221
208 (c) the conduct of the parties subsequent to the conclusion of the contract;			

	to a term which is important for a determination of their rights and duties, a term which is appropriate in the circumstances shall be supplied.	237		
222	(2) In determining what is an appropriate term regard shall be had, among other factors, to			
223	(a) the intention of the parties;			
224	(b) the nature and purpose of the contract;			
225	(c) good faith and fair dealing;			
226	(d) reasonableness.			
227	<b>Chapter 5 - Content and Third Party Rights</b>			
228	<b>Section 1 - Content</b>			
229	<b>Article 5.1.1 - Express and implied obligations</b>			
230	The contractual obligations of the parties may be express or implied.			
231	<b>Article 5.1.2 - Implied obligations</b>			
232	Implied obligations stem from			
233	(a) the nature and purpose of the contract;			
234	(b) practices established between the parties and usages;			
235	(c) good faith and fair dealing;			
236	(d) reasonableness.			
			<b>Article 5.1.3 - Co-operation between the parties</b>	
			Each party shall cooperate with the other party when such co-operation may reasonably be expected for the performance of that party's obligations.	
			<b>Article 5.1.4 - Duty to achieve a specific result. Duty of best efforts</b>	239
			(1) To the extent that an obligation of a party involves a duty to achieve a specific result, that party is bound to achieve that result.	240
			(2) To the extent that an obligation of a party involves a duty of best efforts in the performance of an activity, that party is bound to make such efforts as would be made by a reasonable person of the same kind in the same circumstances.	241
			<b>Article 5.1.5 - Determination of kind of duty involved</b>	242
			In determining the extent to which an obligation of a party involves a duty of best efforts in the performance of an activity or a duty to achieve a specific result, regard shall be had, among other factors, to	243
			(a) the way in which the obligation is expressed in the contract;	244
			(b) the contractual price and other terms of the contract;	245
			(c) the degree of risk normally involved in achieving the expected result;	246
			(d) the ability of the other party to influence the performance of the obligation.	247

248 **Article 5.1.6 - Determination of quality of performance**

249 Where the quality of performance is neither fixed by, nor determinable from, the contract a party is bound to render a performance of a quality that is reasonable and not less than average in the circumstances.

250 **Article 5.1.7 - Price determination**

251 (1) Where a contract does not fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have made reference to the price generally charged at the time of the conclusion of the contract for such performance in comparable circumstances in the trade concerned or, if no such price is available, to a reasonable price.

252 (2) Where the price is to be determined by one party and that determination is manifestly unreasonable, a reasonable price shall be substituted notwithstanding any contract term to the contrary.

253 (3) Where the price is to be fixed by a third person, and that person cannot or will not do so, the price shall be a reasonable price.

254 (4) Where the price is to be fixed by reference to factors which do not exist or have ceased to exist or to be accessible, the nearest equivalent factor shall be treated as a substitute.

255 **Article 5.1.8 - Contract for an indefinite period**

256 A contract for an indefinite period may be ended by either party by giving notice a reasonable time in advance.

257 **Article 5.1.9 - Release by agreement**

(1) An obligee may release its right by agreement with the obligor. 258

(2) An offer to release a right gratuitously shall be deemed accepted if the obligor does not reject the offer without delay after having become aware of it. 259

**Section 2 - Third Party Rights** 260**Article 5.2.1 - Contracts in favour of third parties** 261

(1) The parties (the “promisor” and the “promisee”) may confer by express or implied agreement a right on a third party (the “beneficiary”). 262

(2) The existence and content of the beneficiary's right against the promisor are determined by the agreement of the parties and are subject to any conditions or other limitations under the agreement. 263

**Article 5.2.2 - Third party identifiable** 264

The beneficiary must be identifiable with adequate certainty by the contract but need not be in existence at the time the contract is made. 265

**Article 5.2.3 - Exclusion and limitation clauses** 266

The conferment of rights in the beneficiary includes the right to invoke a clause in the contract which excludes or limits the liability of the beneficiary. 267

268 **Article 5.2.4 - Defences**

269 The promisor may assert against the beneficiary all defences which  
the promisor could assert against the promisee.

270 **Article 5.2.5 - Revocation**

271 The parties may modify or revoke the rights conferred by the con-  
tract on the beneficiary until the beneficiary has accepted them or  
reasonably acted in reliance on them.

272 **Article 5.2.6 - Renunciation**

273 The beneficiary may renounce a right conferred on it.

274 **Chapter 6 - Performance**275 **Section 1 - Performance in General**276 **Article 6.1.1 - Time of performance**

277 A party must perform its obligations:

278 (a) if a time is fixed by or determinable from the contract, at that  
time;

279 (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 other party is to choose a time;

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

281 **Article 6.1.2 - Performance at one time or in instalments**

In cases under Article 6.1.1(b) or (c), a party must perform its obli- 282  
gations at one time if that performance can be rendered at one time  
and the circumstances do not indicate otherwise.

**Article 6.1.3 - Partial performance** 283

(1) The obligee may reject an offer to perform in part at the time 284  
performance is due, whether or not such offer is coupled with an  
assurance as to the balance of the performance, unless the obligee  
has no legitimate interest in so doing.

(2) Additional expenses caused to the obligee by partial perfor- 285  
mance are to be borne by the obligor without prejudice to any other  
remedy.

**Article 6.1.4 - Order of performance** 286

(1) To the extent that the performances of the parties can be ren- 287  
dered simultaneously, the parties are bound to render them simul-  
taneously unless the circumstances indicate otherwise.

(2) To the extent that the performance of only one party requires a 288  
period of time, that party is bound to render its performance first,  
unless the circumstances indicate otherwise.

**Article 6.1.5 - Earlier performance** 289

(1) The obligee may reject an earlier performance unless it has no 290  
legitimate interest in so doing.

(2) Acceptance by a party of an earlier performance does not af- 291  
fect the time for the performance of its own obligations if that time

has been fixed irrespective of the performance of the other party's obligations. 303

292 (3) Additional expenses caused to the obligee by earlier performance are to be borne by the obligor, without prejudice to any other remedy.

#### 293 **Article 6.1.6 - Place of performance**

294 (1) If the place of performance is neither fixed by, nor determinable from, the contract, a party is to perform:

- 295 (a) a monetary obligation, at the obligee's place of business;
- 296 (b) any other obligation, at its own place of business.

297 (2) A party must bear any increase in the expenses incidental to performance which is caused by a change in its place of business subsequent to the conclusion of the contract.

#### 298 **Article 6.1.7 - Payment by cheque or other instrument**

299 (1) Payment may be made in any form used in the ordinary course of business at the place for payment.

300 (2) However, an obligee who accepts, either by virtue of paragraph (1) or voluntarily, a cheque, any other order to pay or a promise to pay, is presumed to do so only on condition that it will be honoured.

#### 301 **Article 6.1.8 - Payment by funds transfer**

302 (1) Unless the obligee has indicated a particular account, payment may be made by a transfer to any of the financial institutions in which the obligee has made it known that it has an account.

(2) In case of payment by a transfer the obligation of the obligor is discharged when the transfer to the obligee's financial institution becomes effective.

#### **Article 6.1.9 - Currency of payment** 304

(1) If a monetary obligation is expressed in a currency other than that of the place for payment, it may be paid by the obligor in the currency of the place for payment unless 305

- (a) that currency is not freely convertible; or 306
- (b) the parties have agreed that payment should be made only in the currency in which the monetary obligation is expressed. 307

(2) If it is impossible for the obligor to make payment in the currency in which the monetary obligation is expressed, the obligee may require payment in the currency of the place for payment, even in the case referred to in paragraph (1)(b). 308

(3) Payment in the currency of the place for payment is to be made according to the applicable rate of exchange prevailing there when payment is due. 309

(4) However, if the obligor has not paid at the time when payment is due, the obligee may require payment according to the applicable rate of exchange prevailing either when payment is due or at the time of actual payment. 310

#### **Article 6.1.10 - Currency not expressed** 311

Where a monetary obligation is not expressed in a particular currency, payment must be made in the currency of the place where payment is to be made. 312

**Article 6.1.11 - Costs of performance**

314 Each party shall bear the costs of performance of its obligations.

**Article 6.1.12 - Imputation of payments**

316 (1) An obligor owing several monetary obligations to the same obligee may specify at the time of payment the debt to which it intends the payment to be applied.

317 However, the payment discharges first any expenses, then interest due and finally the principal.

318 (2) If the obligor makes no such specification, the obligee may, within a reasonable time after payment, declare to the obligor the obligation to which it imputes the payment, provided that the obligation is due and undisputed.

319 (3) In the absence of imputation under paragraphs (1) or (2), payment is imputed to that obligation which satisfies one of the following criteria in the order indicated:

320 (a) an obligation which is due or which is the first to fall due;

321 (b) the obligation for which the obligee has least security;

322 (c) the obligation which is the most burdensome for the obligor;

323 (d) the obligation which has arisen first.

324 If none of the preceding criteria applies, payment is imputed to all the obligations proportionally.

**Article 6.1.13 - Imputation of non-monetary obligations**

326 Article 6.1.12 applies with appropriate adaptations to the imputa-

313 tion of performance of non-monetary obligations.

**Article 6.1.14 - Application for public permission**

327 Where the law of a State requires a public permission affecting the validity of the contract or its performance and neither that law nor the circumstances indicate otherwise

329 (a) if only one party has its place of business in that State, that party shall take the measures necessary to obtain the permission;

330 (b) in any other case the party whose performance requires permission shall take the necessary measures.

**Article 6.1.15 - Procedure in applying for permission**

332 (1) The party required to take the measures necessary to obtain the permission shall do so without undue delay and shall bear any expenses incurred.

333 (2) That party shall whenever appropriate give the other party notice of the grant or refusal of such permission without undue delay

**Article 6.1.16 - Permission neither granted nor refused**

335 (1) If, notwithstanding the fact that the party responsible has taken all measures required, permission is neither granted nor refused within an agreed period or, where no period has been agreed, within a reasonable time from the conclusion of the contract, either party is entitled to terminate the contract.

336 (2) Where the permission affects some terms only, paragraph (1)

does not apply if, having regard to the circumstances, it is reasonable to uphold the remaining contract even if the permission is refused.

### 337 **Article 6.1.17 - Permission refused**

338 (1) The refusal of a permission affecting the validity of the contract renders the contract void. If the refusal affects the validity of some terms only, only such terms are void if, having regard to the circumstances, it is reasonable to uphold the remaining contract.

339 (2) Where the refusal of a permission renders the performance of the contract impossible in whole or in part, the rules on non-performance apply.

## 340 **Section 2 - Hardship**

### 341 **Article 6.2.1 - Contract to be observed**

342 Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship .

### 343 **Article 6.2.2 - Definition of hardship**

344 There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished, and

345 (a) the events occur or become known to the disadvantaged party after the conclusion of the contract;

346 (b) the events could not reasonably have been taken into account

by the disadvantaged party at the time of the conclusion of the contract;

(c) the events are beyond the control of the disadvantaged party; 347  
and

(d) the risk of the events was not assumed by the disadvantaged party. 348

### **Article 6.2.3 - Effects of hardship** 349

(1) In case of hardship the disadvantaged party is entitled to request renegotiations. The request shall be made without undue delay and shall indicate the grounds on which it is based. 350

(2) The request for renegotiation does not in itself entitle the disadvantaged party to withhold performance. 351

(3) Upon failure to reach agreement within a reasonable time either party may resort to the court. 352

(4) If the court finds hardship it may, if reasonable, 353

(a) terminate the contract at a date and on terms to be fixed, 354  
or

(b) adapt the contract with a view to restoring its equilibrium. 355

## **Chapter 7 - Non-Performance** 356

### **Section 1 - Non-Performance in general** 357

#### **Article 7.1.1 - Non-performance defined** 358

Non-performance is failure by a party to perform any of its obligations under the contract, including defective performance or late performance. 359

360 **Article 7.1.2 - Interference by the other party**

361 A party may not rely on the non-performance of the other party  
to the extent that such non-performance was caused by the first  
party's act or omission or by another event as to which the first  
party bears the risk.

362 **Article 7.1.3 - Withholding performance**

363 (1) Where the parties are to perform simultaneously, either party  
may withhold performance until the other party tenders its perfor-  
mance.

364 (2) Where the parties are to perform consecutively, the party that  
is to perform later may withhold its performance until the first party  
has performed.

365 **Article 7.1.4 - Cure by non-performing party**

366 (1) The non-performing party may, at its own expense, cure any  
non-performance, provided that

367 (a) without undue delay, it gives notice indicating the proposed  
manner and timing of the cure;

368 (b) cure is appropriate in the circumstances;

369 (c) the aggrieved party has no legitimate interest in refusing cure;  
and

370 (d) cure is effected promptly.

371 (2) The right to cure is not precluded by notice of termination.

372 (3) Upon effective notice of cure, rights of the aggrieved party that  
are inconsistent with the non-performing party's performance are  
suspended until the time for cure has expired.

(4) The aggrieved party may withhold performance pending 373  
cure.

(5) Notwithstanding cure, the aggrieved party retains the right to 374  
claim damages for delay as well as for any harm caused or not  
prevented by the cure.

**Article 7.1.5 - Additional period for performance** 375

(1) In a case of non-performance the aggrieved party may by no- 376  
tice to the other party allow an additional period of time for perfor-  
mance.

(2) During the additional period the aggrieved party may withhold 377  
performance of its own reciprocal obligations and may claim dam-  
ages but may not resort to any other remedy. If it receives notice  
from the other party that the latter will not perform within that pe-  
riod, or if upon expiry of that period due performance has not been  
made, the aggrieved party may resort to any of the remedies that  
may be available under this Chapter.

(3) Where in a case of delay in performance which is not funda- 378  
mental the aggrieved party has given notice allowing an additional  
period of time of reasonable length, it may terminate the contract  
at the end of that period. If the additional period allowed is not of  
reasonable length it shall be extended to a reasonable length. The  
aggrieved party may in its notice provide that if the other party fails  
to perform within the period allowed by the notice the contract shall  
automatically terminate.

(4) Paragraph (3) does not apply where the obligation which has 379  
not been performed is only a minor part of the contractual obligation  
of the non-performing party.



**Article 7.1.6 - Exemption clauses**

381 A clause which limits or excludes one party's liability for  
 non-performance or which permits one party to render perform-  
 382 ance substantially different from what the other party reasonably  
 expected may not be invoked if it would be grossly unfair to do so,  
 having regard to the purpose of the contract.

**Article 7.1.7 - Force majeure**

383 (1) Non-performance by a party is excused if that party proves that  
 the non-performance was due to an impediment beyond its control  
 and that it could not reasonably be expected to have taken the im-  
 pediment into account at the time of the conclusion of the contract  
 or to have avoided or overcome it or its consequences.

384 (2) When the impediment is only temporary, the excuse shall have  
 effect for such period as is reasonable having regard to the effect  
 of the impediment on the performance of the contract.

385 (3) The party who fails to perform must give notice to the other  
 party of the impediment and its effect on its 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, it is liable for damages resulting from  
 such non-receipt.

386 (4) Nothing in this article prevents a party from exercising a right to  
 terminate the contract or to withhold performance or request inter-  
 est on money due.

**3880 Section 2 - Right to Performance****388 Article 7.2.1 - Performance of monetary obligation**

Where a party who is obliged to pay money does not do so, the 389  
 other party may require payment.

**Article 7.2.2 - Performance of non-monetary obligation** 390

Where a party who owes an obligation other than one to pay money 391  
 does not perform, the other party may require performance, un-  
 less

(a) performance is impossible in law or in fact; 392

(b) performance or, where relevant, enforcement is unreasonably 393  
 burdensome or expensive;

(c) the party entitled to performance may reasonably obtain perfor- 394  
 mance from another source;

(d) performance is of an exclusively personal character; or 395

(e) the party entitled to performance does not require performance 396  
 within a reasonable time after it has, or ought to have, become  
 aware of the non-performance.

**Article 7.2.3 - Repair and replacement of defective performance** 397

The right to performance includes in appropriate cases the right to 398  
 require repair, replacement, or other cure of defective performance.  
 The provisions of Articles 7.2.1 and 7.2.2 apply accordingly.

**Article 7.2.4 - Judicial penalty**

400 (1) Where the court orders a party to perform, it may also direct that this party pay a penalty if it does not comply with the order.

401 (2) The penalty shall be paid to the aggrieved party unless mandatory provisions of the law of the forum provide otherwise. Payment of the penalty to the aggrieved party does not exclude any claim for damages.

**Article 7.2.5 - Change of remedy**

403 (1) An aggrieved party who has required performance of a non-monetary obligation and who has not received performance within a period fixed or otherwise within a reasonable period of time may invoke any other remedy.

404 (2) Where the decision of a court for performance of a non-monetary obligation cannot be enforced, the aggrieved party may invoke any other remedy.

**Section 3 - Termination**

**Article 7.3.1 - Right to terminate the contract**

407 (1) A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.

408 (2) In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether

409 (a) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract unless the other

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party did not foresee and could not reasonably have foreseen such result;

(b) strict compliance with the obligation which has not been performed is of essence under the contract;

(c) the non-performance is intentional or reckless;

(d) the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance;

(e) the non-performing party will suffer disproportionate loss as a result of the preparation or performance if the contract is terminated.

(3) In the case of delay the aggrieved party may also terminate the contract if the other party fails to perform before the time allowed it under Article 7.1.5 has expired.

**Article 7.3.2 - Notice of termination**

(1) The right of a party to terminate the contract is exercised by notice to the other party.

(2) If performance has been offered late or otherwise does not conform to the contract the aggrieved party will lose its right to terminate the contract unless it gives notice to the other party within a reasonable time after it has or ought to have become aware of the offer or of the non-conforming performance.

**Article 7.3.3 - Anticipatory non-performance**

Where prior to the date for performance by one of the parties it is clear that there will be a fundamental non-performance by that party, the other party may terminate the contract.

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**420 Article 7.3.4 - Adequate assurance of due performance**

421 A party who reasonably believes that there will be a fundamental  
non-performance by the other party may demand adequate assur-  
ance of due performance and may meanwhile withhold its own per-  
formance. Where this assurance is not provided within a reason-  
able time the party demanding it may terminate the contract.

**422 Article 7.3.5 - Effects of termination in general**

423 (1) Termination of the contract releases both parties from their obli-  
gation to effect and to receive future performance.

424 (2) Termination does not preclude a claim for damages for  
non-performance.

425 (3) Termination does not affect any provision in the contract for the  
settlement of disputes or any other term of the contract which is to  
operate even after termination.

**426 Article 7.3.6 - Restitution**

427 (1) On termination of the contract either party may claim restitution  
of whatever it has supplied, provided that such party concurrently  
makes restitution of whatever it has received. If restitution in kind  
is not possible or appropriate allowance should be made in money  
whenever reasonable.

428 (2) However, if performance of the contract has extended over a  
period of time and the contract is divisible, such restitution can only  
be claimed for the period after termination has taken effect.

**429 Section 4 - Damages****430 Article 7.4.1 - Right to damages**

Any non-performance gives the aggrieved party a right to dam- 431  
ages either exclusively or in conjunction with any other remedies  
except where the non-performance is excused under these Princi-  
ples.

**Article 7.4.2 - Full compensation** 432

(1) The aggrieved party is entitled to full compensation for harm 433  
sustained as a result of the non-performance. Such harm includes  
both any loss which it suffered and any gain of which it was de-  
prived, taking into account any gain to the aggrieved party resulting  
from its avoidance of cost or harm.

(2) Such harm may be non-pecuniary and includes, for instance, 434  
physical suffering or emotional distress.

**Article 7.4.3 - Certainty of harm** 435

(1) Compensation is due only for harm, including future harm, that 436  
is established with a reasonable degree of certainty.

(2) Compensation may be due for the loss of a chance in proportion 437  
to the probability of its occurrence.

(3) Where the amount of damages cannot be established with a 438  
sufficient degree of certainty, the assessment is at the discretion of  
the court.

**Article 7.4.4 - Foreseeability of harm** 439

The non-performing party is liable only for harm which it foresaw or 440

could reasonably have foreseen at the time of the conclusion of the contract as being likely to result from its non-performance.

441 **Article 7.4.5 - Proof of harm in case of replacement transaction**

442 Where the aggrieved party has terminated the contract and has made a replacement transaction within a reasonable time and in a reasonable manner it may recover the difference between the contract price and the price of the replacement transaction as well as damages for any further harm.

443 **Article 7.4.6 - Proof of harm by current price**

444 (1) Where the aggrieved party has terminated the contract and has not made a replacement transaction but there is a current price for the performance contracted for, it may recover the difference between the contract price and the price current at the time the contract is terminated as well as damages for any further harm.

445 (2) Current price is the price generally charged for goods delivered or services rendered in comparable circumstances at the place where the contract should have been performed or, if there is no current price at that place, the current price at such other place that appears reasonable to take as a reference.

446 **Article 7.4.7 - Harm due in part to aggrieved party**

447 Where the harm is due in part to an act or omission of the aggrieved party or to another event as to which that party bears the risk, the amount of damages shall be reduced to the extent that these factors have contributed to the harm, having regard to the conduct of each of the parties.

**Article 7.4.8 - Mitigation of harm**

448

(1) The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps.

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(2) The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the harm.

450

**Article 7.4.9 - Interest for failure to pay money**

451

(1) If a party does not pay a sum of money when it falls due the aggrieved party is entitled to interest upon that sum from the time when payment is due to the time of payment whether or not the non-payment is excused.

452

(2) The rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment.

453

(3) The aggrieved party is entitled to additional damages if the non-payment caused it a greater harm.

454

**Article 7.4.10 - Interest on damages**

455

Unless otherwise agreed, interest on damages for non-performance of non-monetary obligations accrues as from the time of non-performance.

456

**Article 7.4.11 - Manner of monetary redress**

458 (1) Damages are to be paid in a lump sum. However, they may  
be payable in instalments where the nature of the harm makes this  
appropriate.

459 (2) Damages to be paid in instalments may be indexed.

**Article 7.4.12 - Currency in which to assess damages**

461 Damages are to be assessed either in the currency in which the  
monetary obligation was expressed or in the currency in which the  
harm was suffered, whichever is more appropriate.

**Article 7.4.13 - Agreed payment for non-performance**

463 (1) Where the contract provides that a party who does not per-  
form is to pay a specified sum to the aggrieved party for such  
non-performance, the aggrieved party is entitled to that sum irre-  
spective of its actual harm.

464 (2) However, notwithstanding any agreement to the contrary the  
specified sum may be reduced to a reasonable amount where  
it is grossly excessive in relation to the harm resulting from the  
non-performance and to the other circumstances.

**Chapter 8 - Set-Off****Article 8.1 - Conditions of set-off**

467 (1) Where two parties owe each other money or other perfor-  
mances of the same kind, either of them (“the first party”) may set  
off its obligation against that of its obligee (“the other party”) if at  
the time of set-off,

457 (a) the first party is entitled to perform its obligation; 468

(b) the other party's obligation is ascertained as to its existence and 469  
amount and performance is due.

(2) If the obligations of both parties arise from the same contract, 470  
the first party may also set off its obligation against an obligation of  
the other party which is not ascertained as to its existence or to its  
amount.

**Article 8.2 - Foreign currency set-off**

471 Where the obligations are to pay money in different currencies, the 472  
right of set-off may be exercised, provided that both currencies are  
freely convertible and the parties have not agreed that the first party  
shall pay only in a specified currency.

**Article 8.3 - Set-off by notice**

473 The right of set-off is exercised by notice to the other party. 474

**Article 8.4 - Content of notice**

475 (1) The notice must specify the obligations to which it relates. 476

(2) If the notice does not specify the obligation against which set-off 477  
is exercised, the other party may, within a reasonable time, declare  
to the first party the obligation to which set-off relates. If no such  
declaration is made, the set-off will relate to all the obligations pro-  
portionally.

**Article 8.5 - Effect of set-off**

478 (1) Set-off discharges the obligations. 479

480 (2) If obligations differ in amount, set-off discharges the obligations  
up to the amount of the lesser obligation.

481 (3) Set-off takes effect as from the time of notice.

## 482 **Chapter 9 - Assignment of Rights, Transfer of Obligations, Assignment of Contracts**

### 483 **Section 1 - Assignment of Rights**

#### 484 **Article 9.1.1 - Definitions**

485 “Assignment of a right” means the transfer by agreement from one  
person (the “assignor”) to another person (the “assignee”), includ-  
ing transfer by way of security, of the assignor’s right to payment  
of a monetary sum or other performance from a third person (“the  
obligor”).

#### 486 **Article 9.1.2 - Exclusions**

487 This Section does not apply to transfers made under the special  
rules governing the transfers:

488 (a) of instruments such as negotiable instruments, documents of  
title or financial instruments, or

489 (b) of rights in the course of transferring a business.

#### 490 **Article 9.1.3 - Assignability of non-monetary rights**

491 A right to non-monetary performance may be assigned only if the  
assignment does not render the obligation significantly more bur-  
densome.

#### **Article 9.1.4 - Partial assignment**

(1) A right to the payment of a monetary sum may be assigned 493  
partially.

(2) A right to other performance may be assigned partially only if 494  
it is divisible, and the assignment does not render the obligation  
significantly more burdensome.

#### **Article 9.1.5 - Future rights**

A future right is deemed to be transferred at the time of the agree- 496  
ment, provided the right, when it comes into existence, can be iden-  
tified as the right to which the assignment relates.

#### **Article 9.1.6 - Rights assigned without individual specification**

A number of rights may be assigned without individual specifica- 498  
tion, provided such rights can be identified as rights to which the as-  
signment relates at the time of the assignment or when they come  
into existence.

#### **Article 9.1.7 - Agreement between assignor and assignee sufficient**

(1) A right is assigned by mere agreement between the assignor 500  
and the assignee, without notice to the obligor.

(2) The consent of the obligor is not required unless the obligation 501  
in the circumstances is of an essentially personal character.

	<b>Article 9.1.8 - Obligor's additional costs</b>	502	<b>Article 9.1.12 - Adequate proof of assignment</b>	512
503	The obligor has a right to be compensated by the assignor or the assignee for any additional costs caused by the assignment.		(1) If notice of the assignment is given by the assignee, the obligor may request the assignee to provide within a reasonable time adequate proof that the assignment has been made.	513
504	<b>Article 9.1.9 - Non-assignment clauses</b>		(2) Until adequate proof is provided, the obligor may withhold payment.	514
505	(1) The assignment of a right to the payment of a monetary sum is effective notwithstanding an agreement between the assignor and the obligor limiting or prohibiting such an assignment. However, the assignor may be liable to the obligor for breach of contract.		(3) Unless adequate proof is provided, notice is not effective.	515
506	(2) The assignment of a right to other performance is ineffective if it is contrary to an agreement between the assignor and the obligor limiting or prohibiting the assignment. Nevertheless, the assignment is effective if the assignee, at the time of the assignment, neither knew nor ought to have known of the agreement. The assignor may then be liable to the obligor for breach of contract.		(4) Adequate proof includes, but is not limited to, any writing emanating from the assignor and indicating that the assignment has taken place.	516
507	<b>Article 9.1.10 - Notice to the obligor</b>		<b>Article 9.1.13 - Defences and rights of set-off</b>	517
508	(1) Until the obligor receives a notice of the assignment from either the assignor or the assignee, it is discharged by paying the assignor.		(1) The obligor may assert against the assignee all defences that the obligor could assert against the assignor.	518
509	(2) After the obligor receives such a notice, it is discharged only by paying the assignee.		(2) The obligor may exercise against the assignee any right of set-off available to the obligor against the assignor up to the time notice of assignment was received.	519
510	<b>Article 9.1.11 - Successive assignments</b>		<b>Article 9.1.14 - Rights related to the right assigned</b>	520
511	If the same right has been assigned by the same assignor to two or more successive assignees, the obligor is discharged by paying according to the order in which the notices were received.		The assignment of a right transfers to the assignee:	521
			(a) all the assignor's rights to payment or other performance under the contract in respect of the right assigned, and	522
			(b) all rights securing performance of the right assigned.	523
			<b>Article 9.1.15 - Undertakings of the assignor</b>	524
			The assignor undertakes towards the assignee, except as other-	525

wise disclosed to the assignee, that:

- 526 (a) the assigned right exists at the time of the assignment, unless  
the right is a future right;
- 527 (b) the assignor is entitled to assign the right;
- 528 (c) the right has not been previously assigned to another assignee,  
and it is free from any right or claim from a third party;
- 529 (d) the obligor does not have any defences;
- 530 (e) neither the obligor nor the assignor has given notice of  
set-off concerning the assigned right and will not give any such  
notice;
- 531 (f) the assignor will reimburse the assignee for any payment  
received from the obligor before notice of the assignment was  
given.

## 532 **Section 2 - Transfer of Obligations**

### 533 **Article 9.2.1 - Modes of transfer**

534 An obligation to pay money or render other performance may be  
transferred from one person (the “original obligor”) to another per-  
son (the “new obligor”) either

- 535 a) by an agreement between the original obligor and the new  
obligor subject to Article 9.2.3, or
- 536 b) by an agreement between the obligee and the new obligor, by  
which the new obligor assumes the obligation.

### 537 **Article 9.2.2 - Exclusion**

538 This Section does not apply to transfers of obligations made under

the special rules governing transfers of obligations in the course of  
transferring a business.

### **Article 9.2.3 - Requirement of obligee's consent to transfer**

539

The transfer of an obligation by an agreement between the  
original obligor and the new obligor requires the consent of the  
obligee.

540

### **Article 9.2.4 - Advance consent of obligee**

541

(1) The obligee may give its consent in advance.

542

(2) If the obligee has given its consent in advance, the transfer of  
the obligation becomes effective when a notice of the transfer is  
given to the obligee or when the obligee acknowledges it.

543

### **Article 9.2.5 - Discharge of original obligor**

544

(1) The obligee may discharge the original obligor.

545

(2) The obligee may also retain the original obligor as an obligor in  
case the new obligor does not perform properly.

546

(3) Otherwise the original obligor and the new obligor are jointly  
and severally liable.

547

### **Article 9.2.6 - Third party performance**

548

(1) Without the obligee's consent, the obligor may contract with  
another person that this person will perform the obligation in place  
of the obligor, unless the obligation in the circumstances has an  
essentially personal character.

549



550 (2) The obligee retains its claim against the obligor.

551 **Article 9.2.7 - Defences and rights of set-off**

552 (1) The new obligor may assert against the obligee all defences  
which the original obligor could assert against the obligee.

553 (2) The new obligor may not exercise against the obligee any right  
of set-off available to the original obligor against the obligee.

554 **Article 9.2.8 - Rights related to the obligation transferred**

555 (1) The obligee may assert against the new obligor all its rights to  
payment or other performance under the contract in respect of the  
obligation transferred.

556 (2) If the original obligor is discharged under Article 9.2.5(1), a se-  
curity granted by any person other than the new obligor for the per-  
formance of the obligation is discharged, unless that other person  
agrees that it should continue to be available to the obligee.

557 (3) Discharge of the original obligor also extends to any security of  
the original obligor given to the obligee for the performance of the  
obligation, unless the security is over an asset which is transferred  
as part of a transaction between the original obligor and the new  
obligor.

558 **Section 3 - Assignment of Contracts**

559 **Article 9.3.1 - Definitions**

560 "Assignment of a contract" means the transfer by agreement from  
one person (the "assignor") to another person (the "assignee") of  
the assignor's rights and obligations arising out of a contract with  
another person (the "other party").

**Article 9.3.2 - Exclusion**

This Section does not apply to the assignment of contracts made  
under the special rules governing transfers of contracts in the  
course of transferring a business.

**Article 9.3.3 - Requirement of consent of the other party**

The assignment of a contract requires the consent of the other  
party.

**Article 9.3.4 - Advance consent of the other party**

(1) The other party may give its consent in advance.

(2) If the other party has given its consent in advance, the assign-  
ment of the contract becomes effective when a notice of the assign-  
ment is given to the other party or when the other party acknowl-  
edges it.

**Article 9.3.5 - Discharge of the assignor**

(1) The other party may discharge the assignor.

(2) The other party may also retain the assignor as an obligor in  
case the assignee does not perform properly.

(3) Otherwise the assignor and the assignee are jointly and sever-  
ally liable.

**Article 9.3.6 - Defences and rights of set-off**

(1) To the extent that the assignment of a contract involves an as-  
signment of rights, Article 9.1.13 applies accordingly.

574 (2) To the extent that the assignment of a contract involves a trans- 585  
fer of obligations, Article 9.2.7 applies accordingly.

### 575 **Article 9.3.7 - Rights transferred with the contract**

576 (1) To the extent that the assignment of a contract involves an as-  
signment of rights, Article 9.1.14 applies accordingly.

577 (2) To the extent that the assignment of a contract involves a trans-  
fer of obligations, Article 9.2.8 applies accordingly.

## 578 **Chapter 10 - Limitation Periods**

### 579 **Article 10.1 - Scope of the Chapter**

580 (1) The exercise of rights governed by these Principles is barred by  
the expiration of a period of time, referred to as "limitation period",  
according to the rules of this Chapter.

581 (2) This Chapter does not govern the time within which one party is  
required under these Principles, as a condition for the acquisition  
or exercise of its right, to give notice to the other party or to perform  
any act other than the institution of legal proceedings.

### 582 **Article 10.2 - Limitation periods**

583 (1) The general limitation period is three years beginning on the  
day after the day the obligee knows or ought to know the facts as  
a result of which the obligee's right can be exercised.

584 (2) In any event, the maximum limitation period is ten years begin-  
ning on the day after the day the right can be exercised.

### **Article 10.3 - Modification of limitation periods by the parties**

(1) The parties may modify the limitation periods. 586

(2) However they may not 587

(a) shorten the general limitation period to less than one year; 588

(b) shorten the maximum limitation period to less than four 589  
years;

(c) extend the maximum limitation period to more than fifteen 590  
years.

### **Article 10.4 - New limitation period by acknowledgement** 591

(1) Where the obligor before the expiration of the general limita- 592  
tion period acknowledges the right of the obligee, a new general  
limitation period begins on the day after the day of the acknowl-  
edgement.

(2) The maximum limitation period does not begin to run again, 593  
but may be exceeded by the beginning of a new general limitation  
period under Art. 10.2(1).

### **Article 10.5 - Suspension by judicial proceedings** 594

(1) The running of the limitation period is suspended 595

(a) when the obligee performs any act, by commencing judicial pro- 596  
ceedings or in judicial proceedings already instituted, that is recog-  
nised by the law of the court as asserting the obligee's right against  
the obligor;

(b) in the case of the obligor's insolvency when the obligee has 597  
asserted its rights in the insolvency proceedings; or

598 (c) in the case of proceedings for dissolution of the entity which is  
the obligor when the obligee has asserted its rights in the dissolu-  
tion proceedings.

599 (2) Suspension lasts until a final decision has been issued or until  
the proceedings have been otherwise terminated.

#### 600 **Article 10.6 - Suspension by arbitral proceedings**

601 (1) The running of the limitation period is suspended when the  
obligee performs any act, by commencing arbitral proceedings or  
in arbitral proceedings already instituted, that is recognised by the  
law of the arbitral tribunal as asserting the obligee's right against  
the obligor. In the absence of regulations for arbitral proceedings  
or provisions determining the exact date of the commencement of  
arbitral proceedings, the proceedings are deemed to commence  
on the date on which a request that the right in dispute should be  
adjudicated reaches the obligor.

602 (2) Suspension lasts until a binding decision has been issued or  
until the proceedings have been otherwise terminated.

#### 603 **Article 10.7 - Alternative dispute resolution**

604 The provisions of Articles 10.5 and 10.6 apply with appropriate  
modifications to other proceedings whereby the parties request a  
third person to assist them in their attempt to reach an amicable  
settlement of their dispute.

#### 605 **Article 10.8 - Suspension in case of force majeure, death or incapacity**

606 (1) Where the obligee has been prevented by an impediment that  
is beyond its control and that it could neither avoid nor overcome,

from causing a limitation period to cease to run under the preced-  
ing articles, the general limitation period is suspended so as not to  
expire before one year after the relevant impediment has ceased  
to exist.

(2) Where the impediment consists of the incapacity or death of 607  
the obligee or obligor, suspension ceases when a representative  
for the incapacitated or deceased party or its estate has been ap-  
pointed or a successor has inherited the respective party's posi-  
tion. The additional one-year period under paragraph (1) applies  
accordingly.

#### **Article 10.9 - The effects of expiration of limitation period** 608

(1) The expiration of the limitation period does not extinguish the 609  
right.

(2) For the expiration of the limitation period to have effect, the 610  
obligor must assert it as a defence.

(3) A right may still be relied on as a defence even though the expi- 611  
ration of the limitation period for that right has been asserted.

#### **Article 10.10 - Right of set-off** 612

The obligee may exercise the right of set-off until the obligor has 613  
asserted the expiration of the limitation period.

#### **Article 10.11 - Restitution** 614

Where there has been performance in order to discharge an obli- 615  
gation, there is no right of restitution merely because the limitation  
period has expired.

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